
No. 113,267

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In the Supreme Court of the State of Kansas

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Luke Gannon, et al.,
Plaintiffs-Appellees,

HEATHER L. SMITH
CLERK OF APPELLATE COURTS

v.

State of Kansas, et al.,
Defendant-Appellants.

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

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

District Court Case No. 10C001569

BRIEF OF APPELLANT

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Oral Argument: One Hour

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NATURE OF THE CASE

This is the second appeal from a judgment in this “school finance” case brought against the State by four school districts—U.S.D. 259 in Wichita, U.S.D. 308 in Hutchinson, U.S.D. 443 in Dodge City, and U.S.D. 500 in Kansas City, Kansas (“Districts”)—alleging that the State failed to comply with its obligations under Article 6, § 6 of the Kansas Constitution.

After this Court’s decision in *Gannon v. State*, 298 Kan. 1107, 319 P.3d 1196 (2014), the Legislature acted to fully fund supplemental general state (“LOB”) and capital outlay (“Outlay”) aid under the formulas then in place, and the Panel found that the State had complied with this Court’s order regarding equity. But the amount of aid for FY2015 was artificially inflated under the old aid formulas and, as a result, exceeded the Kansas Department of Education’s (KSDE) estimates for reasons unrelated to equity. This resulted in the Legislature repealing the old formulas and temporarily replacing them with a block grant system (SB 7) while it studies and develops a new school finance system. The amounts of equalization aid under SB 7 parallel and exceed the amounts KSDE estimated would be necessary to comply with *Gannon*.

Following passage of SB 7, the Panel withdrew its finding that the State had substantially complied with Article 6’s equity requirements and entered an order finding SB 7 unconstitutional. As a remedy, the Panel rewrote the relevant statutes, revived repealed statutes, and ordered the distribution of additional funding.

The State timely appealed and sought a stay of the Panel’s Order, which was granted by this Court. In accordance with the Court’s order, this brief addresses only equity issues; the adequacy issues will be briefed separately.

SUMMARY OF ARGUMENT AND ISSUES ON APPEAL

In response to this Court's decision in *Gannon*, the State provided and distributed to local districts an additional \$140 million in LOB and Outlay aid for the 2014-2015 school year. This amount was more than the Kansas State Department of Education ("KSDE") had estimated was necessary to fully comply with this Court's decision when the Legislature passed HB 2506 and also more than was anticipated when the Panel initially found the State had complied with Article 6's equity mandate.

SB 7 does not change the fact that districts have "reasonably equal access to substantially similar educational opportunity through similar tax effort" as required by *Gannon*. 298 Kan. at 1175. SB 7 was an appropriate adjustment in light of two circumstances that had artificially inflated state aid under old formulas.

First, the average valuation per pupil ("AVPP") of the hypothetical local district at the 8 1.2 percentile spiked out of proportion with the general distribution of all districts' AVPP. *Second*, local districts opportunistically increased their capital outlay levies because of the property tax relief provided in 2014. These circumstances do not raise equity concerns. SB 7 continues to provide equalization aid roughly equivalent to the amounts specified in the KSDE estimates, prior to these artificial inflations.

While the Panel gave lip-service to the flexible equity test of *Gannon*, it actually applied a bright-line test holding constitutionally invalid any reduction in LOB and Outlay aid below "full funding" under the formulas of the aid statutes in place when *Gannon* was decided. The Panel's findings of fact do not support that any school district, including the four plaintiffs, is or has been denied "reasonably similar access to substantially similar educational opportunity through similar tax effort" because of SB 7.

Further, the Panel’s remedy was improper and itself unconstitutional. In purporting to rewrite the relevant statutes, revive previously repealed statutes, and order the distribution of funding, the Panel violated the separation of powers by usurping legislative power. The Panel should not have imposed a specific remedy when—as this Court recognized in *Gannon*—various funding systems could satisfy the Constitution. The Panel’s decision also violated a fundamental principle of equitable relief in that it creates more harm than it is attempting to remedy. Given the non-severability provisions in both the School District Finance and Quality Performance Act (“SDFQPA”) and the Classroom Learning Assuring Student Success Act (“CLASS”), the Panel’s decision will leave no funding mechanisms in place. Instead of purporting to rewrite those statutes, the Panel at most should have issued a declaratory judgment, allowing the Legislature to cure any remaining inequities in the manner it deems most appropriate.

The Panel’s equity orders must be reversed, and this Court should enter judgment that the State has cured the equity infirmities this Court found in *Gannon*.

ISSUES

1. Did the Legislature cure the equity infirmities identified in *Gannon* by providing additional equalization aid roughly equivalent to the amounts the Kansas State Department of Education estimated would be necessary to fully fund equalization aid under the old school finance formula?
2. Did the Panel improperly consider the constitutionality of SB 7 beyond its application to FY2015 and in doing so err in concluding SB 7 violated Article 6’s equity component?

3. Did the Panel improperly order specific remedies, including rewriting the relevant statutes, instead of issuing a declaratory judgment and allowing the Legislature to choose an appropriate solution?

STATEMENT OF FACTS

A. Relying on KSDE Estimates, the State Increased Capital Outlay and LOB Aid by Nearly \$140 Million in Response to *Gannon*

The Legislature, in good faith, passed Senate Substitute for House Bill 2506 (“HB 2506”), L. 2014, ch. 93, to address the inequities found in *Gannon* by fully funding LOB and Outlay aid. In budgeting for this additional aid, the Legislature relied on the following estimates provided by the Kansas State Department of Education (KSDE):

- a. The FY2015 appropriation needed to provide 100 percent funding of LOB aid, under the [School District Finance and Quality Performance Act], was \$103,865,000 if calculated with a base state aid per pupil of \$4,433;
- b. An additional FY2015 appropriation of approximately \$5 million in LOB aid was needed as a result of the ability of local school district to increase their local options budgets under HB 2506; and
- c. One hundred percent funding of capital outlay state aid would amount to \$25,200,786 in FY2015.

Vol. 138, pp. 125-28; Vol. ___, Ex. 507, p. 2.¹ Accordingly, the Legislature made appropriations for an additional \$109,265,000 in LOB aid and an additional \$25,200,786 in Outlay aid. *Id.*

On June 11, 2014, the Panel held a hearing and concluded that HB 2506 complied with this Court’s order regarding LOB and Outlay aid, Vol. 24, pp. 3051-53, a conclusion

¹ In several instances citation to record volume and page number was not possible when this brief was filed. Departing from Supreme Court Rule 3.07(a), the record on appeal was transferred before briefing was complete. As a result, the State was required to file a motion with this Court for additions to the record and exhibits referenced in this brief had not been assigned volume and page numbers while the motion was pending.

that Plaintiffs did not challenge, Vol. 20, p. 2541. About six months later, on December 30, 2014, the Panel released a Memorandum Opinion and Order on Remand (“December Order”). Vol. 24. While concluding that the Kansas public education financing system did not satisfy the adequacy requirements of Article 6, § 6, the Panel reaffirmed that the State had complied with this Court’s order regarding equity. *Id.*, p. 3053.

B. Because School Districts Changed Their Budgets under the Old Aid Formulas to Dramatically Increase LOB and Capital Outlay Funding Required, the End Result Was that these Budget Items Significantly Exceeded the Estimates the KSDE Provided the Legislature

As time passed, it became clear that the funds required to fully fund LOB and Outlay aid under the formulas in place would exceed the original KSDE estimates. In preparing its estimates, KSDE used assessed valuations per pupil (“AVPP”) data from 2012-13, the most current data available at that time. The median and 81.2 percentile AVPP were central to determining LOB and Outlay aid under HB 2506. *See* K.S.A. 2014 Supp. 72-6434(a) and K.S.A. 2014 Supp. 72-8814(b). *See also* Vol. 138, pp. 129-35, 151.

After HB 2506 became law, in July through August of 2014, local districts prepared their FY2015 budgets. Vol. 138, pp. 53-55; 55-61, 138-39; 308-09. In the process, the local districts’ boards determined their local option budget and capital outlay levies. *Id.* In preparing these budgets, district boards had 2013-14 AVPP data *which had not been available and which was different from the data the KSDE used to estimate full funding* of LOB and Outlay aid. *Id.*, pp. 125-39. Using the 2013-14 data, the districts projected they could, depending upon their levies for LOB, receive significantly more LOB aid than had been projected when HB 2506 was passed. *Id.*, pp. 55-61, 138-141. *See* Vol. ___, Ex. 507 & 702 (comparison of the exhibits shows estimated LOB aid jumped approximately \$35.5 million as a result of the spike in AVPP). This was the case because

the 81.2 percentile AVPP spiked upwards from \$109,257 in 2012-13 to \$116,700 in 2013-14, Vol. 138, pp. 138, 141; ___ Ex. 3009, p. 6, an increase which greatly exceeded inflation. *E.g.*, http://www.bls.gov/data/inflation_calculator.htm (6.38% increase in AVPP vs. 1.6% increase in CPI).

Expecting more funds as a result of the Legislature's full funding of LOB aid, districts calculated and set their LOB levies lower than in FY2014 even though LOB usage was up statewide. Vol. 138, pp. 154-62. The average local district LOB mill levy was reduced from 21.913 in FY2014 to 17.289 in FY2015. Vol. ___, Ex. 3008, 2013-14 (column 8), 2014-15 (column 8). And the average percentage of the calculated LOB general fund rose from 27.57% to 28.67%. Vol. ___, Ex. 3017, column "BM"; Ex. 3018, column "BM."

Reduction of LOB levies provided some districts with the opportunity to provide their constituents with property tax relief. However, many of these districts saw this as their opportunity to raise their capital outlay taxes. Vol. 138, pp. 156-62. For FY2015, capital outlay levies were raised statewide by about 35 percent. The average outlay mill levy had been 3.796 in FY2014. It rose to 5.672 in FY2015. Vol. ___, Ex. 3008, 2013-14 (column 16), 2014-15 (column 16); Ex. 604, p. vi. By comparison, the mean levy was only 3.2 in FY2009, when the Outlay aid was last "fully funded. Vol. 138, p. 133; ___, Ex 3008, 2008-09 (column 5, calculated).

As a result of the precipitous increase in the 81.2 percentile AVPP and opportunistic increases in capital outlay taxes, the State would have been required to distribute approximately \$35 million more in LOB aid and \$17 million more in Outlay

aid in FY2015 than it had budgeted on the basis of the KSDE estimates. Vol. ___, Ex. 3020 (columns 3, 4, 9 & 10); Ex. 701, p. 7.

C. In Light of the Artificial Inflation of LOB and Outlay Aid, the Legislature Decided to Modify the Old Formulas While Still Providing the Overall Amount of New Equity Funding the KSDE Had Estimated Was Necessary

To address the increased cost of LOB and Outlay aid, the Legislature initially passed House Substitute for Senate Bill 4 (“SB 4”), which amended K.S.A. 2014 Supp. 72-8814 by directing a demand transfer of \$25,300,000 for Outlay aid on February 20, 2015, and another transfer of the “remaining amount of moneys to which the school districts are entitled to receive from the state general fund to the school district capital outlay state aid fund” on June 20, 2015, for distribution to local districts. 34 Kansas Register, No. 7, p. 135, §54(d). This law contemplated full funding of HB 2506.

Before SB 4 was implemented, the Legislature decided to change the direction of K-12 public school finance. Unsatisfied with the previous K-12 school finance formula, the Legislature passed House Substitute for Senate Bill 7 (“SB 7”), which repealed the old formula and temporarily replaced it with a block grant system while lawmakers review and overhaul systems of funding K-12 education. *See* SB 7, § 4. The Governor signed SB 7 on March 25, 2015. *See* 34 Kansas Register, No. 14, p. 267 (April 2, 2015).

SB 7 guaranteed FY2015 funding, but also appropriated more in equivalent “state aid” in FY2016 and then more in FY2017. *Id.* §§ 3 & 4. *See also* Vol. ___, Ex. 3020, columns S, T, AA, AB, AI, AJ (exclusive of KPERS \$4,500,139 more in FY2016 and \$17,131,405 more in FY2017). Among other things, the law:

- Appropriated an additional \$27,350,000 for districts’ general funds (effectively replacing reductions in BSAPP made by an allotment in 2015). SB 7, § 1(a).

- Amended the calculation of LOB aid in K.S.A. 2014 Supp. 72-6434. SB 7, § 38.
- Appropriated an additional \$1,803,566 for FY2015 LOB aid. SB 7, § 1(a).
- Amended the calculation of capital outlay state aid in K.S.A. 2014 Supp. 72-8814 as amended by SB 4. SB 7, § 63(b).
- Authorized an additional \$2,200,000 for FY15 capital outlay state aid. SB 7, § 63(c)(2).
- Appropriated \$4,000,000 for distribution, through a new fund, to districts that show extraordinary needs. SB 7, § 1(b).
- Repealed both K.S.A. 2014 Supp. 72-6434 and K.S.A. 2014 Supp. 72-8814 as amended by SB 4. SB 7, § 80.

Also under SB 7, the Classroom Learning Assuring Student Success Act (CLASS) replaced the School District Finance and Quality Performance Act (SDFQPA). SB 7, §§ 4-22; 81. CLASS changed K-12 public school finance, awaiting a complete overhaul of school finance formulas, by:

- Providing districts with fund flexibility at the district level; that is, funds can be transferred to the general fund of the district with no cap on the amount of the transfer. Excluded from this flexibility are three funds: bond and interest, special education, and the special retirement contributions fund. SB 7, § 62.
- For FY 2016, appropriation of \$2,751,326,659 from the State General Fund (SGF) as a block grant to school districts. A demand transfer from the SGF to the School District Extraordinary Need Fund will be made in an amount not to exceed \$12,292,000. An SGF appropriation of \$500,000 will be made to the Information Technology Education Opportunities Account (a program to pay for credentialing high school students in information technology fields, funded previously in the Board of Regents' budget). SB 7, § 2.
- For FY 2017, appropriation of \$2,757,446,624 from the SGF as a block grant to school districts. A demand transfer from the SGF to the School District Extraordinary Need Fund will be made in an amount not to exceed \$17,521,425. An SGF appropriation of \$500,000 will be made to the Information Technology Education Opportunities Account. SB 7, § 3.

- The block grants for FY2016 and FY2017 include General State Aid equal to what school districts are entitled to receive for school year 2014-15, as adjusted by virtual school aid calculations and a 0.4 percent reduction for an Extraordinary Need Fund; supplemental general state aid and capital outlay state aid as adjusted in 2014-15; virtual state aid as recalculated for FYs 2016 and 2017; amounts attributable to the tax proceeds collected by school districts for the ancillary school facilities tax levy, the cost of living tax levy, and the declining enrollment tax levy; and KPERS employer obligations, as certified by KPERS. SB 7, §§ 4-22.
- Providing the funding for FY2016 and FY2017 above the General State Aid school districts were entitled to receive for school year 2014-15, as adjusted by virtual school aid calculations and a 0.4 percent reduction, is distributed to each district in proportion to the school district’s enrollment. SB 7, § 6(f).

The following compares the LOB aid formula that SB 7 repealed with the new formula:

<p>K.S.A. 2014 Supp. 72-6434, “Old Formula”</p> <p>How it Works:</p> <p>The State provides supplemental general state aid to those districts that have adopted an LOB but have an assessed property valuation per pupil (AVPP) under the 81.2 percentile of statewide AVPP.* See K.S.A. 2014 Supp. 72-6434. The amount of such aid to which a district is entitled is the product resulting from multiplying the amount of its LOB by a ratio obtained by dividing its AVPP by the AVPP of a theoretical district at the 81.2 percentile. K.S.A. 2014 Supp. 72-6434(a). <i>Gannon v State</i>, 298 Kan. 1107, 1193 (2014).</p> <p>*The AVPP data used in the formula is from 2013-14.</p>	<p>SB 7, Section 38</p> <p>How it Works:</p> <ol style="list-style-type: none"> 1. Divide all districts with AVPP below the theoretical district at the 81.2 percentile, as determined for FY15 into five equal groups. 2. Calculate the supplemental general state aid for each district under the “Old Formula.” <ul style="list-style-type: none"> A. Lowest quintile districts receive 97% of the ratio used to calculate aid under the “Old Formula.” B. Second lowest quintile districts receive 95% of the ratio used to calculate aid under the “Old Formula.” C. Middle quintile districts receive 92% of the ratio used to calculate aid under the “Old Formula.” D. Second highest quintile districts receive 82% of the ratio used to calculate aid under the “Old Formula.”
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	E. Highest quintile districts receive 72% of the ratio used to calculate aid under the “Old Formula.”
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The use of stair-stepped quintiles, in SB 7’s LOB aid formula, is supported by the curiosity that districts like U.S.D. 229 (Blue Valley) receive LOB aid. Although Blue Valley district’s families are no doubt the wealthiest in the state by every measure but AVPP, following the “Old Formula” the district was budgeted to receive \$3,333,822 in LOB aid in FY2015. Vol. ___, Exhibit 3020, Column 3. After the law changed, the district still received \$2,400,352 in LOB aid in FY2015, but this was calculated by 72% of the ratio used for pre-SB 7 LOB aid. *Id.*, Column 10.

