

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

DIANE PETRELLA, *et al.*,

Plaintiffs.

vs.

SAM BROWNBACK, Governor of Kansas, in his  
official capacity, *et al.*,

Defendants,

and

L.G., by his next friends and guardians, Jeff and  
Meredith Gannon, *et al.*,

Intervenor-Defendants.

CASE NO. 10-CV-2661-JWL-KGG

AFFIDAVIT OF ALAN R. CUNNINGHAM

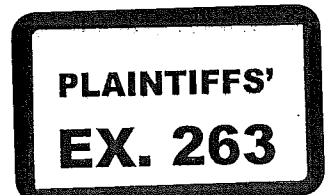
The undersigned, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 and have personal knowledge of each of the facts set forth in this declaration. If called to testify, I could and would competently testify thereto. I understand that I am submitting this affidavit for use in the above proceeding.

2. I am Superintendent of the Dodge City, Kansas school district, Unified School District 443 ("USD 443" or the "District"). I am familiar with the State of Kansas' school financing system and USD 443's budgeting process and financial position.

3. USD 443 is in the enviable position to have a growing student population, with an increase of over 600 weighted, full-time equivalent students in the past three school years.

4. This enrollment increase, however, has had both positive and negative consequences for the school district. Primary among the negative effects is the need for additional staff and facilities, during a time when the school district has experienced a loss from its anticipated



operating budgets in excess of \$5 million.

5. In light of the cuts in base state aid per pupil ("BSAPP"), as well as a growing student population, the USD 443 Board of Education identified four priorities for its budgetary considerations, including:

- a. Maximizing the Contingency Reserve Fund, as allowed by law in order to hedge against the impact of additional budget reductions by the State;
- b. Providing facilities infrastructure repairs (i.e., HVAC, electrical, and plumbing systems) at Dodge City Middle School following two failed bond issues in the past two years to address the need for additional middle school facilities;
- c. Preserving the current staffing levels, at a minimum, in the face of an increasing student population; and
- d. Providing additional classroom space for the District's Early Childhood Education Program in light of waiting lists of families qualifying for, but not receiving, services.

6. In order to accomplish the Board's stated budgetary priorities, and with the prospect of continuing reductions in BSAPP by the Kansas Legislature, District staff and patrons identified options regarding revenues and expenditures. These prioritized options responded to budget reductions, while attempting to manage the increased student growth, and included:

- a. Identifying opportunities to increase revenue to the School District;
- b. Eliminating, reducing, or deferring any anticipated new or additional expense, including additional professional staff;
- c. Reducing and/or deferring any non-salary (i.e., personnel) expenses;
- d. Reducing, reallocating, or deferring expenses for programs and services not

mandated by state or federal statute;

- e. Reducing and/or deferring extra duty and supplemental program expenses, including salary expenses; and
- f. Reducing and/or deferring