The following compares the Outlay aid formula that SB 7 repealed with the new formula:

<p>K.S.A. 72-8814 “Old Formula”</p> <p>How it works:</p> <ol style="list-style-type: none"> 1. Determine the amount of the assessed valuation per pupil (AVPP) of each school district in the state and round such amount to the nearest \$1,000.* 2. Determine the median AVPP of all school districts. 3. Determine a state aid percentage factor for each school where the median district factor is 25%. The factor increases or decreases 1% for every \$1,000 AVPP. 4. Multiply the district’s state aid percentage factor by the revenue expected from the district’s capital outlay mill levy in place for 2014-15. 	<p>SB 7, Section 63</p> <p>How it works:</p> <ol style="list-style-type: none"> 1. Determine the amount of the assessed valuation per pupil (AVPP) of each school district in the state and round such amount to the nearest \$1,000. 2. Determine the lowest rounded AVPP of all school districts. 3. Determine a state aid percentage factor for each school where the lowest district factor is 75%. The factor decreases 1% for every \$1,000 AVPP. 4. Multiply the district’s state aid percentage factor by the revenue expected from the district’s capital outlay mill levy in place for 2014-15.
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<u>AVPP</u>	<u>State Aid</u>	<u>AVPP</u>	<u>State Aid</u>
\$1,000	90% x taxes	Lowest: \$1,000**	75% x taxes
\$20,000	71% x taxes	\$20,000	56% x taxes
\$25,000	66% x taxes	\$25,000	51% x taxes
\$26,000	65% x taxes	\$26,000	50% x taxes
\$64,000	27% x taxes	\$63,000	13% x taxes
\$65,000	26% x taxes	\$64,000	12% x taxes
Median* \$66,000	25% x	\$65,000	11% x taxes
taxes		\$66,000	10% x taxes
\$67,000	24% x taxes	\$67,000	9% x taxes
\$73,000	18% x taxes	\$73,000	3% x taxes
\$74,000	17% x taxes	\$74,000	2% x taxes
\$75,000	16% x taxes	\$75,000	1% x taxes
\$90,000	1% x taxes	\$76,000 to \$480,000	no state aid
\$91,000 to \$480,000	no state aid		
*2013-14 AVPP data is used in the formula and the median AVPP was \$66,000.		**2013-14 AVPP data is again used in the formula and the low AVPP was \$1,000.	

The SB 7 Outlay aid formula focuses the aid to districts with the poorest AVPP by starting at the district with the lowest AVPP. The old Outlay formula used the median AVPP as its starting point.

Aid under SB 7 is well above the amounts provided before FY2015 and roughly aligns with the amount of aid KSDE estimated would be necessary to fully fund LOB and Outlay aid following *Gannon*. In FY2015, the LOB aid provided totaled \$448,973,840 and the Outlay aid totaled \$27,126,700, inclusive of forgiven overpayments. Appendix A, p. 1.

D. The Districts Moved for Reconsideration of the Panel’s Order Regarding Equity Even Before SB 7 Was Enacted

Even before passage of SB 7, the Districts sought amendment of the Panel’s December Order, filing a “Motion to Alter and Amend Panel’s Previous Judgment Regarding Equity” based on fears about the State’s ability to fund the LOB and Outlay

aid contemplated by HB 2506. Vol. 25, pp. 3233, 3239. Then, on March 26, 2015, the Districts filed a “Motion for Injunction and Declaratory Relief” in which they asked the Panel to enjoin SB 7. They alleged SB 7 does not adequately or equitably finance Kansas public schools and asked for a temporary restraining order against implementation of SB 7 until the hearing on the District’s motion to alter and amend. Vol. 130, pp. 12-20. The State opposed this new motion. It questioned the Panel’s jurisdiction to consider all of SB 7 and the Panel’s ability to grant the relief that the Districts demanded.

The hearing on the Districts’ “Motion to Alter and Amend Panel’s Previous Judgment Regarding Equity” was conducted on May 7 and 8, 2015. Vol. 138 & 139. After the hearing, the Legislature passed, and the Governor signed, 2015 Senate Substitute for House Bill 2353 (“HB 2353”), 34 Kansas Register, No. 24, p. 597 (June 11, 2015), and 2015 House Substitute for Senate Bill 112 (“SB 112”), 34 Kansas Register, No. 26A, p. 642 (June 26, 2015). This legislation made additional amendments to LOB and Outlay aid statutes and provided an additional \$1,976,818 in FY2015 LOB aid and an additional \$1,756,400 in FY2015 Outlay aid, effectively forgiving any obligation to repay aid already distributed in FY2015 that exceeded the aid provided under the formulas in SB 7. HB 2353, § 8; SB 112, § 20.

On June 26, 2015, the Panel filed a “Memorandum Opinion and Order and Entry of Judgment Regarding Panel’s Previous Judgment Regarding Equity and Plaintiffs’ Motion for Declaratory Judgment and Injunctive Relief” (“June Order”). Vol. 136. In the June Order, the Panel reversed and withdrew its finding that the State had substantially complied with Article 6’s equity requirements. The Panel found parts of SB 4, SB 7, and

HB 2353 and SB 112 unconstitutional in violation of Art. 6, § 6(b) of the Kansas Constitution. *Id.*, pp. 1425-26.

In an unprecedented and remarkable move, the Panel as a remedy purported to rewrite SB 7 and associated legislation, striking and substituting language so that the SDFQPA, as it existed in January 1, 2015, replaced CLASS. *Id.*, pp. 1484-94, 1499-1502. That portion of the decision looks precisely like a bill “markup” that takes place in the legislative process, with the Panel striking words, phrases and sentences to write the statute it prefers. *Id.* The Panel also issued a “temporary restraining order” (a misnomer if there ever was one) that purports to require the following:

1. Additional LOB and Outlay aid must be paid under the terms of the “before January 1, 2015” version of state aid statutes K.S.A. 72-6434 and K.S.A. 72-8814. *Id.*, pp. 1489-90.
2. State funds necessary for payment of the additional Outlay aid are “encumbered” for FY2015 distribution. *Id.*, p. 1490.
3. State funds necessary for payment of the additional FY2015 LOB aid will be distributed from “FY2016 revenues available for [LOB] aid.” *Id.*, p. 1496. The State understands these revenues are in SB 7’s FY2016 block grant appropriation because strictly speaking there is no longer separate LOB aid under SB 7.
4. Distribution of general state aid in FY2016 and FY2017, under CLASS, adopted by SB 7, will be based upon weighted student count in the current school year in which distribution is to be made, not the weighted or unweighted student count in FY2015. *Id.*, p. 1478; and

5. I.OB and Outlay aid portions of districts' block grants under CLASS must be calculated as the statutes providing for such aid existed before January 1, 2015. *Id.*, pp. 1487-88, 1495-96.

The Panel acknowledged that its order will require additional appropriations by the Legislature. *Id.*, pp. 1487, 1496.

The State filed a notice of appeal on June 26, 2015 from the Panel order, Vol. 137, pp. 1507-10, and requested a stay of the Panel's order. This Court granted a stay on June 30, 2015.

ARGUMENT

I. The Panel Reached the Erroneous Legal Conclusion That the Equity Infirmities Had Not Been Cured, *i.e.*, That in FY 2015 Local Districts Did Not Have Reasonably Equal Access to Substantially Similar Educational Opportunity Through Similar Tax Effort

A. This Court Reviews the Panel's Legal Conclusion *De Novo*

The constitutionality of legislative enactments is a question of law over which the Court exercises unlimited review. *See, e.g., State v. Cook*, 286 Kan. 766, 768, 187 P.3d 1283 (2008) (citing *State v. Myers*, 260 Kan. 669, 676, 923 P.2d 1024 (1996)). The legal, constitutional question presented by this appeal is whether local districts "have reasonably equal access to substantially similar educational opportunity through similar tax effort." *Gannon*, 298 Kan. at 1175. That question is reviewed *de novo*, as *Gannon* recognized. *See id.* at 1175-76. *Gannon's* discussion of the underpinning findings, which the Court held supported the conclusion that Article 6's equity component was violated, would have been purposeless if equity or lack of equity under Article 6 were a question of fact. *See id.* at 1177-81, 1183-88. Moreover, the Court found the Panel had improperly applied a rigid, zero-tolerance standard to any wealth-based disparity. *Id.* at 1180, 1188.

If the Panel’s ultimate equity conclusion was a finding of fact, that error would have required the Court to reverse, because findings of fact premised an erroneous legal standard are not entitled to any deference. *State v. Gonzalez*, 290 Kan. 747, 755-56, 234 P.3d 1 (2010).

Neeley v. W. Orange – Cove Consol. Indep. Sch. Dist., 176 S.W. 3d 746 (Tex. 2005), cited repeatedly in *Gannon*, illustrates the application of these rules to school finance litigation. The trial court had made numerous findings of fact. *Id.* at 787-88. However, considering all evidence and the trial court’s findings, *Neeley* concluded Texas public education finance did not violate its constitution’s requirement that school districts are “reasonably able to afford all students the access to education and educational opportunity to accomplish a general diffusion of knowledge.” *Id.* at 789. Explaining how its conclusion departed from the trial court’s, particularly in light of the trial court’s extensive findings of fact, the Texas Supreme Court stated:

To the extent that this determination rests on factual matters that are in dispute, we must, of course, rely entirely on the district court’s findings. But in deciding ultimately the constitutional issues, *those findings have a limited role.*

Id. at 785 (emphasis added).

B. The Legislature Should Receive Deference in Determining Whether a School Finance System Is Equitable

The equity test this Court adopted in *Gannon* is deferential: “School districts must have *reasonably equal* access to *substantially similar* educational opportunity through *similar* tax effort.” 298 Kan. at 1175 (emphasis added). This test “does not require the legislature to provide equal funding for each student or school district”; “wealth-based disparities should not be measured against such mathematically precise standards.” *Id.* at

1173, 1180 (emphasis added). The question is whether any remaining wealth-based disparities are “unreasonable.” *Id.* at 1180.

In assessing reasonableness in other contexts, this Court grants substantial deference to legislative determinations. *See, e.g., Meehan v. Kansas Dep’t of Revenue*, 25 Kan. App. 2d 183, 189, 959 P.2d 940 (1998) (“Where scientific opinions conflict on a particular point, the legislature is free to adopt the opinion it chooses, and a court will not substitute its judgment on this issue.”); *Blue v. McBride*, 252 Kan. 894, 920, 850 P.2d 852 (1993) (“[Plaintiffs] lost in the legislature. The courts are being asked to sit as a super legislature and overturn the legislature’s action as violative of the Fourteenth Amendment. This we are not empowered to do.”); *State v. Consumers Warehouse Market, Inc.*, 183 Kan. 502, 509, 329 P.2d 638 (1958) (“[J]udgment of the legislature cannot be superseded by that of the court if questions relating thereto are reasonably debatable.”).

Courts in other states also frequently grant great deference to legislative determinations in school finance litigation, to the extent they find those cases to be justiciable in the first place. *See, e.g., Lobato v. People*, 218 P.3d 358, 363 (Colo. 2009) (“[Plaintiffs] must prove that the state’s current public school financing system is not rationally related to the General Assembly’s constitutional mandate to provide a ‘thorough and uniform’ system of public education. On remand, the trial court must give substantial deference to the legislature’s fiscal and policy judgments.”); *Neeley*, 176 S.W. 3d at 785 (“[A] mere difference of opinion between judges and legislators, where reasonable minds could differ, is not a sufficient basis for striking down [school finance] legislation as arbitrary or unreasonable.”); *Danson v. Casey*, 382 A.2d 1238, 1245-46 (Pa.

Comwlth. 1978) (using a fair and substantial relationship test to review Pennsylvania’s school finance system against the constitutional obligation to “provide for a thorough and efficient system of public education to serve the needs of the Commonwealth”).

This Court should align itself with these sister States and grant substantial deference to the Legislature in determining whether the State has provided “reasonably equal” access to educational opportunities.

C. The Panel Failed to Apply the Equity Test this Court Adopted

While the Panel gave lip-service to the equity test this Court adopted in *Gannon*, it in fact applied a quite different one in practice. In discussing LOB aid, the Panel wrote:

[I]t should be kept in mind that the eligibility cap for [LOB] aid is at 81.2, which means there already exists a 18.8 percentage disparity between the wealthiest districts’ tax effort . . . Thus, “zero tolerance” has not been applied by us as the measuring stick or point of reference for measuring a wealth based disparity nor the freedom of local choice so accorded. Nevertheless, we would admit that were we unfettered in our decision making, we would find little room to deviate from the strict view in regards to tax equity nor the consequent equity in freedom of choice accorded by such equity

Vol. 136, p. 1471. Thus, instead of applying its prior “‘zero tolerance’ for any wealth-based disparity” test, which this Court rejected in *Gannon*, 298 Kan. at 1180, the Panel merely altered its zero tolerance test to find unconstitutional any aid below full funding under the old LOB formula.

In attempting to justify its ruling concerning LOB aid, the Panel relied on the fact that SB 7 “reduced down to about 92.7% of the dollars which would have been otherwise been due had the then-existing FY2015 formula been followed. *Id.* at 1462-63, 1467, 1469. The Panel also incorporated a miscalculation that the formula in SB 7, “while not dropping the eligibility threshold, per se, would have, but for the graduated reductions

through quintiles, effectively reduced the eligibility cap to the 75.27 percentile had the reductions been accomplished by strict proration of the defunded amount.” *Id.* at 1472. We cannot know how the Panel arrived at the 75.27 percentile figure because it did not share its math. We can only know that its statement is untrue. *See infra* pp. 22-23. Yet, with the wrong figure in hand, the Panel stressed that by providing LOB aid below full funding, districts were required to either trim their budgets or rely on reserve funds to cover the balance. Vol. 136, pp. 1468-69.

Similarly, the Panel attempted to justify its ruling concerning Outlay aid by relying upon the fact that SB 7 provided less than full funding under the old formula. The Panel observed that “the amount of the entitlement for all those [districts] eligible [for Outlay aid] has been reduced to some degree;” *id.* at 1453-54, and that use “of USD’s other operating funds or needs . . . would be likely to occur commensurate to the unsatisfied need.” *Id.* at 1454. The Panel reported the difference in Outlay aid local districts had budgeted based on full funding and that provided by the State as approximately \$18.6 million and concluded that the Legislature has “merely reduced, not cured, the wealth-based disparity found that disparity found [sic] unconstitutional in *Gannon*.” *Id.* at 1449, 1454-55.

In both contexts, then, the Panel reasoned that because the Legislature had failed to fully fund equalization aid *under the old formula*, it had merely reduced, rather than cured, unreasonable wealth-based disparities. Under this logic, there is no principled way to distinguish a reduction in “full funding” of \$150 million dollars, \$50 million dollars, one thousand dollars, or one dollar. The reasoning does not faithfully apply the equity test set out in *Gannon*.

In fact, *Gannon* made clear that “full funding” was not the *only* remedy for the inequities that violated Article 6. *Gannon*, 298 Kan. at 1181, 1188-89, 1198-99 (“We agree that the infirmity can be cured in a variety of ways—at the choice of the legislature.”). And the Court stressed that any cure should “be measured by determining whether it sufficiently reduces the unreasonable, wealth-based disparity so the disparity then becomes constitutionally acceptable, *not whether the cure necessarily restores funding to the prior levels.*” *Id.* at 1181, 1189-99 (emphasis added). Yet the latter requirement is precisely what the Panel demanded here.

D. The Legislature Cured the Inequities Found in *Gannon*

When the correct legal standard is applied—whether “districts have reasonably equal access to substantially similar educational opportunity through similar tax effort”—the Legislature has cured the equity problems identified in *Gannon*. In fact, the Panel found as much following passage of HB 2506.

SB 7 does not change this fact. SB 7 was an appropriate adjustment in light of circumstances that, under old formulas, would have artificially inflated state aid. *First*, the AVPP at the hypothetical local district at the 81.2% level, used to calculate LOB state aid, spiked out of proportion with the general distribution of all districts’ AVPP. *Second*, local districts opportunistically increased their capital outlay levies because of the property tax relief provided in 2014. These circumstances do not raise equity concerns. SB 7 continues to provide aid roughly equivalent to the amounts specified in the KSDE estimates, prior to these artificial inflations.

1. SB 7’s Aid Formulas Did Not Impact Local Mill Levies Which Had Been Reduced Because of FY2015 LOB and Outlay Aid

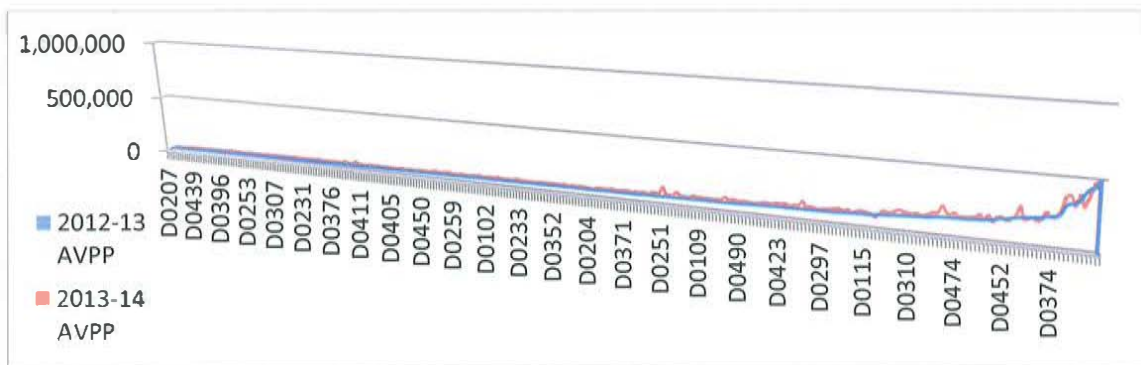
SB 7’s new formulas do not impact local mill levies. Any local district LOB tax for this year has already been levied. In fact, the increased LOB aid allowed local districts to reduce their LOB mill levies in FY2015 even after local districts generally voted larger LOBs. The average LOB usage rose from 27.57% in FY2014 to 28.68% in FY2015 of the “state financial aid of the district(s).” *See* K.S.A. 2014 Supp. 72-6433(a). At the same time, the statewide average mill levy dropped from 21.913 mills in FY 2014 to 17.289 mills in FY2015. The result was the same for the Plaintiff Districts:

USD#	USD Name	LOB Rate 2013-2014	2013-2014 Mill Levy	LOB Rate 2014-2015	2014-2015 Mill Levy
259	Wichita	29.66	25.2	30	16.212
308	Hutchinson	27.75	22.871	28.68	13.419
443	Dodge City	29.48	30.446	29.88	16.636
500	Kansas City	28.93	30.994	30	13.396

Vol. ___, Ex. 3017, column “BM”; Ex. 3008, 2013-14 Report, column 8; Ex. 3018, column “BM”; Ex. 3008, 2014-15 Report, column 8; Ex. 3018, column “BM”; Ex. 3008, 2013-14 Report, column 8; Ex. 3008, 2014-15 Report, column 8. *See also* Vol. 132, p. 1040. The average mill levy the ten local districts with the lowest AVPP shifted from 26.54 in FY2014 to 13.67 in FY 2015. Vol. ___, Ex. 3017, column “BM”; Ex. 3008, 2013-14 Report, column 8; Ex. 3018, column “BM”; Ex. 3008, 2014-15 Report, column 8; Ex. 3018, column “BM”; Ex. 3008, 2013-14 Report, column 8; Ex. 3008, 2014-15 Report, column 8. *See also* Vol. 132, p. 1041.

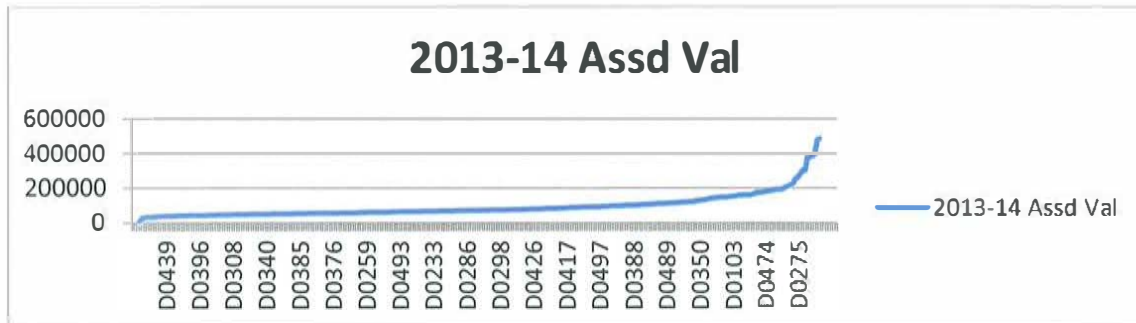
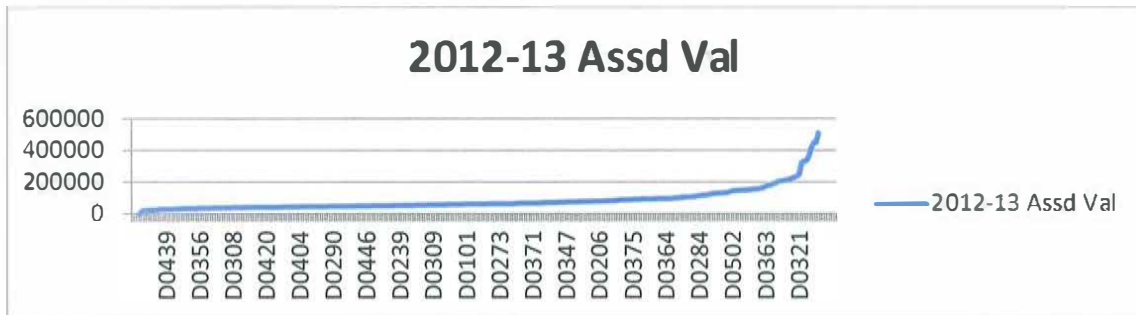
2. The Upward Spike in AVPP Did Not Reflect Need for More Equity Aid in FY2015.

The uncontroverted evidence established that the general distribution of AVPPs across all local districts did not materially change between 2012-13 and 2013-14. First, property values per pupil jumped up and down among districts between 2012-13 and 2013-14, but they did not appreciably increase or decrease relative to other districts. The following figure shows there was little variance in all districts' assessed property values in the two years. The figure sorts the districts, low to high, by their 2012-13 AVPP and plots the distribution of 2012-13 AVPP and 2013-14 AVPP. The figure had to be angled slightly otherwise it is very difficult to see any variance. In other words, the slight increase in the mean AVPP mostly resulted from increases in the AVPP in only a few districts as shown:



Vol. __, Ex. 3009; Vol. 134, pp. 1334, 1358-69.

Second, the overall distribution of AVPPs between local districts changed very little from 2012-13 to 2013-14. The next two figures sort the districts, low to high, and plot their AVPPs:



Vol. __, Ex. 3009; Vol. 134, pp. 1335, 1370-90.

The curves are nearly identical. Accordingly, any advantage possessed by districts with the highest AVPP to raise tax revenue at lower mill levies remained pretty much the same in the two years.

But important to this appeal, by operation of LOB aid, the distribution of the districts' effective AVPP at or below the 81.2 percentile is substantially the same whether the LOB aid is provided to the 81.2 percentile or to the effective percentiles under SB 7. This means that SB 7 did not change the fact that districts at or below the 81.2 percentile of all districts generally have the same ability to raise LOB. SB 7's application of multiple percentages to the LOB aid ratios calculated under the old formula produces effective local district AVPPs from between \$107,587 per pupil to \$116,484 per pupil. While the Panel stated the SB 7 "would have, but for the graduated reductions through quintiles, effectively reduced the eligibility cap to the 75.27 percentile had the reductions been accomplished by strict proration of the defunded [sic] amount," Vol. 136, p. 1472,

the Panel's math is flawed. The 75.27 percentile was \$103,038. The lowest effective AVPP because of SB 7's LOB aid was at the 77.71 percentile and the highest at the 81.1 percentile. In fact, the mean effective AVPP was at the 79 percentile. *See* Appendix B, p. 6 for calculations.

Moreover, the artificial nature of the increase in the AVPP can be shown by focusing on the districts surrounding the hypothetical 81.2 percentile district. In 2013-14, the 81.2 percentile district was between USD284 (Chase County), which AVPP was \$115,959, and USD 444 (Little River), which AVPP was \$117,724. Vol. ___, Ex. 701, p. 21. While the AVPP for the Chase County and Little River Districts was lower than the 2012-13's 81.2 percentile district, oil production in the districts and increased oil prices caused their AVPPs to ascend. Vol. 138, pp. 150-51. In Little River's case, the jump in AVPP is also explained by a 10% reduction in FTE students. Vol. ___ Ex. 3017, FY2015 Legal Max, columns 3 & 4(c). The assessed value of the property in the district increased some, Vol. ___, Ex. 3009, but the increase in AVPP was magnified because AVPP is the product of a district's assessed valuation divided by the number of the district's students. After the fall of 2014, oil prices dropped precipitously. *See* http://ycharts.com/indicators/kansas_crude_oil_first_purchase_price.

3. The Aid Provided in FY2015 Cured the Equity Infirmities *Gannon* Found, Which Had Nothing to Do with the Artificial Increase in AVPP or Some Districts' Opportunistic Increase in Outlay

a. LOB Aid under SB 7 Satisfied *Gannon*'s Requirements

This appeal is distinguishable from *Gannon*, where the Court observed that “[w]ith no evidence of a cost justification for the reduction, the panel made a reasonable inference that the proration ‘reflects no other reason than a choice based on the amount of

funds desired to be made available' by the legislature.” *Gannon*, 298 Kan. at 1185. Here, the undisputed evidence presented to the Panel showed that LOB and Outlay formulas were changed in response to a spike in AVPP unrelated to increased operating or maintenance costs and opportunistic increased levies for Outlay monies. Concluding that these additional funds were not necessary to preserve “reasonably equal access to substantially similar educational opportunity through similar tax effort,” the Legislature created a new funding system that includes equalization aid roughly equivalent to the original KSDE estimates. In fact, the amount of LOB and Outlay aid provided in FY2015 actually *exceeded* what had been deemed constitutionally appropriate by all estimates when HB 2506 was passed. No evidence supports a finding that the aid provided became insufficient thereafter because of the artificial inflations under the old formula.

In *Gannon*, the Court reasoned “it logically follows that the inequity that equalization aid was designed to cure remains present” by the failure to fund aid required by statutes. *Gannon*, 298 Kan. at 1185. But in this case, SB 7’s formulas for LOB and Outlay *were* fully funded. Thus, unlike before, there is no admission any more that such aid is required.

Gannon also relied on the Panel’s findings of fact regarding the extent of loss of LOB aid to conclude that Article 6 was violated. The Court noted that Wichita’s LOB aid entitlement was reduced \$6,087,297, or about 6% of its authorized LOB, so that Wichita had to raise its taxes to accommodate the reduction. *Gannon*, 298 Kan. at 1186. And it found similar obligations were imposed on the other Districts:

Due to the proration of aid in fiscal year 2012, Hutchison lost \$736,135, or about 8% of its authorized LOB; Dodge City lost \$1,422,457, or about 10% of its authorized LOB; and Kansas City, Kansas, lost \$4,078,906, or

about 9% of its authorized LOB. Each reduction technically increased the district's local responsibility by those lost state aid amounts.

Id.

However, the difference between the local districts' budgeted FY2015 LOB and the revenue available in FY2015 is small in any pertinent sense. Statewide, the districts' LOB revenue totaled approximately \$1.026 billion instead of \$1.062 billion, a 3% difference. Vol. __, Ex. 3018, column 21(c) or (d); Ex. 3018, column 21(c) or (d); Ex. 3020, columns 3 & 10). *See also* Vol. 134, p. 1045. Under SB 7, the districts all received substantially more LOB aid than in FY2014, allowing them to reduce their LOB tax levies:

- The LOB aid Wichita received in FY2015 was \$11,315,748 more than it received in FY2014, before *Gannon*. As a result, Wichita reduced its LOB tax levy from 25.2 to 16.212. Its percentage change in LOB aid as it budgeted for FY2015 and the aid received under SB 7 was 4%. This was less than its LOB fund's FY2015 cash reserves.
- The LOB aid Hutchison received in FY 2015 was \$1,511,052 more than in the previous year. It lowered its LOB levy from 22.871 to 13.419. Its percentage change in LOB aid as it budgeted for FY2015 and the aid received under SB 7 was 2%. This was less than its LOB fund's FY2015 cash reserves.
- The LOB aid Dodge City received in FY 2015 was \$2,788,382 more from than in the previous year. It lowered its LOB levy from 30.446 to 16.636. Its percentage change in LOB aid as it budgeted for FY2015 and the aid received under SB 7 was 2%. This was less than its LOB fund's FY2015 cash reserves.
- The LOB aid KCK received in FY 2015 was \$9,164,638 more than the previous year. It lowered its LOB levy from 30.994 to 13.396. Its percentage change in LOB aid as it budgeted for FY2015 and the aid received under SB 7 was 2%. This was less than its LOB fund FY2015 cash reserves.

Vol. __, Ex. 3022, column 3; Ex. 3020, spreadsheet, column 10; Ex. 3017, column "BM"; Ex. 3008, 2013-14 Report, column 8 and 2014-15 Report, column 8; Ex. 3018, column "BM"; Ex. 3018, column 21(c) or (d); Ex. 3018, column 21(c) or (d); Ex. 3020,

columns 3 & 10; Ex. 3020, spreadsheet, columns 3 & 10; Ex. 3013, 2014, column. *See also* Vol. ___, Ex. 132, pp. 1039-40, 1045, 1047. These additional funds have cured the equity violations identified in *Gannon*.

This Court's holding in *Gannon* also relied on disparities in assessed property values between the similarly sized Galena and Burlington school districts:

[I]n fiscal year 2012 Galena's adopted LOB was \$1,500,000. . . . But when its [LOB] entitlement was prorated to 86.1%, it lost \$172,576 [in LOB aid] To cover this shortfall, Galena needed to raise its local property taxes by about 12 mills, bringing its total local responsibility under the LOB to about 30 mills. Or it needed to cut its budget.

Gannon, 298 Kan. at 1186-87. Yet, as a result of the additional LOB aid it received in FY 2015, Galena was able to reduce its LOB mill levy from 27.279 in FY2014 to 16.997. Vol. ___, Ex. 3018, 2013-14 Report, column 8 & 2014-15 Report, column 8. It received \$804,947 more in LOB aid in FY2015 than the previous year. Vol. ___, Ex. 3015, p. 6; Ex. 3020, column 10 (\$1,710,273 minus \$905,326).

The Panel here inappropriately attached great significance to the fact that districts developed their budgets for the 2014-2015 school year based on the assumption of fully funded aid under the old LOB formula and SB 7 marginally reduced this additional aid. The percentage change between budgeted LOB aid and LOB aid received under SB 7 ranged from 2% to 4% for the four Plaintiff Districts. Vol. ___, Ex. 3018, column 21(c) or (d); Ex. 3018, column 21(c) or (d); Ex. 3020, columns 3 & 10).

If local districts had chosen, they could have absorbed the difference between the local districts' budgeted FY2015 LOB revenue and the revenue available under SB 7 by drawing against the cash balances in their LOB fund cash reserves. Local districts' LOB

fund cash reserves starting FY2015 exceeded the small differences as shown in the following table:

USD Name	LOB Aid As Budgeted	LOB Aid Under SB 7	Difference	LOB and Contingent Funds
Statewide	483,829,732	448,422,920	35,406,812	253,846,248
Wichita	59,174,742	54,440,762	4,733,980	19,438,124
Hutchinson	6,456,000	6,262,993	193,007	2,590,850
Dodge City	11,723,645	11,370,569	356,076	6,292,540
Kansas City	35,695,695	34,624,824	1,070,870	12,426,714

Vol. __, Ex. 3020, spreadsheet, columns 3 & 10; Ex. 3013, 2014, column. *See also* Vol. 132, p. 1047.

Only testimony concerning the finances of two of the four Districts, Hutchinson and KCK, was presented at the May equity hearing. The Hutchinson and KCK administrators testified their district might make “cuts” because of reductions of funding under SB 7. Vol. __, Ex. 654, 655. The administrators compared all funding their districts had hoped to receive under laws in place before HB 2506 for FY2015-17. *Id.*; Vol. 138, pp. 26-33, 85-86, 92-96, 99-102; Vol. 139, pp. 291-92, 295-98, 319-22, 328-31. These reductions in expected funding, which they described as “cuts,” were not pinpointed to FY2015 or loss of LOB or Outlay aid alone. Moreover, no evidence was presented that these changes, if implemented instead of drawing against cash reserves, precluded the districts from providing reasonably similar education opportunities when compared with other districts. And no evidence purporting to show any impact on other districts has been submitted.

However, the difference in the increase in FY2015 LOB aid that Hutchinson and KCK expected before SB 7 and the actual increase in aid provided was less than monies the districts had budgeted to have in the bank at the end of FY2015. Hutchinson started

FY2015 with \$744,944 in its LOB fund. Vol. ___, Ex. 3023, USD 308 Budget, p. 21. It had budgeted expenditures and transfers of \$10,000,000. *Id.* at 21, 25. It planned no transfers into the fund from its contingency reserves or any other district fund. *Id.* The budgeted expected cash balance after all expenditures for FY2016 was \$477,122. *Id.* This is \$163,888 more than the “reduction” from the budgeted FY 2015 LOB aid by SB 7.

Likewise, KCK started the FY 2015 with \$4,176,493 in its LOB fund. Vol. ___, Ex. 3023, USD 500 Budget, p. 21. The District budgeted expenditures and transfers from the fund of \$49,940,047. *Id.* at 21, 25. It planned no transfers into the fund from contingency reserves or any other district fund. *Id.* at 21. The budgeted expected cash balance after all expenditures for FY2015 was \$2,210,264. *Id.* This is \$1,139,394 more than the “reduction” from the budgeted FY2015 LOB aid by SB 7.

In addition, it is important to recognize that the only “reductions” to LOB aid by SB 7 were reductions to the *increased* LOB aid provided by HB 2506. Even after these “reductions,” each district still received millions of dollars more in LOB aid for FY2015 than in the prior fiscal year, amounts that exceeded what everyone found acceptable when HB 2506 was passed and approved by the Panel. No evidence was offered and none supports an inference the Districts had any greater dollar equity need between when HB 2506 was passed and SB 7 became law.

b. Outlay Aid under SB 7 Satisfied *Gannon*'s Requirements

As with LOB aid, the infirmities which *Gannon* identified regarding Outlay aid have been corrected by the State. *Gannon* emphasized the Legislature had acknowledged an inequity in its school financing structure through its enactment of K.S.A. 2005 Supp.

72-8814. *Gannon*, 298 Kan. at 1178. But that statute has since been amended, and SB 7 fully funded its Outlay aid formula.

Gannon also relied on the fact that Wichita would have been entitled to approximately \$4.3 million in Outlay aid during FY2012 and received none, that the Panel had reasonably inferred the need for capital outlay expenditures continued after the State stopped provided Outlay aid, that the lack of Outlay aid funding distorted and exacerbated inequities among districts because in the complete absence of Outlay aid, and that capital outlay expenditures would instead probably have had to come from other funds (*e.g.*, LOB funds or BSAPP-generated funds that logically would have to be diverted from their own particular intended uses). *Gannon*, 298 Kan. at 1177-79.

Those concerns have all been addressed. Up to and through the appeal, the Districts' claim for future capital outlay aid was the State should "fully fund" Outlay aid. Vol. 7, p. 926. The Districts anticipated the required future Outlay aid would be in the neighborhood of \$25 million annually. Vol. 1, pp. 35, 47. *See also* Plaintiffs' Proposed Findings of Fact 259, Vol. 13, p. 1658. The Panel adopted this finding as its own. Vol. 14, p. 1799. Until FY2015, Outlay aid, if it had been paid, would have been in the range of \$20 to 25 million each year. Vol. 138, pp. 162-63.

Under SB 7, local districts received approximately \$27 million in Outlay aid in FY2015. Appendix A, -p. 1; Vol. __, Ex. 3020, column 9. The districts are not denied access to substantially similar educational opportunity because they received "only" \$27 million rather than the \$25 million they originally anticipated. There is no evidence that districts' Outlay needs increased after the Panel released its initial judgment finding that the equity infirmities in Outlay aid had been cured by HB 2506.

Just as with the reduction of LOB aid by the change of formula in SB 7, if local districts had elected, they could have absorbed the difference between the FY2015 Outlay aid they had budgeted and the revenue available under SB 7. Again, they could have drawn upon the monies in their capital outlay fund cash reserves. Local districts' capital outlay cash reserves exceeded the differences between 2015 budgeted Outlay aid and the actual Outlay aid provided. The statewide difference was approximately \$18 million, but the Outlay cash reserves as the beginning of FY2015 were \$432,142,687. The difference for each District and available cash for Outlay when the year began was: Wichita, \$3,020,714 compared to \$22,310,169 in reserve; Hutchinson, \$120,227 compared to \$5,340,008 in reserve; Dodge City, \$247,897 compared to \$1,798,674 in reserve; Kansas City, \$805,045 compared to \$38,425,956 in reserve. Vol. ____, Ex. 3020 column 9; Ex. 3020, column 16; Ex. 3013, 2014, column 16.

Again, as to the two Districts whose representatives provided testimony at the May hearing, the difference between the budgeted FY2015 Outlay revenue and the revenue available under SB 7 is smaller than the cash balance they budgeted for the end of FY2015. Hutchinson started FY2015 with \$5,340,008 in its Outlay fund. Vol. ____, Ex. 3023, USD 308 Budget, p. 43. It budgeted expenditures and transfers of \$3,815,847. *Id.* It planned no transfers into the fund from contingency reserves or any other district fund. *Id.* The budgeted expected cash balance after all expenditures for FY2016 was \$2,901,361. *Id.* This is \$830,875 more than the "reduction" from the budgeted FY 2015 LOB aid by SB 7.

Likewise, KCK started FY2015 with \$38,425,956 in its Outlay fund. Vol. ____, Ex. 3023, USD 500 Budget, p. 43. It had budgeted expenditures and transfers of \$45,635,755.

Id. at 43, 45. It planned no transfers into the fund from contingency reserves or any other district fund. *Id.* at 43. The budgeted expected cash balance after all expenditures for FY 2016 was \$1,635,920. *Id.* This is \$2,781,134 more than the “reduction” from the budgeted FY 2015 LOB aid by SB 7.

Moreover, Outlay aid has a significantly lower equalizing affect when compared to LOB aid. Outlay aid supplements the revenue local districts raise by their Outlay tax. By contrast, LOB aid is *part of* each local district’s LOB. Vol. 138, pp. 156-58. Thus, USD 207 (Ft. Leavenworth), which has the lowest AVPP in the state, received \$6,553 in Outlay aid to supplement the \$8,711 it raised by its 3.981 mill levy for 2014-15. Vol. ___, Ex. 3020, column 9; Ex. 3008, column 16. Yet, it received \$3,328,661 in LOB aid making up nearly all of its adopted \$3,471,532 LOB. Vol. ___, Ex. 3018, column 21(d).

Outlay aid was never intended to make the districts’ ability to raise Outlay absolutely equal. Vol. 138, p. 157-59. This is so for at least two reasons. First, local districts’ use of Outlay has been restricted to acquisition, construction, repair, remodeling, additions to, furnishing, maintaining, and equipping of school property and equipment. K.S.A. 2014 Supp. 72-8801(a). *See also* Vol. 14, pp. 1913-15. Thus, local districts attach different levels of importance to Outlay revenue depending upon the condition of the district’s property and equipment in comparison to LOB revenues, which can be spent by a local district in almost any manner. Vol. 138, p. 166. For example, Galena and Cherryvale did not levy an Outlay tax in FY2015, even though each district’s total mill levy was less than the statewide average of 50.402. Vol. ___, Ex. 3008, column “USD Total Actual Levies.” However, Galena levied 14.003 mills and Cherryvale levied

7.503 mills for bond interest pertaining to their new construction. Vol. __, Ex. 3008, column 63.

Second, Outlay aid is not designed to reduce the mill levies otherwise required of AVPP poorer districts to raise funds. A district's Outlay mill levy cannot exceed 8 mills. K.S.A. 2014 Supp. 72-8801(a) & (b)(2). Thus, for example, the maximum Outlay tax burden is equal on Galena and a high AVPP district. By contrast, maximum LOB is a percentage of a district's state financial aid calculated for LOB. K.S.A. 2014 Supp. 72-6433, -6433d. Therefore, if LOB aid were not available, Galena would be required to levy more mills than AVPP rich districts in order to raise its maximum legal LOB.

Under the old formula for capital outlay, the increased 2014-15 mill levies resulted in a jump in capital outlay aid the State would have had to distribute. The jump explains nearly all of the *additional* \$18 million that Plaintiff Districts now demand. The jump was not to make tax burdens more equal. Vol. 138, pp. 138-39. The jump was not to correct any impediment to districts providing substantially similar educational opportunity. The Legislature acted reasonably in providing Outlay aid at levels above the pre-jump estimates of full funding, and in so doing cured the inequities identified in *Gannon*.

II. The Panel Should Not Have Adjudicated the Constitutionality of SB 7 Beyond Its Application to FY2015. Further, the Panel Erred in Concluding SB 7, as Applied to FY2016 and FY2017, Violated Article 6's Equity Component

A. The Panel Should Not Have Adjudicated the Constitutionality of SB 7 Beyond its Application to FY2015

When remanded for further proceedings after *Gannon*, the Panel was obligated to comply with the Court's mandate and could consider only the matters essential to

implementing the mandate. *State v. Collier*, 263 Kan. 629, 632, 952 P.2d 1326 (1998). The Court issued its mandate and remanded with directions to the Panel on how to proceed in resolving the remaining claims. *Gannon*, 298 Kan. at 1198-99. Whether SB 7, into years FY2016 and FY2017, complies with the equity piece in Article 6 should not have been included in the review of whether the State has cured the equity infirmities identified in *Gannon*.

Amendment following remand is permitted only when consistent with the appellate court's decision. See 3-15 *Moore's Federal Practice - Civil* § 15.14 (2015), citing *Nguyen v. United States*, 792 F.2d 1500, 1502-03 (9th Cir. 1986) (although decision of appellate court foreclosed district court from reconsidering issues decided by appellate court, district court was free to allow amendments regarding issues not disposed of on appeal); *In re Beverly Hills Bancorp v. Hine*, 752 F.2d 1334, 1337 (9th Cir. 1984) (district court's grant of leave to amend on remand was in error when intent of appellate court was clear that trustee was not entitled to amend). Yet, the Districts never filed a motion to amend their claims. They did not provide a proposed amended petition. Without a motion, an order granting leave to amend, and amended pleadings, the consideration of SB 7 beyond FY2015 placed the cart before the horse.

Montoy v. State, 282 Kan. 9, 138 P.3d 755 (2006), is instructive. The Court dismissed the *Montoy* litigation after finding that the State substantially complied with remedy orders through new legislation. Its choice was to either dismiss the case or remand and allow the *Montoy* plaintiffs to amend their pleadings. The Court wrote:

[I]n response to our orders, the legislature has amended the school finance formula three times. The most recent changes made in S.B. 549 have now so fundamentally altered the school funding formula that the school finance formula that was at issue in this case no longer exists. It has been

replaced with a fundamentally different funding scheme for which there are no facts and figures in the record from which we could determine how it will operate over the next 3 years.

We recognize that we could remand this case to the district court to allow the plaintiffs to amend their pleading to challenge the new funding formula. However, we decline to do so, electing instead to end this litigation. We do so for two reasons.

First, we note the point made by the Chief Justice of the Ohio Supreme Court in *DeRolph v. State*:

“A review of sixteen other state Supreme Court decisions that have declared their systems for funding public education unconstitutional reveals that a majority of those decisions remanded the case to a trial court. However, it is those states that have had the most difficulty producing a final plan that met the Supreme Court’s opinion of constitutionality. . . .”

Second, S.B. 549 is a 3-year plan; thus, it may take some time before the full financial impact of this new legislation is known, a factor which would be important in any consideration of whether it provides constitutionally suitable funding. . . .

Id. at 25-26.

The Panel should have found that the State substantially complied with Article 6’s equity requirements as expressed by the Court’s mandate on the basis of the aid it provided in FY2015. Applying the Court’s rationale in *Montoy*, the Panel should not have litigated the constitutionality of SB 7 beyond its application to FY2015.

First, entry of the Panel’s judgment without pleadings, statutorily required status conference, discovery, statutorily required final pretrial conference and trial or any other procedures remotely resembling due process of law is not an option. The State is entitled to no less due process than any other litigant.

Second, the Districts’ assertion that Article 6 is violated was procedurally split when the Court affirmed the Panel’s January 2013 order only in part and remanded for

additional findings. The two components are now being separately considered despite their interrelated nature. It made sense for the Panel to refuse a request to amend so that the Court can address the entire case, rather than continue to engage in fractionalized review of SB 7. Pressing forward, while the adequacy appeal is undecided, placed the very kind of road block to reaching a final constitutional plan that persuaded the *Montoy* Court to dismiss.

Third, as in *Montoy*, the new legislation is comprehensive and because of its new approaches may be difficult to assess without some passage of time. SB 7 is a substantial shift in Kansas' financing of K12 public education.

B. The Panel Erred in Concluding SB 7, as Applied to FY2016 and FY2017, Violated Article 6's Equity Component

Even if the Panel could consider SB 7 going into FY2016 and FY2017, the Panel's criticisms do not justify its legal conclusion that SB 7 violates the equity component of Article 6. The State carried the burden to show it had cured the equity infirmities which the Court had found violated the Kansas Constitution. *Cf. Montoy v. State*, 279 Kan. 817, 820, 112 P.3d 923 (2005). Therefore, every deference granted to legislative enactments and the presumption of constitutionality should attach to any analysis of the prospective application of SB 7. The standard must be whether the State acted arbitrarily in enacting SB 7. Otherwise, an irrational result is possible. That is, under the same facts and circumstances, Kansas school finance systems are constitutional or in violation of the Kansas Constitution depending only upon which party carries the burden of persuasion.

In addition to the general concern that SB 7 does not fully fund equalization aid under the old formula, the Panel offered several other critiques of SB 7 relating

specifically to FY2016 and FY2017. The Panel claimed that by freezing LOB and Outlay aid in the amounts local districts had received in FY2015, SB 7 improperly and inequitably overlooked possible increases in enrollments and weighted enrollments. Vol. 138, pp. 1478-79. Additionally, the Panel asserted that some districts cannot receive additional LOB and Outlay aid on levies that they may elect to increase above their FY2015 levels. *Id.*, pp. 1452, 1457. Finally, the Panel asserted that limiting the ability to raise LOB levies above what had been arranged before or by July 1, 2015 is unfair. *Id.*, p. at 1457.

There are numerous problems with these arguments. First, they substitute the Panel's own policy judgments in place of the equity test adopted by this Court. Nowhere does the Panel explain how the issues it identifies cause SB 7 to deny districts "reasonably equal access to substantially similar educational opportunity through similar tax effort."

Second, the Panel's concern about changes in enrollments is speculative and insubstantial. *Cf. U.S.D. No. 229 v. State*, 256 Kan. 232, 258, 885 P.2d 1170 (1994) ("[T]he court cannot base its judgment upon the speculation of what may happen in the future"). Comparison of the 2014-15 and 2013-14 school year data shows the statewide weighted full time equivalent enrollment decreased in FY2014. The Panel's contrary assertion is based on incorrect enrollment data which was updated later in 2014 after enrollment audits. Vol. 138, pp. 143-50; *Compare* Vol. ___, Ex. 603 (relied upon by the Panel at Vol. 136, p. 1434), *with* data in Vol. ___, Ex. 3018, columns 3, 4b, and 5. In fact, the weighted FTE for Hutchinson and Wichita had also decreased into FY 2015. *Id.*; *see also* Vol. 134, p. 1339 and Appendix B, pp. 7-8.

Moreover, changes in enrollments and even weighted enrollments did not have a significant impact on equalization aid even under the old formula. These changes had *no* impact on Outlay aid because enrollment numbers were not part of that formula. And even with LOB aid, the percentage change in FY2015 because of enrollment changes between 2013-14 and 2014-15 was only about 1/3 of one percent:

	LOB State Aid before SB 7	Applying Ratio of Increase or Decrease in Enrollment to Aid	Percentage Change
Statewide	483,829,732	-1,640,183	-0.339
USD 259	59,174,742	-1,431,437	-2.419
USD 308	6,456,000	-59,524	-0.922
USD 443	11,723,645	254,743	2.173
USD 500	35,695,695	184,868	0.518

Vol. ___, Ex. 3020, spreadsheet, column 3; *see also* Vol. 134, p. 1340. For districts that do experience significant enrollment growth, SB 7 set up an Extraordinary Need Fund, which allows those districts to apply to the State Finance Council for additional state funding.

Third, there is no reason to believe local districts that did not raise their maximum LOB in FY2015 will do so in FY2016 or FY2017. Into FY2015, many districts did not perceive the need to levy LOB at the legal maximum of 32% of a calculated general state aid. The statewide average was 28.67 percent, Vol. ___, Ex. 3018, column “BM,” while most districts were at 30%, the cap without special elections. *Id.* Likewise, there is no evidence districts will raise their capital outlay any higher.

However, fourth, no evidence exists that local districts will be unable to tax and raise LOB or Outlay funds above the FY2015 levels if any additional taxing authority exists and they make that choice. For example, Hutchison can raise its LOB and Outlay

mill levies to maximum allowed by statutes by levying only an additional 6.823 mills. Appendix C. Into FY2015, Hutchinson's total mill levies were only 52.086. Vol. ___, Ex. 3008, 2014-15, "USD Total Actual Levies." Hutchinson could have covered the difference between the aid calculated under the old formulas and SB 7's formulas by levies against its local property of 1.2 mills in Outlay and 1.2 mills in LOB. Appendix C.

Fifth, there is no basis in the evidence to infer that the relatively minimal change in aid provided by SB 7 impacts educational opportunity at all, much less "access to substantially similar educational opportunity." There is no basis for the Panel or the Court to act as a super legislature and substitute its judgment for Legislature's actual and presumed findings.

Finally, SB 7 is only a temporary measure; it does not freeze funding at a certain level for all time. The act is a pause in K12 funding until a new finance system is in place. The Legislature should be given the opportunity to evaluate alternatives to present weighting, funding sources, and "equalization aid." In the interim, SB 7 creates an Extraordinary Need Fund so that local districts can apply to the State Finance Council for extraordinary need state aid payments.

Given all of this, how did the Legislature fail to provide "reasonably" equal access to educational opportunities based on the evidence and information provided?

III. The Panel's Remedies Are Improper and Unconstitutional

Even if this Court affirms the Panel's equity holding, this Court should reverse the remedies the Panel ordered. By effectively rewriting the school finance law, reviving repealed statutes, and ordering the distribution of funding, the Panel infringed on powers

exclusively vested in the political branches by the Kansas Constitution, violating the separation of powers. These remedies exceeded the Panel’s “judicial power.”

The Panel also erred in imposing a particular remedy. As this Court recognized in *Gannon*, “the constitutional infirmity can be cured in a variety of ways—at the choice of the legislature.” 298 Kan. at 1188. Within the realm of possible choices, it is a policy judgment how the school funding system should be designed. The Panel inappropriately imposed its own policy preferences by dictating a remedy not specifically compelled by law. If the Court finds an equity violation, the remedy should be limited to declaratory relief, allowing the Legislature to cure the violation in the manner it deems most appropriate. Doing so would be consistent with this Court’s past practices as well as the practices of courts in other states.

Finally, the Panel’s remedies violate fundamental principles of equitable relief. The Panel did not even consider the traditional factors for an injunction, much less the heightened standard for mandatory injunctions or mandamus against public officers. The Panel’s remedies also do far more harm than good: given the non-severability clauses in the SDFQPA and CLASS, the Panel’s order will lead to the loss of all K-12 funding.

A. The Panel’s Order Violates Separation of Powers

The Panel’s unprecedented order purporting to cure what it found to be a violation of Article 6, Section 6 itself violates the Kansas Constitution. Article 2, Section 1 of the Kansas Constitution vests the “legislative power” in the Legislature. This Court has defined the “legislative power” generally as the “power to make, amend or repeal laws.” *State ex rel. Stephan v. Finney*, 251 Kan. 559, 577, 836 P.2d 1169 (1992); *accord State ex. rel. Morrison v. Sebelius*, 285 Kan. 875, 898, 179 P.3d 366 (2008) (“It is universally

recognized that ‘the essential of the legislative function is the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct within the limitations laid down by the constitution.’” (quoting *Stephan*, 251 Kan. at 578)).

The separation of powers doctrine prohibits the executive or judicial branches from assuming the role of the Legislature. *See, e.g., State ex rel. State Board of Healing Arts v. Beyrle*, 269 Kan. 616, 622, 7 P.3d 1194 (2000); *State ex rel. Tomasic v. Unified Gov. of Wyandotte Co./Kansas City*, 264 Kan. 293, 337-38, 955 P.2d 1136 (1998). A separation of powers violation occurs when there is “a usurpation by one branch of government of the powers of another branch of government,” such as when the “judicial branch . . . exercise[s] legislative or executive power.” *Morrison*, 285 Kan. at 884, 900. As this Court explained in *State ex. rel. Morrison v. Sebelius*, 285 Kan. 875, 179 P.3d 366 (2008):

Article 2 of the Kansas Constitution gives the legislature the *exclusive* power to pass, amend, and repeal statutes. It is universally recognized that the essential of the legislative function is the determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct within the limitations laid down by the constitution. *The separation of powers doctrine, therefore, prohibits either the executive or judicial branches from assuming the role of the legislature.*

Id. at 898 (emphasis added) (citations and internal quotation marks omitted).

Here, the Panel did precisely what *Morrison* forbids. Instead of declaring the existing school finance law unconstitutional and leaving it to the Legislature to determine how to remedy that violation, the Panel proceeded to rewrite the relevant statutes to its liking. The Panel struck language here, added language there, and revived repealed statutory provisions. The Panel’s order reads like a legislative committee report, not a

judicial opinion. In crafting a new school finance system, the Panel usurped the legislative power vested in the Legislature by Article 2 of the Kansas Constitution as well as the Governor's power under the presentment requirements of Article 1.

In addition, the Panel ignored Article 2, Section 16 of the Kansas Constitution, which imposes very clear and explicit requirements for any statute to be "revived." Those requirements do not authorize *any* court to "revive" *any* repealed statute under *any* circumstances. Yet here, the Panel purported to revive various statutory provisions that had been repealed effective April 2, 2015.

The Panel also violated Article 2, Section 24 of the Kansas Constitution, which provides that "[n]o money shall be drawn from the treasury except in pursuance of a specific appropriation made by law." As this Court recognized in *State ex rel. Schneider v. Bennett*, 222 Kan. 11, 564 P.2d 1281 (1977), "[t]he legislature has the exclusive power to direct how, when and for what purpose public funds shall be applied in carrying out the objects of state government." *Id.* at 18-19. The Panel's remedy of ordering payment of state aid to school districts requires money to be drawn from the treasury, and these payments are not authorized by any law, except the "law" the Panel unconstitutionally purported to create.

The Panel thus exceeded its "judicial power" under Article 3, Section 1 of the Kansas Constitution. The judicial power, like all government power, is limited. It consists of the "power to hear, consider and determine controversies between rival litigants." *Morrison*, 285 Kan. at 896. Here, the Panel went well beyond saying "what the law is," *Gannon*, 298 Kan. at 1159 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177

(1803)), and instead purported to *make new legislation* by rewriting the relevant statutes. This is not the “judicial power” Kansas courts traditionally have exercised.

In *Gannon*, this Court stressed that Article 6, § 6 was part of “the people’s constitution.” *Gannon*, 298 Kan. at 1168. Importantly, the Panel forgot or ignored that the “people’s constitution” also contains Article 2 (vesting legislative power in the Legislature and creating exclusive appropriations power) and Article 1 (vesting executive power, including veto power, in the Governor). This Court in *Gannon* concluded that the Court had a role to play, but the Court was mindful of not overstepping its judicial role, explicitly admonishing the Panel to “carefully consider” the State’s separation of powers arguments as to any remedy. *Gannon*, 298 Kan. at 1197. The Panel ignored that admonition, and in attempting to remedy the claimed violations of Article 6, § 6, failed to respect the basic structural provisions of the Kansas Constitution. The Panel’s remedies must be set aside.

B. If This Court Finds an Equity Violation, the Remedy Should Be Limited to Declaratory Relief

The Panel also inappropriately rewrote the school finance statutes to impose a specific remedy. Not only does this violate the separation of powers, as discussed above, but it also fails to recognize that the Kansas Constitution does not require a specific school finance system. *See Gannon*, 298 Kan. at 1181 (“[T]he infirmity can be cured in a variety of ways—at the choice of the legislature.”). Selecting between the numerous constitutional options for funding public schools requires political judgment based on the consideration of a multitude of interests, and is therefore ill-suited to the litigation process.

Plaintiff Districts' and the Panel's sentiments about SB 7 may not be shared by all 285 districts. For example, SB 7 changed the formula for funding virtual students. Some districts may be benefitted by that change. In fact, the Shawnee Mission District, which has attempted to intervene in this case, disagrees with the relief the Districts sought and the Panel ordered.

The Panel inherently pits district against district. By rewriting the school finance statutes to require calculation of general state aid under 2016-17 enrollments and weightings, the Panel takes from some districts to give to others. The local district which loses students in 2016-17 receives less general state aid as a result of the Panel's requirement. Such a district's average assessed value per pupil is increased, reducing its ability to get capital outlay and LOB state aid. Moreover, districts also lose the opportunity to continue to receive state aid even if they reduce their local tax levies for capital outlay and LOB.

If nothing else, this divergence among the interests of various districts in the State illustrates the impropriety of attempting to impose a specific judicially-created remedy instead of allowing the Legislature, after hearing from all interested parties (instead of just the four Plaintiff Districts), to make policy judgments from among the numerous possible solutions.

If this Court holds that the existing school finance system violates the equity requirements of Article 6, § 6, any remedy should be limited to declaratory relief, allowing the Legislature to cure the violation. This would be consistent with the majority practice in other states. *See* Richard E. Levy, *Gunfight at the K-12 Corral: Legislative v. Judicial Power in the Kansas School Finance Litigation*, 54 U. Kan. L. Rev. 1021 (2006)

(“[T]he most common course of action for courts has been to declare the system of school finance unconstitutional and afford the legislature an opportunity to fix the problem . . .”).

Courts in other states have recognized that it is inappropriate to mandate a specific remedy or judicially rewrite the relevant statutes, as the Panel did here. *See DeRolph v. State*, 78 Ohio St. 3d 193, 212-13, 677 N.E.2d 733, 747 (1997) (“Although we have found the school financing system to be unconstitutional, we do not instruct the General Assembly as to the specifics of the legislation it should enact.”); *id.* at 213 n.9 (“[W]e recognize that the proper scope of our review is limited to determining whether the current system meets constitutional muster. We refuse to encroach upon the clearly legislative function of deciding what the new legislation will be.”); *Claremont School Dist. v. Governor*, 142 N.H. 462, 475-76, 703 A.2d 1353, 1360 (1997) (“[W]e were not appointed to establish educational policy, nor to determine the proper way to finance its implementation. That is why we leave such matters, consistent with the Constitution, to the two co-equal branches of government . . .”); *Leandro v. State*, 346 N.C. 336, 355-57, 488 S.E. 2d 249 (1997) (“[T]he very complexity of the problems of financing and managing a statewide public school system suggests that ‘there will be more than one constitutionally permissible method of solving them,’ and that within the limits of rationality, ‘the legislature’s efforts to tackle the problems’ should be entitled to respect.”); *Brigham v. State*, 166 Vt. 246, 692 A.2d 384 (1997) (“Although the Legislature should act under the Vermont Constitution to make educational opportunity available on substantially equal terms, the specific means of discharging this broadly

defined duty is properly left to its discretion.”); *Bismarck Public School Dist. No. 1 v. State*, 511 N.W.2d 247, 263 (1994):

Although we sustain the district court’s determination that the statutory method for distributing funding for education, as a whole, is unconstitutional, we also conclude that the district court erred in mandating specific actions to be taken by the Governor, the Superintendent of Public Instruction, and the Legislative Assembly and its leaders In view of the separate powers entrusted to the three coordinate branches of government, it is not the usual function of the judiciary to supervise the legislative process in that manner. The procedure for a declaratory judgment provides an adequate alternative

The Supreme Court of South Carolina recently took a similar approach after finding the state’s school finance scheme unconstitutional. In discussing the proper remedy, the court wrote: “The principle of separation of powers directs that the legislature, not the judiciary, is the proper institution to make major educational policy choices. Thus, the General Assembly is primarily responsible for school finance reform. In light of this sacrosanct principle, we refuse to provide the General Assembly with a specific solution to the constitutional violation.” *See Abbeville County School District v. State*, 410 S.C. 619, 655-56, 767 S.E.2d 157, 176 (2014) (citations omitted). The court went on to explain: “[T]he Defendants are the sole arbiters of educational policy choices. Rather than dictating that the Defendants follow our own views on how to fix the problems faced by the Plaintiff Districts, *which would grossly exceed our judicial authority*, we merely offer our discussion of [two cases from other states] as a suggestion to the Defendants on where they might turn to obtain guidance in their future policy decisions.” *Id.* at 177, n.25 (emphasis added).

Even in *Neeley, supra*, which found required reliance upon local tax levies to fund schools had created a state property tax in violation of the Texas constitution, the Texas

Supreme Court declined to impose a specific remedy, noting that “[t]he Constitution does not require a particular solution.” 176 S.W.3d at 799. Instead, the court gave the Legislature “ample time to fully consider structural changes in the public education system.” *Id.*

This approach is also consistent with this Court’s past practices. In *Gannon*, the Court explained that the Legislature could cure the equity issues by fully funding the capital outlay provisions as contemplated in K.S.A. 2013 Supp. 72-8814, but the Court did not mandate this solution. *Gannon*, 298 Kan. at 1198. Instead, the Court recognized that the Legislature could take other steps to remedy the problem. *Id.* (“[T]he infirmity can be cured in a variety of ways—at the choice of the legislature.”). Similarly, in *Montoy v. State*, the trial court never attempted to direct the Legislature to act in any particular way. 278 Kan. 769, 775, 120 P.3d 306 (2005) (trial judge stated that there were “literally hundreds of ways” the financing formula could be altered to comply with Article 6, Section 6). And on appeal, this Court also deferred to the Legislature in the first instance to respond to the Court’s declaratory judgment. *Id.* at 310.

If the Court were to find an equity violation—despite the Legislature’s good faith and provision of substantial additional equity funding in its effort to correct the issues identified in *Gannon*—the Court should issue declaratory relief explaining what it finds to be the remaining problems, and the Court should then provide the Legislature an opportunity to address those problems.

C. The Panel's Remedies Violate Fundamental Principles of Equitable Relief

1. The Panel Erred in Not Limiting Its Judgment to the Four Named Plaintiffs or to the Relief Initially Pleaded

The Panel did not limit its judgment to the four Districts or to the years at issue in the Amended Petition contrary to pleading requirements stated in K.S.A. 60-208. Rather, in essence, the Panel granted statewide class relief in a manner that exceeded any motion for class certification. The Panel also granted relief exceeding the claims made in the Amended Petition. This action has been a moving target in which neither the Districts, nor the Panel have complied with the applicable rules of civil procedure, rules which exist for good reason.

Plaintiff Districts are just four of 286 local districts. In fact, other districts have different views about and positions on school finance issues, and at least one district is attempting to intervene in this action for that reason. The four plaintiff Districts lack standing to assert claims or demand remedies for *all* other districts in the State. *See Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1255 (10th Cir. 2008) (“A plaintiff may challenge a statute . . . on an as-applied basis ‘only insofar as it has an adverse impact on his own rights,’” *quoting County Court of Ulster County v. Allen*, 442 U.S. 140, 155 (1979)); *see also State v. Thompson*, 221 Kan. 165, 172, 558 P.2d 1079 (1976) (holding that “unconstitutional governmental action can only be challenged by a person directly affected and such a challenge cannot be made by invoking the rights of others”).

While this Court found that the Districts had standing to assert claims based upon their own injuries as supported by the evidence presented, the Court did not determine that the Districts had standing to assert claims of others not before the Court. No such standing exists.

2. The Panel Made No Findings that the Plaintiff Districts Met the High Standard for Mandatory Injunction or Mandamus Against Public Officers

Any injunction is a drastic and extraordinary remedy, only available to remedy future as opposed to past harms, and only available where other relief is not sufficient. Here, the Panel failed to analyze the required factors for injunctive relief, merely referring to *Steffes v. City of Lawrence*, 284 Kan. 380, 395-96, 160 P.3d 843 (2007), without making the findings required for injunctive relief. The Panel's injunction cannot be sustained.

Moreover, the Panel violated several additional limitations on the courts' equitable powers. *First*, the Panel imposed a mandatory as opposed to prohibitory injunction. As the Court stated it in *Mid-America Pipeline Co. v. Wietharn*, 246 Kan. 238, 242, 787 P.2d 716 (1990):

Mandatory injunctions require performance of an act, while preventative, or prohibitory, injunctions require a party to refrain from doing an act. . . . A mandatory injunction is an extraordinary remedy [C]ourts are more reluctant to grant a mandatory injunction. Therefore, usually only prohibitory injunctions are entered. A party seeking a mandatory injunction must clearly be entitled to that form of relief.

Thus, mandatory injunctions such as the Panel imposed here are subject to even higher scrutiny than injunctions generally. 43A C.J.S. Injunction §§ 19, 23 (2014). Unlike a David-v-Goliath circumstance where courts protect individuals from the power of the State by *negating* state acts that infringe individual constitutionally protected rights, Plaintiff School Districts in this case ask the Court to *compel* state action (to enforce a positive right), thus running squarely into other constitutional provisions enacted by “the People” under authority of “the People’s Constitution” under which government authority is defined, limited, and separated.

The Panel’s injunction purports to direct state officials and entities to perform public acts or to interfere with their public duties. But “[c]ourts of equitable jurisdiction lack power to restrain public agencies or officers by injunction from performing any official act which they are by law required to perform or acts which are not in excess of the authority and discretion reposed in them.” 43A C.J.S. Injunction § 205 (2014); *see Umbehr v. Board of County Comm’rs*, 252 Kan. 30, 38, 843 P.2d 176 (1992) (injunctive relief against public officers not available in the absence of illegal, fraudulent or oppressive conduct). Accordingly, in *Mobil Oil Corp. v. McHenry*, 200 Kan. 211, 436 P.2d 982 (1968), the Court held that a mandatory injunction granted against a county clerk interfering with the clerk’s duties of assessment and taxation was void and improperly granted because there was no showing that the clerk was engaged in illegal conduct. Ordering a mandatory injunction of the type the Panel entered here takes courts out of their traditional judicial role and raises serious separation of powers concerns, at a minimum, if not outright violations of the separation of powers. *See, e.g., State ex rel. Miller v. Rohleder*, 208 Kan. 193, 195, 490 P.3d 374 (1971) (granting mandamus against a district judge who had entered a restraining order against Attorney General Miller and the county attorney conducting an inquisition into gambling operations, stating that injunctions do not lie against public officers performing their duty as “to hold otherwise would create chaos . . .”).

Second, an action seeking to compel a public officer to perform an alleged public duty is, in essence, an action for mandamus rather than one for injunction, *see* S. Gard, R. Casad & L. Mulligan, *Kansas Law and Practice: Kansas Code of Civil Procedure Annot.*

119 (5th ed. 2012); K.S.A. 60-801, and it is well-established that “mandamus will not lie for the performance of an act involving discretion on the part of a public official”:

“It has uniformly been held that the remedy of mandamus is available only for the purpose of compelling the performance of a clearly defined duty; that its purpose is to require one to whom the writ or order is issued to perform some act which the law specifically enjoins as a duty resulting from an office, trust, or station; that mandamus may not be invoked to control discretion and neither does it lie to enforce a right which is in substantial dispute, and further, that resort to the remedy may be had only when the party invoking it is clearly entitled to the order which he seeks.”

Arney v. Director, Kansas State Penitentiary, 234 Kan. 257, 260-61, 671 P.2d 559 (1983) (quoting *Lauber v. Firemen’s Relief Ass’n*, 195 Kan. 126, 128-29, 402 P.2d 817 (1965)).

“Absent illegal, arbitrary or unreasonable action, mandamus is not a proper remedy.” *Id.* at 266; see also *National Education Ass’n-Topeka, Inc. v. U.S.D. 501, Shawnee County*, 225 Kan. 445, 455, 592 P.2d 93 (1970) (“Absent a finding that the Board was violating an alleged duty, there was no basis to support the order of mandamus.”).

Plaintiffs have not established grounds for mandamus here against the Secretary of Administration, the State Treasurer, or any other state officer. Furthermore, a writ of mandamus cannot be used to trump the Legislature’s exclusive authority to appropriate funds. See *Wheat v. Finney*, 230 Kan. 217, 222-23, 630 P.2d 1160 (1981) (refusing to require the State Treasurer to refund sums improperly deposited in the Kansas Law Enforcement Training Center Fund because Article 2, § 24 of the Kansas Constitution provides “that no money shall be withdrawn from the state treasury except in pursuance of a specific appropriation by law which require[s] legislative action. Mandamus [is] the wrong remedy to use in such a case.”).

Third, the timing of the Panel’s mandatory injunction here seemed by design to be issued barely hours after the Legislature adjourned for the session, with the apparent goal

of precluding legislative involvement in efforts to remedy the violation the Panel found. Essentially, the Panel ordered the non-party Board of Education to certify and drop more than 200 vouchers totaling millions of dollars on the Secretary of the Department of Administration *after* the State's books had already closed for the 2015 fiscal year. As the Court knows, the State runs on a budget and on a fiscal year basis. By the end of June, the money for the past fiscal year either has been spent or is committed to purposes necessary to balance the budget for that fiscal year. As elaborated upon in the Department of Administration's Brief on appeal, the Panel was essentially writing checks on someone else's account, and a nearly empty one at that.

Fourth, the Panel cannot do indirectly that which it was prohibited from doing directly—*i.e.*, enjoining the Legislature or the Governor or attempting to repeal legislative enactments. The Panel cannot enjoin their exercise of the legislative power because of legislative immunities. Article 2, § 22 of the Kansas Constitution, the Speech or Debate Clause, cloaks legislators with immunity from suit arising out of the performance of legislative functions. The act of voting for or against proposed laws (or not voting at all), which is what the Districts seek to compel, is the very essence of the “legislative” activity that the Speech or Debate Clause protects from judicial intrusion. *Morrison*, 285 Kan. at Syl. ¶ 7; *see also Gravel v. United States*, 408 U.S. 606, 617 (1972) (“[T]he Court’s consistent approach has been that to confine the protection of the Speech or Debate Clause to words spoken in debate would be an unacceptably narrow view. Committee reports, resolutions, and the act of voting are equally covered.”).

The Governor also has legislative immunity for his “legislative” actions. He plays a vital role in the legislative process and holds the power to sign or veto legislation. This

power is legislative in nature, and that is confirmed by the fact that the Governor's veto power is found in Article 2 of the Kansas Constitution, not Article 1. *See* Kan. Const., art. 2, § 14. Any attempt to "order" a certain funding level or to direct the related functioning of executive officials invades the constitutional prerogatives of the Governor.

Ultimately, the Panel's extraordinary injunctive relief cannot be justified. Here, the Legislature in good faith provided *all* of the additional equity funding required under *Gannon*, based upon the Department of Education's estimates the Legislature was given. SB 7 is a change in the school funding system, but in making that change the Legislature acted with the evident intention to hold the districts harmless by providing roughly the same amount of new equity funding while the Legislature considers a new formula. There is no evidence or even allegation that the Secretary of Administration or the State Treasurer were acting illegally in any way, or otherwise should be subject to a mandatory injunction or mandamus.

3. Given the Non-Severability Provisions in the SDFQPA and CLASS, the Panel's "Cure" Leads to a Loss of All K-12 Funding

The Panel's "cure" also violates the equitable principle that a judicially-imposed remedy should not create more harm than that which it is trying to remedy. Here, the Panel's cure for the equity violation it found is akin to killing the patient in order to provide a cure for an ailment.

The SDFQPA is the only authority for state funding for K-12 operational expenses in FY 2015. CLASS assumed that mantle for FY 2016 and 2017. Also, the local districts' LOB taxing authority was provided exclusively by the SDFQPA and now CLASS. The Panel's conclusion that provisions in both the SDFQPA and CLASS are unconstitutional necessarily invalidates both acts in their entirety because both statutes

include explicit non-severability provisions. Thus, the interrelated nature of the SDFQPA, *see* K.S.A. 72-6405(b), and now CLASS, *see* SB 7, § 22, could produce an earlier, if not immediate, halt to *all* state and local funding for K-12 schools.

As matters stand, the Panel has found K.S.A. 72-6434, as amended by SB 7 (LOB aid) [before it was absorbed into SB 7's block grants for FY2016 and FY2017], to be unconstitutional, and the Panel has purported to strike portions of the statute. The statute, however, is part of the SDFQPA which has a non-severability clause. The SDFQPA explicitly provides that if any part of the Act is found "invalid or unconstitutional," the entire Act is to be held invalid:

(b) Except for the provisions of K.S.A. 75-2321, and amendments thereto, the provisions of the school district finance and quality performance act are not severable. Except for the provisions of K.S.A. 75-2321, and amendments thereto, if any provision of that act is stayed or is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would not have enacted the remainder of such act without such stayed, invalid or unconstitutional provision.

K.S.A. 72-6405(b).

In *Petrella v. Brownback*, 980 F. Supp. 2d 1293 (D. Kan. 2013), *aff'd* 787 F.3d 1242 (10th Cir. 2015), the federal court refused to enter a temporary injunction against the cap on the amount of LOB a district can vote and raise each year, reasoning as follows:

Specifically, the Court concludes that plaintiffs cannot show that their alleged harm in being subject to the LOB cap outweighs the harm to the State and to the public from an injunction against enforcement of the cap. The Court has previously analyzed the issue and concluded that the LOB cap is not severable from the rest of the statutory school funding scheme under Kansas law. Thus, because the school funding scheme may not be applied without the LOB cap, the injunction sought by plaintiffs would also completely upend the entire system of public education in Kansas. Such a result would work a tremendous hardship on public-school students and the rest of the public throughout Kansas, and that potential hardship

easily outweighs plaintiffs' alleged harm from continued enforcement of the LOB cap pending the outcome of this litigation.

980 F. Supp. 2d at 1310.

The significance of the invalidation of the SDFQPA should be marginal because FY 2015 is over. However, the Panel relies on the SDFQPA to replace CLASS, the latter of which the Panel also found to be unconstitutional. In CLASS, the Legislature provided:

New Sec. 22. (a) The provisions of sections 4 through 22 [CLASS], and amendments thereto, shall not be severable. *If any provision of sections 4 through 22, and amendments thereto, is held to be invalid or unconstitutional by court order, all provisions of sections 4 through 22, and amendments thereto, shall be null and void.*

(emphasis added).

In spite of the non-severability clause in CLASS, the Panel purported to invalidate only certain provisions of the statute, including the provisions which provide the authority for distribution of LOB and capital outlay aid as part of the Act's block grants, and provisions which distribute general state aid based upon FY 2015 entitlements. However, the Panel cannot selectively invalidate and rewrite parts of CLASS. The Legislature expressly retained the right to fashion statutes that govern the Kansas school finance system. Thus, the Panel's invalidation of provisions in both the SDFQPA and CLASS necessarily invalidates both statutes in their entirety, leaving no operative school finance system in place.

CONCLUSION

The Legislature acted in good faith in response to this Court's opinion in *Gannon* by providing \$140 million in additional equity funding, basing that number on estimates the KSDE provided the Legislature. Indeed, in both June and December 2014, the Panel agreed that the Legislature had provided full "equity" funding under this Court's *Gannon* decision, and the Plaintiffs did not contest those determinations at the time they were made. The Panel was right. But the Panel erred in granting the Plaintiffs' belated motion to alter or amend its previous judgment and reconsider that original conclusion.

At the end of the day and through the new SB 7 formulas, the Legislature provides substantial new equity funding but, as is its prerogative, decided to reconsider the entire school finance system. The Panel erred in effectively declaring that the Legislature could not alter the prior finance system, apparently constitutionalizing that statutory scheme. At the very least, the remedies the Panel purported to order are unconstitutional and improper, and must be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of September 2015, a true and correct copy of the above and foregoing BRIEF OF APPELLANT was mailed, postage prepaid, to:

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APPENDIX

Appendix A

Kansas State Department of Education September 1, 2015 report “General Fund, GSA, Supplemental and Capital Improvement Aid”

The report states the actual LOB and Outlay aid distributed in FY2015 as opposed to estimates provided at the May 2015 hearing before the end of FY2015. It can be downloaded from <http://www.ksde.org/Default.aspx?tabid=412> as of September 1, 2015.

The report can be judicially noticed under K.S.A. 60-409(a) & (c).

General Fund, GSA, Supplemental and Capital Improvement Aid

September 2, 2015

School Year: 2015
County Name: All Counties

Org_no: 00999
USD Name: All Districts

General Fund and GSA

Repfield	Amount
General Fund Budget	3,057,226,655
Budget Reductions	-124,536
Adjusted GenFund Budget	3,057,102,119
Total Local Effort	452,756,046
General State Aid	2,604,346,073
Gen Aid State Paid	2,606,798,858
Balance of Entitlement	0
Excess Local Effort	0
GSA/Budget Ratio	0.85
GSA OverPayment	-2,452,785
GSA Refunded	2,452,785

FTE_Totals

Repfield	Amount
FTE Enrollment (CUR YR)	463,266.4
FTE Adjusted Enrollment	460,081.6
Total Weighted_exclSPED	680,902.1
Total Weighted Enrollment	790,059.9

FTE Details

Repfield	Qty	Wt_Qty
Low/High Enrollment	460,081.6	54,403.3
Bilingual Education	157,412.7	10,362.8
Vocational Education	96,427.1	8,036.5
At Risk	193,253	88,122.9
High at Risk	0	13,223.8
Non Proficient At Risk	0	0.0
New Facilities	7,366.7	1,842.3
Transportation	133,449.1	26,365.9
Ancillary	21,791,313	5,657.1
Special Education	420,476,221	109,157.8
Decline Enrollment	3,670,673	952.9
Virtual	6,289.3	6,604.9
Virtual Non Proficient	0	0.0
Virtual AP Students_1stSemestr	16	1.3
Virtual AP Students_2ndSemestr	29	2.3
Virtual Weighted Total	0	6,608.4
KAMS	31	31.0
Cost of Living	20,082,717	5,213.6

Local Effort

Repfield	Local Effort
Tax Levy	0
Tax_In_Process	0
Delinquent_Taxes	0
ARRA Stabilization Funds	0
Federal Education Jobs Fund	0
Mineral Production Tax	5,025,735
In Lieu of Tax Payment IRBS	332,129
Fed Impact Aid (PL-874) 70%	17,040,511
Student Tuition	210,513
Unencumbered Cash Balance	1,221,173
Other County Source (Watercraft)	49,347
Special Education Aid	420,476,221
Authorized Transfers	8,400,417
Total Local Effort	452,756,046
Excess Local Effort	0
Excess Local Effort Refunded	0

GSA Payments

Month	State Paid	Total Paid
July	134,726,546	134,726,546
August	132,822,811	132,822,811
September	201,778,504	201,778,504
October	212,278,736	212,278,736
November	216,097,955	216,097,955
December	210,575,288	210,575,288
January	215,647,471	215,647,471
February	218,678,648	218,678,648
March	196,909,787	196,909,787
April	151,725,838	151,725,838
May	190,187,504	190,187,504
June	525,369,770	525,369,770

Supplemental

Supplemental Aid

Repfield	Amount	Month	Payment
Suppl GenFund Budget	1,056,637,742	October	195,040,931
LOB State Aid Rate	0.3745	February	193,717,823
LOB State Aid	446,781,070	June	60,215,086
Adjustment	-5,083		
ARRA Stabilization Fund	0		
State_Payments	448,973,840		
Total_Payments	448,973,840		
Balance of Entitlement	0		
Overpayment	-2,195,925		
Refund	1,928		
LOB Authorized Percent	0.30		
LOB Pro_Ration	1.000		

LOB Payments

Capital Outlay

Repfield	Amount	Month	Payment
Capital Outlay Tax	215,954,255	February	25,300,000
Capital Outlay Aid Rate	0.0000	June	3,627,119
Capital Outlay Aid	27,126,700	OverPayment	-1,800,419

Capital Outlay Payments

Bond & Interest Summary

Repfield	Prior	After
Bond & Interest	218,300	477,639,271
State Aid Ratio	0.00	0.25
State Aid	0	145,404,796
Prior Year Overpayment	0	-328,799
Adjustment Audit	0	-253,299
Adjustment Total	0	-582,098
Payments To Date	0	145,009,015
OverPayment	0	-182,614
Refund	0	2,234

Bond and Interest Payments

Month	Prior_Rqst	Prior_Pmt	After_Rqst	After_Pmt
July	0	0	4,257,731	4,238,504
August	0	0	69,494,094	69,315,140
September	0	0	18,251,170	18,242,245
October	0	0	12,352,025	12,232,566
November	0	0	56,120	56,120
December	0	0	0	0
January	0	0	2,875,735	2,875,715
February	0	0	25,318,436	25,233,000
March	0	0	7,649,923	7,647,623
April	0	0	5,112,316	5,111,936
May	0	0	56,283	56,166
June	0	0	0	0

General Fund, GSA, Supplemental and Capital Improvement Aid

September 2, 2015

School Year: 2015
County Name: All Counties

Org_no: D0999
USD Name: All Districts

Certified Employees

Repfield	Amount
Certified	36,909.2
Special Education	5,065.6
Total	41,974.8
Pupil/Cert Emp Rate*	12.55

* Excludes Special Education Employees

Property Value Assessments

Assessed Year	Repfield	Valuation	Per_Pupil
2014	Total	31,780,914,962	68,602
2014	General Fund	29,518,846,705	63,719
2014	LOB_BI	31,443,547,471	67,874
2013	Total	30,850,221,495	66,907
2013	General Fund	28,598,679,328	62,024
2013	LOB_BI	30,545,350,969	66,246
2013	Median		66,391
2013	81.2 Percent		116,700

Budget and State Aid Per Pupil

		Per_FTE	Per_WtFTE
State Aid	General	5,621.70	3,296.39
State Aid	Supplemental	964.41	565.50
Budget	General	6,599.02	3,869.46
Budget	Supplemental	2,280.84	1,337.41
Base State Aid Per Pupil			

Transportation Cost

Years	Repfield	Amount
2013-14	Cost of transportation	123,445,767
2013-14	Public pupils transpo	212,217.6
2013-14	Non resident pupils	8,487.8
2013-14	Pupils trans under 2.5	70,347.6
2013-14	Pupils trans over 2.5	133,382.2
2013-14	Trans. cost per pupil	581.69
2013-14	Cost attr. under 2.5 n	20,460,248
2013-14	Total adj.transp costs	102,985,519
2013-14	Adj. actual cost per p	772.11
2014-15	Non resident pupils	8,359.4
2014-15	Pupils trans under 2.5	85,946.2
2014-15	Pupils trans over 2.5	133,449.1
2014-15	Public pupils transpo	227,754.7
2014-15	Area in square miles	82,019.7
2014-15	Density	1.63
2014-15	Density cost per pupil	952.57

Enrollment

Grade_Level	Curr_Yr	PrevYr_1	PrevYr_2
01	37,570.0	37,677.8	36,933.1
02	37,285.7	36,723.2	36,089.9
03	36,612.6	35,979.9	35,689.1
04	35,883.1	35,766.1	35,861.5
05	35,792.7	35,827.5	35,242.7
06	35,658.0	35,296.5	35,705.3
07	35,483.3	35,820.7	35,801.9
08	35,709.4	35,862.1	35,247.3
09	37,298.5	36,703.8	36,846.2
10	35,544.2	35,325.4	34,247.2
11	33,864.4	32,802.2	33,241.0
12	32,100.3	32,435.5	32,455.2
KG	20,934.7	21,352.6	21,363.1
NG	5,684.8	5,538.6	5,216.3
Pre-School (IEP)	3,690.0	3,587.0	3,494.0
4YR Old At Risk	3,529.0	3,554.0	3,547.5
Military_4YR Old At Risk	1.0	0.5	0.5
Military_Provision	624.7	834.9	914.8
Total	463,266.4	461,088.3	457,896.6
Weighted FTE	790,059.9	792,878.1	786,264.3

Tax Rates

Repfield	Curr_Yr	PrevYr_1	PrevYr_2
General	20.00	20.00	20.00
Supp. General	17.30	21.91	21.08
Capital Outlay	5.67	3.70	3.43
Bond & Interest	7.27	6.72	6.96
Rec. Commission	1.25	1.23	1.21
Other	0.20	0.18	0.20
Total	51.70	53.74	52.88

Tax Appeals

TaxAppeal	Amount	Refund
Ancillary	21,791,313	21,791,313
Cost Of Living	20,082,717	20,082,717
Declining Enrollment	3,670,673	3,670,673

Miscellaneous

Repfield	Amount
Low Enrollment Factor	0.118247
Transportation Wtg Fact	0.1976
Percent Free Meals	0.4200
Impact Aid 100%(less Sped.Indian,const.LRH)	39,212,293
Cost of Living percent	0.16

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Appendix B

Calculations of Percentile AVPP and FTE

D0207	Ft Leavenworth	Leavenworth	1,129	1,205	1,238	1,304	1,341
D0499	Galena	Cherokee	17,592	17,958	18,111	18,821	20,251
D0508	Baxter Springs	Cherokee	27,155	25,625	25,025	24,469	24,570
D0475	Geary County Schools	Geary	24,167	24,330	24,127	25,305	24,991
D0504	Oswego	Labette	23,224	22,942	23,621	25,867	25,840
D0261	Haysville	Sedgwick	27,446	26,313	26,757	26,260	26,295
D0447	Cherryvale	Montgomery	30,746	23,865	24,706	25,312	27,102
D0249	Frontenac Public Schools	Crawford	28,339	27,890	28,035	27,948	27,865
D0202	Turner-Kansas City	Wyandotte	37,541	34,391	32,309	30,996	30,420
D0337	Royal Valley	Jackson	27,918	27,765	28,816	30,123	31,130
D0470	Arkansas City	Cowley	30,106	30,571	29,912	32,345	31,459
D0439	Sedgwick Public Schools	Harvey	25,382	27,780	28,965	31,177	32,130
D0505	Chetopa-St. Paul	Labette	26,763	29,145	30,584	31,100	32,240
D0235	Uniontown	Bourbon	30,840	28,632	29,324	32,220	32,631
D0500	Kansas City	Wyandotte	38,668	37,003	35,593	34,833	33,169
D0443	Dodge City	Ford	31,569	31,546	31,041	31,547	33,315
D0506	Labette County	Labette	33,367	30,222	30,538	32,175	34,385
D0344	Pleasanton	Linn	42,289	40,243	39,952	38,807	34,987
D0246	Northeast	Crawford	29,116	29,804	33,443	35,414	35,085
D0357	Belle Plaine	Sumner	30,157	32,746	33,482	33,752	35,101
D0248	Girard	Crawford	33,418	32,975	33,058	33,887	35,264
D0454	Burlingame Public School	Osage	35,173	33,333	35,446	35,934	36,358
D0336	Holton	Jackson	38,306	37,498	36,626	37,408	36,361
D0461	Neodesha	Wilson	48,616	39,384	37,292	35,790	36,384
D0491	Eudora	Douglas	38,896	38,307	38,932	37,876	36,406
D0396	Douglass Public Schools	Butler	32,524	34,468	34,696	36,071	36,846
D0402	Augusta	Butler	36,218	35,535	37,898	38,202	36,913
D0480	Liberal	Seward	43,286	38,890	40,022	38,545	37,070
D0367	Osawatomie	Miami	38,328	39,317	39,273	39,448	37,201
D0394	Rose Hill Public Schools	Butler	33,452	33,488	34,619	36,492	37,810
D0258	Humboldt	Allen	48,486	46,123	39,494	40,508	37,912
D0353	Wellington	Sumner	36,160	36,367	37,697	37,514	39,127
D0339	Jefferson County North	Jefferson	31,548	31,898	33,240	36,496	39,319
D0253	Emporia	Lyon	39,820	39,996	38,730	39,141	39,636
D0338	Valley Falls	Jefferson	35,604	37,460	37,409	40,470	39,900
D0257	Iola	Allen	38,421	40,107	39,147	40,282	40,382
D0268	Cheney	Sedgwick	40,853	37,941	40,262	39,651	40,552
D0356	Conway Springs	Sumner	36,500	37,761	37,253	37,095	40,603
D0234	Fort Scott	Bourbon	40,315	40,346	41,534	41,845	40,760
D0308	Hutchinson Public Schools	Reno	41,575	41,322	40,342	40,842	41,355
D0307	Ell-Saline	Saline	42,701	43,541	43,657	42,748	42,178
D0503	Parsons	Labette	42,954	43,828	42,384	42,860	42,249
D0462	Central	Cowley	33,803	33,200	36,589	39,098	42,435
D0420	Osage City	Osage	42,080	39,403	39,870	43,952	42,691
D0373	Newton	Harvey	41,683	42,130	42,151	42,763	42,794
D0436	Caney Valley	Montgomery	40,458	36,556	37,993	41,139	43,105
D0288	Central Heights	Franklin	41,957	40,943	39,853	43,038	43,405
D0372	Silver Lake	Shawnee	37,998	40,166	41,587	42,939	43,440
D0430	South Brown County	Brown	32,945	35,910	38,108	42,145	43,626
D0262	Valley Center Pub Sch	Sedgwick	43,024	44,205	44,178	44,089	44,070
D0335	North Jackson	Jackson	38,632	38,053	40,887	43,598	44,220
D0487	Herington	Dickinson	36,201	38,227	41,286	43,712	44,447
D0231	Gardner Edgerton	Johnson	53,004	48,607	45,623	44,214	44,552
D0340	Jefferson West	Jefferson	42,129	43,915	44,846	44,452	44,678
D0501	Topeka Public Schools	Shawnee	46,083	45,308	45,578	45,298	44,978
D0465	Winfield	Cowley	41,267	40,269	41,386	43,652	45,030
D0265	Goddard	Sedgwick	44,942	45,391	45,452	45,050	45,241
D0498	Valley Heights	Marshall	41,388	43,497	45,992	44,635	45,468
D0247	Cherokee	Crawford	40,570	38,000	41,757	42,152	45,694
D0469	Lansing	Leavenworth	43,747	45,157	45,302	44,540	45,864

D0207	Ft Leavenworth	Leavenworth	1,129	1,205	1,238	1,304	1,341
D0499	Galena	Cherokee	17,592	17,958	18,111	18,821	20,251
D0508	Baxter Springs	Cherokee	27,155	25,625	25,025	24,469	24,570
D0475	Geary County Schools	Geary	24,167	24,330	24,127	25,305	24,991
D0504	Oswego	Labette	23,224	22,942	23,621	25,867	25,840
D0457	Garden City	Finney	45,492	41,200	44,162	45,413	45,975
D0411	Goessel	Marion	45,809	47,419	46,661	48,357	46,319
D0230	Spring Hill	Johnson	45,163	38,590	45,312	45,807	46,586
D0421	Lyndon	Osage	47,786	44,778	47,030	46,988	46,750
D0434	Santa Fe Trail	Osage	42,289	43,180	42,592	44,519	46,936
D0389	Eureka	Greenwood	45,316	44,113	44,689	45,363	47,870
D0341	Oskaloosa Public Schools	Jefferson	47,367	50,407	50,128	51,309	48,276
D0385	Andover	Butler	55,996	54,855	53,506	52,510	48,292
D0325	Phillipsburg	Phillips	41,852	44,217	46,063	47,494	48,354
D0333	Concordia	Cloud	43,296	45,682	47,235	49,719	48,555
D0240	Twin Valley	Ottawa	46,466	46,564	47,669	48,470	48,735
D0428	Great Bend	Barton	44,032	44,780	47,425	47,679	48,905
D0404	Riverton	Cherokee	36,535	38,034	36,845	46,615	49,033
D0290	Ottawa	Franklin	47,814	47,797	48,405	49,224	49,069
D0440	Halstead	Harvey	43,231	45,031	45,697	48,310	49,130
D0250	Pittsburg	Crawford	52,779	53,318	51,113	50,692	49,132
D0409	Atchison Public Schools	Atchison	42,706	45,443	46,320	47,461	49,446
D0405	Lyons	Rice	44,609	46,598	47,665	50,683	49,495
D0460	Hesston	Harvey	43,503	44,149	45,224	47,257	49,907
D0435	Abilene	Dickinson	48,840	48,887	50,517	50,505	50,017
D0464	Tonganoxie	Leavenworth	48,291	49,459	51,169	50,296	50,048
D0376	Sterling	Rice	44,276	41,586	44,923	45,877	50,344
D0453	Leavenworth	Leavenworth	50,187	53,527	52,987	50,621	50,409
D0446	Independence	Montgomery	57,494	56,921	53,857	52,257	50,633
D0471	Dexter	Cowley	39,375	43,854	41,761	43,624	50,735
D0114	Riverside	Doniphan	NA	43,570	49,608	51,591	50,942
D0320	Wamego	Pottawatomie	51,969	51,296	52,333	50,715	51,071
D0264	Clearwater	Sedgwick	44,544	45,773	47,979	50,309	51,136
D0463	Udall	Cowley	42,926	45,810	45,165	48,308	51,876
D0323	Rock Creek	Pottawatomie	43,691	45,384	46,667	49,198	51,894
D0449	Easton	Leavenworth	43,420	46,095	47,435	49,442	52,203
D0358	Oxford	Sumner	46,503	46,964	52,444	48,558	52,524
D0266	Maize	Sedgwick	52,196	53,304	52,199	51,864	52,988
D0243	Lebo-Waverly	Coffey	45,779	47,893	50,660	53,362	53,725
D0450	Shawnee Heights	Shawnee	50,347	51,481	51,625	53,167	54,385
D0259	Wichita	Sedgwick	57,373	56,805	56,772	55,671	54,559
D0458	Basehor-Linwood	Leavenworth	59,444	59,609	59,302	58,426	54,863
D0239	North Ottawa County	Ottawa	50,771	51,585	53,386	55,593	54,952
D0495	Ft Larned	Pawnee	50,616	48,696	52,511	53,885	55,244
D0379	Clay Center	Clay	46,750	48,246	50,331	53,036	55,305
D0380	Vermillion	Marshall	41,291	43,680	47,983	50,906	55,351
D0413	Chanute Public Schools	Neosho	36,179	32,633	43,217	52,778	55,530
D0285	Cedar Vale	Chautauqua	46,446	49,643	44,858	44,954	55,894
D0348	Baldwin City	Douglas	55,040	54,812	55,481	56,208	56,175
D0397	Centre	Marion	73,568	71,515	63,692	66,183	56,214
D0456	Marais Des Cygnes Valley	Osage	55,179	58,941	54,756	54,308	56,737
D0232	De Soto	Johnson	62,952	58,936	57,041	56,136	56,796
D0267	Renwick	Sedgwick	48,010	48,602	52,205	54,496	57,025
D0218	Elkhart	Morton	133,049	76,892	71,096	65,143	57,230
D0493	Columbus	Cherokee	49,752	54,110	54,584	55,868	58,218
D0378	Riley County	Riley	48,986	52,476	52,499	54,619	58,343
D0256	Marmaton Valley	Allen	42,890	43,488	47,192	54,014	58,421
D0429	Troy Public Schools	Doniphan	43,391	51,121	51,791	55,477	58,672
D0211	Norton Community Schools	Norton	34,334	45,563	50,920	56,668	58,959
D0342	McLouth	Jefferson	58,321	61,698	60,138	59,608	59,508

D0207	Ft Leavenworth	Leavenworth	1,129	1,205	1,238	1,304	1,341
D0499	Galena	Cherokee	17,592	17,958	18,111	18,821	20,251
D0508	Baxter Springs	Cherokee	27,155	25,625	25,025	24,469	24,570
D0475	Geary County Schools	Geary	24,167	24,330	24,127	25,305	24,991
D0504	Oswego	Labette	23,224	22,942	23,621	25,867	25,840
D0311	Pretty Prairie	Reno	57,721	55,677	54,886	57,663	59,553
D0492	Flinthills	Butler	51,554	58,129	57,203	60,582	59,564
D0509	South Haven	Sumner	37,248	42,238	41,979	47,455	59,823
D0345	Seaman	Shawnee	61,237	59,701	59,192	58,771	60,499
D0365	Garnett	Anderson	53,663	55,468	58,824	62,610	61,001
D0289	Wellsville	Franklin	52,891	55,936	57,272	59,766	61,034
D0309	Nickerson	Reno	52,899	55,209	57,589	59,167	61,426
D0408	Marion-Florence	Marion	49,241	53,316	55,079	56,050	61,461
D0233	Olathe	Johnson	70,983	64,746	63,861	61,876	61,471
D0360	Caldwell	Sumner	59,982	57,066	56,795	57,426	61,576
D0260	Derby	Sedgwick	60,228	63,081	62,341	62,609	61,687
D0305	Salina	Saline	60,860	61,780	62,601	62,400	62,220
D0102	Cimarron-Ensign	Gray	52,632	52,043	54,338	59,118	62,445
D0346	Jayhawk	Linn	55,932	59,532	61,378	60,168	62,560
D0204	Bonner Springs	Wyandotte	60,435	58,881	58,060	66,066	62,665
D0400	Smoky Valley	McPherson	53,613	56,136	56,793	61,895	63,024
D0282	West Elk	Elk	55,541	59,709	58,129	63,280	63,238
D0484	Fredonia	Wilson	63,761	55,070	62,535	59,492	63,679
D0101	Erie-Galesburg	Neosho	98,794	63,566	70,620	63,224	63,745
D0322	Onaga-Havensville-Wheaton	Pottawatomie	53,793	57,185	57,352	59,145	64,700
D0381	Spearville	Ford	47,123	47,355	51,590	55,192	65,090
D0316	Golden Plains	Thomas	42,045	45,911	50,741	54,100	65,129
D0286	Chautauqua Co Community	Chautauqua	48,884	56,002	57,833	64,611	65,300
D0410	Durham-Hillsboro-Lehigh	Marion	53,804	57,475	59,277	58,238	65,871
D0416	Louisburg	Miami	71,255	70,982	68,240	66,042	66,065
D0352	Goodland	Sherman	67,790	65,689	63,902	64,589	66,329
D0287	West Franklin	Franklin	53,659	58,508	60,805	64,666	66,336
D0386	Madison-Virgil	Greenwood	56,097	55,696	56,278	64,587	66,345
D0327	Ellsworth	Ellsworth	53,409	54,332	60,288	63,862	66,437
D0431	Hoisington	Barton	57,338	57,995	64,754	70,816	66,675
D0368	Paola	Miami	65,124	64,815	65,135	65,915	66,876
D0473	Chapman	Dickinson	62,034	67,085	60,312	65,794	67,111
D0393	Solomon	Dickinson	55,406	59,988	61,888	64,466	67,800
D0313	Buhler	Reno	56,257	58,576	61,279	63,540	68,482
D0205	Bluestem	Butler	53,132	56,916	59,126	65,385	68,829
D0273	Beloit	Mitchell	59,787	62,287	61,726	65,840	68,921
D0298	Lincoln	Lincoln	69,729	65,879	68,123	69,048	68,967
D0110	Thunder Ridge Schools	Phillips	59,421	55,548	57,520	61,082	69,051
D0366	Woodson	Woodson	57,881	55,697	57,106	59,331	69,190
D0263	Mulvane	Sedgwick	32,455	33,411	34,615	48,279	69,276
D0479	Crest	Anderson	58,354	58,410	64,190	67,228	69,396
D0382	Pratt	Pratt	57,195	72,866	69,695	66,488	69,701
D0312	Haven Public Schools	Reno	54,933	55,940	61,695	65,752	70,059
D0237	Smith Center	Smith	53,968	55,672	57,604	61,866	70,242
D0252	Southern Lyon County	Lyon	65,299	63,847	64,283	69,935	70,303
D0438	Skyline Schools	Pratt	76,023	72,612	72,131	69,979	70,624
D0349	Stafford	Stafford	59,368	61,882	68,012	73,970	72,091
D0331	Kingman - Norwich	Kingman	71,913	68,378	71,578	71,145	72,220
D0343	Perry Public Schools	Jefferson	57,274	59,326	65,103	69,414	72,578
D0283	Elk Valley	Elk	66,534	65,063	77,809	66,490	73,082
D0426	Pike Valley	Republic	49,637	51,831	56,399	64,755	74,033
D0330	Mission Valley	Wabaunsee	61,727	64,947	67,412	70,360	74,336
D0445	Coffeyville	Montgomery	96,155	113,323	115,555	115,234	74,564
D0371	Montezuma	Gray	62,907	71,335	71,235	70,305	74,746
D0347	Kinsley-Offerle	Edwards	73,215	72,630	73,281	76,899	76,102

D0207	Ft Leavenworth	Leavenworth	1,129	1,205	1,238	1,304	1,341
D0499	Galena	Cherokee	17,592	17,958	18,111	18,821	20,251
D0508	Baxter Springs	Cherokee	27,155	25,625	25,025	24,469	24,570
D0475	Geary County Schools	Geary	24,167	24,330	24,127	25,305	24,991
D0504	Oswego	Labette	23,224	22,942	23,621	25,867	25,840
D0113	Prairie Hills	Nemaha	NA	66,926	66,648	73,375	76,653
D0212	Northern Valley	Norton	46,273	45,049	50,703	70,817	76,810
D0315	Colby Public Schools	Thomas	66,076	69,774	73,982	71,687	77,148
D0392	Osborne County	Osborne	49,455	54,535	61,815	70,149	77,507
D0377	Atchison Co Comm Schools	Atchison	56,395	60,707	63,156	69,538	77,560
D0105	Rawlins County	Rawlins	69,936	74,256	74,118	78,734	78,037
D0437	Auburn Washburn	Shawnee	79,692	77,189	76,657	74,847	78,703
D0329	Mill Creek Valley	Wabaunsee	69,500	73,188	74,977	79,128	78,755
D0448	Inman	McPherson	57,525	66,613	71,126	76,621	79,438
D0417	Morris County	Morris	71,616	73,217	72,978	78,675	81,078
D0418	McPherson	McPherson	71,907	70,971	73,238	76,513	81,481
D0206	Remington-Whitewater	Butler	64,542	76,555	81,308	81,817	82,739
D0293	Quinter Public Schools	Gove	70,581	77,076	97,184	81,194	83,399
D0369	Burrton	Harvey	66,362	66,120	68,323	81,112	83,406
D0419	Canton-Galva	McPherson	71,018	76,718	78,195	81,514	83,783
D0272	Waconda	Mitchell	59,204	57,864	67,486	74,688	84,561
D0224	Clifton-Clyde	Washington	81,395	77,817	79,539	79,773	85,469
D0496	Pawnee Heights	Pawnee	72,318	60,019	68,571	74,464	85,778
D0109	Republic County	Republic	72,504	70,831	76,254	81,012	86,422
D0359	Argonia Public Schools	Sumner	69,142	71,887	73,261	78,077	86,556
D0490	El Dorado	Butler	76,715	82,605	84,273	84,200	86,584
D0203	Piper-Kansas City	Wyandotte	96,148	93,762	90,964	89,403	86,617
D0108	Washington Co. Schools	Washington	67,879	68,146	70,983	81,144	86,890
D0497	Lawrence	Douglas	90,811	89,748	89,081	87,695	87,457
D0223	Barnes	Washington	75,568	75,777	77,848	81,676	88,783
D0395	LaCrosse	Rush	69,194	70,536	74,323	81,923	89,199
D0334	Southern Cloud	Cloud	70,885	76,209	77,164	90,549	89,744
D0481	Rural Vista	Dickinson	55,158	66,313	69,975	86,777	91,091
D0511	Attica	Harper	129,106	93,537	151,698	104,856	91,757
D0225	Fowler	Meade	85,660	79,552	87,329	83,816	91,965
D0398	Peabody-Burns	Marion	62,907	71,461	77,145	85,808	92,275
D0494	Syracuse	Hamilton	138,717	97,284	103,686	97,907	92,513
D0306	Southeast Of Saline	Saline	86,978	84,991	87,103	95,746	92,811
D0467	Leoti	Wichita	65,520	64,473	71,351	79,512	94,182
D0375	Circle	Butler	97,618	90,590	88,418	92,364	95,406
D0299	Sylvan Grove	Lincoln	94,836	88,460	86,530	90,705	95,509
D0383	Manhattan-Ogden	Riley	87,311	87,813	88,475	92,351	96,134
D0388	Ellis	Ellis	77,617	89,856	102,370	97,193	96,219
D0297	St Francis Comm Sch	Cheyenne	124,483	92,186	99,457	97,975	96,978
D0219	Minneola	Clark	83,818	81,689	81,486	83,356	97,269
D0423	Moundridge	McPherson	94,768	97,732	89,027	94,560	99,780
D0384	Blue Valley	Riley	73,373	76,601	83,116	91,779	100,153
D0271	Stockton	Rooks	88,098	92,723	101,504	103,213	101,180
D0364	Marysville	Marshall	80,891	96,754	98,091	98,186	101,228
D0466	Scott County	Scott	88,795	93,705	102,280	110,352	101,423
D0415	Hiawatha	Brown	79,185	91,655	94,537	97,640	101,926
D0326	Logan	Phillips	71,555	97,582	106,545	95,927	103,397
D0412	Hoxie Community Schools	Sheridan	99,408	97,467	92,200	98,545	105,075
D0387	Altoona-Midway	Wilson	159,736	110,395	124,565	95,334	105,734
D0355	Ellinwood Public Schools	Barton	74,393	88,562	95,702	99,297	106,208
D0294	Oberlin	Decatur	82,450	93,343	94,855	97,530	107,830
D0489	Hays	Ellis	84,846	85,166	90,273	95,890	107,972
D0242	Weskan	Wallace	62,415	70,068	82,372	94,505	108,253
D0512	Shawnee Mission Pub Sch	Johnson	116,556	110,135	109,953	109,441	108,527
D0229	Blue Valley	Johnson	115,293	107,883	108,226	108,564	108,735

D0207	Ft Leavenworth	Leavenworth	1,129	1,205	1,238	1,304	1,341
D0499	Galena	Cherokee	17,592	17,958	18,111	18,821	20,251
D0508	Baxter Springs	Cherokee	27,155	25,625	25,025	24,469	24,570
D0475	Geary County Schools	Geary	24,167	24,330	24,127	25,305	24,991
D0504	Oswego	Labette	23,224	22,942	23,621	25,867	25,840
D0361	Anthony-Harper	Harper	60,322	58,641	61,295	81,908	111,008
D0107	Rock Hills	Jewell	92,039	94,240	94,680	94,871	111,780
D0477	Ingalls	Gray	70,633	75,524	79,223	77,282	112,823
D0390	Hamilton	Greenwood	75,380	84,975	91,975	102,109	113,115
D0115	Nemaha Central	Nemaha	NA	NA	110,372	109,123	114,192
D0407	Russell County	Russell	76,312	85,520	106,476	108,815	115,384
D0284	Chase County	Chase	95,587	103,094	110,709	117,398	115,959
D0444	Little River	Rice	90,118	90,560	97,133	99,823	117,724
D0245	LeRoy-Gridley	Coffey	75,591	90,218	95,296	104,553	119,712
D0314	Brewster	Thomas	96,649	104,724	145,715	120,165	122,680
D0350	St John-Hudson	Staford	100,631	121,915	124,483	131,906	126,474
D0483	Kismet-Plains	Seward	121,900	110,060	128,994	135,255	126,761
D0208	Wakeeney	Trego	81,781	99,160	111,659	120,690	127,480
D0403	Otis-Bison	Rush	104,455	126,049	159,806	169,635	131,893
D0226	Meade	Meade	139,924	121,273	128,207	135,665	135,595
D0254	Barber County North	Barber	148,447	114,837	126,442	119,400	137,109
D0214	Ulysses	Grant	207,330	157,331	161,910	160,382	138,822
D0310	Fairfield	Reno	105,396	116,840	119,939	130,052	140,394
D0351	Macksville	Stafford	132,219	119,317	123,083	129,968	141,131
D0241	Wallace County Schools	Wallace	93,358	107,130	115,159	125,190	142,471
D0200	Greeley County Schools	Greeley	168,180	147,476	136,782	135,952	142,514
D0251	North Lyon County	Lyon	56,169	67,947	70,594	74,948	142,945
D0401	Chase-Raymond	Rice	125,000	125,673	136,660	151,600	145,387
D0476	Copeland	Gray	99,631	95,468	102,621	96,915	146,028
D0103	Cheylin	Cheyenne	107,573	105,540	110,239	133,459	147,948
D0220	Ashland	Clark	159,176	141,557	145,234	154,585	148,578
D0281	Graham County	Graham	115,715	131,651	141,842	151,120	153,601
D0292	Wheatland	Gove	103,782	114,249	120,181	152,486	154,257
D0432	Victoria	Ellis	109,679	127,277	170,074	183,927	155,418
D0111	Doniphan West Schools	Doniphan	91,911	137,057	138,818	159,107	156,390
D0502	Lewis	Edwards	159,188	146,470	149,724	146,774	156,611
D0459	Bucklin	Ford	115,484	116,884	123,902	127,239	156,793
D0362	Prairie View	Linn	134,440	134,727	142,777	154,759	161,199
D0227	Hodgeman County Schools	Hodgeman	87,103	98,711	123,752	142,708	165,484
D0291	Grinnell Public Schools	Gove	192,696	187,430	176,203	194,228	168,109
D0210	Hugoton Public Schools	Stevens	339,124	217,994	229,200	208,618	171,577
D0274	Oakley	Logan	79,854	121,957	168,328	217,060	171,825
D0422	Kiowa County	Kiowa	180,210	174,292	150,630	149,362	173,275
D0474	Haviland	Kiowa	142,071	146,220	152,327	151,160	177,860
D0363	Holcomb	Finney	188,266	163,893	176,556	177,031	179,077
D0452	Stanton County	Stanton	227,990	157,533	182,618	183,034	182,005
D0216	Deerfield	Kearny	272,596	181,463	201,284	209,893	185,849
D0215	Lakin	Kearny	325,967	232,588	231,642	219,166	187,051
D0303	Ness City	Ness	110,520	126,907	139,835	159,341	187,092
D0270	Plainville	Rooks	115,027	139,917	151,197	165,629	187,861
D0112	Central Plains	Ellsworth	NA	156,978	168,767	195,693	192,818
D0482	Dighton	Lane	158,857	175,055	183,459	213,610	201,809
D0468	Healy Public Schools	Lane	80,256	197,854	177,339	237,148	208,571
D0374	Sublette	Haskell	261,181	214,604	225,648	232,397	215,205
D0300	Comanche County	Comanche	167,160	123,981	147,132	148,543	221,452
D0399	Paradise	Russell	198,858	206,525	228,100	227,661	250,756
D0321	Kaw Valley	Pottawatomie	189,723	197,210	214,251	251,673	254,785
D0275	Triplains	Logan	184,615	219,089	219,646	204,465	276,676
D0209	Moscow Public Schools	Stevens	576,778	375,268	401,100	418,941	297,480
D0217	Rolla	Morton	465,295	364,801	395,607	335,752	297,884

D0207	Ft Leavenworth	Leavenworth	1,129	1,205	1,238	1,304	1,341	
D0499	Galena	Cherokee	17,592	17,958	18,111	18,821	20,251	
D0508	Baxter Springs	Cherokee	27,155	25,625	25,025	24,469	24,570	
D0475	Geary County Schools	Geary	24,167	24,330	24,127	25,305	24,991	
D0504	Oswego	Labette	23,224	22,942	23,621	25,867	25,840	
D0269	Palco	Rooks	218,962	277,519	353,041	449,810	373,357	
D0106	Western Plains	Ness	179,956	207,205	319,787	322,718	375,203	
D0332	Cunningham	Kingman	362,262	366,890	346,751	333,386	378,745	
D0255	South Barber	Barber	239,187	234,074	370,083	362,133	393,675	
D0507	Satanta	Haskell	529,425	445,801	533,249	511,548	475,114	
D0244	Burlington	Coffey	414,430	411,148	421,790	451,080	479,577	
			2009-10	2010-11	2011-12	2012-13	2013-14	
			Assd Val	Assd Val	Assd Val	Assd Val	Assd Val	
	3/30/2015		Col 1	Col 2	Col 3	Col 4	Col 5	
D0213	West Solomon	Norton	258,354	NA	NA	NA	NA	
D0228	Hanston	Hodgeman	113,383	241,755	NA	NA	NA	
D0424	Mullinville	Kiowa	131,055	120,690	NA	NA	NA	
D0442	Nemaha Valley	Nemaha	75,225	103,220	NA	NA	NA	
D0451	B & B	Nemaha	69,520	107,428	NA	NA	NA	
USD#	Name	County Name	Per Pupil	Per Pupil	Per Pupil	Per Pupil	Per Pupil	
			Using excel formula for calculation of Median: =MEDIAN(column6:column296)					
			Using excel formula for calculation of Mean: =AVERAGE(column6:column296)					
			Using excel formula for calculation of percentile: =PERCENTILE(column6:column296, percentile)					
		Median	57,721	58,941	61,287	64,588	\$66,391	
		Mean	81,581	80,063	84,245	87,350	\$89,670	
		81.2 Percentile	99,359	104,228	110,295	109,257	\$116,700	
		75.27 percentile					\$103,038	
		77.71 percentile				107587	\$107,955	
		81.1 percentile				116484	\$117,883	
		79 percentile				112037	\$111,989	

	Col 3	Col 4(a)	Col 4(b)	Col 5		Increase or Decrease	Percent Increase or Decrease
	FTE Enroll (exc 4 yr old at-risk exc virtual) 9/20/2014	FTE Enroll (exc 4 yr old at-risk) 2/20/2014	4 yr old at-risk (inc 9/20 inc 2/20)	Virtual FTE (Info Only) 9/20/14	FTE for Aid Cal(s).	in FTE	
	45,289.2	0.0	956.0	190.3	463,267.4	2,179.1	0.004704

Wichita	46,108.1	0.0	956.0	190.3	47,254.4	216.1	0.004573
Hutchinson	4,792.6	0.0	28.0	16.1	4,836.7	-55.8	-0.01154
Dodge City	6,326.5	0.0	74.5	0.6	6,401.6	132.7	0.020729
KCK	20,238.7	0.0	284.0	0.0	20,522.7	524.5	0.025557

	FTE Enroll (exc 4 yr old at-risk exc virtual) 9/20/2012	FTE Enroll (exc 4 yr old at-risk) 2/20/2013	4 yr old at-risk (inc 9/20 inc 2/20)	Virtual FTE (Info Only) 9/20/13		Increase or Decrease	Percent Increase or Decrease
	40,338.5	0.0	956.0	190.3	461,088.3	3,191.7	0.006922

Wichita	45,888.3	0.0	956.0	194.0	47,038.3	544.1	0.011567
Hutchison	4,852.5	0.0	28.0	12.0	4,892.5	58.3	0.011916
Dodge City	6,194.4	0.0	74.5	0.0	6,268.9	37.5	0.005982
KCK	19,743.2	0.0	285.0	0.0	19,998.2	729.0	0.036453

	FTE Enroll (exc 4 yr old at-risk exc virtual) 9/20/2011	FTE Enroll (exc 4 yr old at-risk) 2/20/2012	4 yr old at-risk (inc 9/20 inc 2/20)	Virtual FTE (Info Only) 9/20/12		Increase or Decrease	Percent Increase or Decrease
	45,287.9	0.0	956.0	250.3	457,896.6		

Wichita	45,287.9	0.0	956.0	250.3	46,494.2		
Hutchinson	4,800.2	0.0	28.0	6.0	4,834.2		
Dodge City	6,154.3	0.0	74.5	2.6	6,231.4		
KCK	18,984.2	0.0	285.0	0.0	19,269.2		

2014-15
 Subtotal Increase Percent
 Weighted or Increase
 FTE (exc Decrease or
 Spec Ed) in FTE Decrease

	68,109.9	-2,309.3	-0.00339
Wichita	73,043.0	-1,766.9	-0.02419
Hutchinson	6,780.4	-62.5	-0.00922
Dodge City	10,792.0	234.5	0.021729
KCK	33,616.2	174.1	0.005179

2013-14
Subtotal
Weighted
FTE (exc
Spec Ed)

33,316.9	7,107.6	0.010402
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Wichita	74,809.9	1,232.7	0.016478
Hutchinson	6,842.9	78.3	0.011443
Dodge City	10,557.5	157.7	0.014937
KCK	33,442.1	1,864.2	0.055744

2012-13
Subtotal
Weighted
FTE (exc
Spec Ed)

67,620.6

Wichita	73,577.2
Hutchinson	6,764.6
Dodge City	10,399.8
KCK	31,577.9

Sources: 2015 legal max, Ex 3016
2014 legal max, Ex 3015
2014 legal max, dated 8/1/13

Appendix C

USD 308 Hutchinson Mill Levy Worksheet Calculations

2014-15 local Outlay and LOB revenue:

- a. District levied 3.957 mills for capital outlay local revenue. Exhibit 3023, USD 308 Budget, p. 2.
- b. District levied 22.871 mills for LOB supplemental general local revenue. Exhibit 3023, USD 308 Budget, p. 2.
- c. In FY2015 district used 28.67% of Financial Aid (\$10,000,000). Exhibit 3018, columns BN, BM.
- d. Authorized LOB was \$10,465,025 at 30%. Exhibit 3018, column BJ.

Per mill rates:

- a. Funds raised by Outlay levy were estimated to be \$394,681 meaning the district expected to raise \$99,742 per mill against property subject to Outlay tax. Exhibit 3023, USD 308 Budget, p. 2.
- b. Funds raised by LOB levy were estimated to be \$3,831,203 meaning the district expected to raise \$167,514 per mill against property subject to LOB tax. Exhibit 3023, USD 308 Budget, p. 2.

Max. Outlay levy is 8 mills; Max LOB is 30% of calculated Financial Aid (USD 308 did not vote for more authority)

Full use of local capital outlay and supplemental general revenue:

4.043 (8 – 3.957) mills for capital outlay
Plus
2.78 mills at 30% without LOB aid (\$465,681 [FY15 unused LOB] / \$167,514 [LOB raised per mill])
Equals
6.823 mills for max local Outlay and LOB aid.

Mills to raise funds equal to the aid under old formulas and aid under SB 7:

1.2 mills for capital outlay (\$120,227/\$99,742)
1.2 mills for LOB (\$193,007/\$167,514)

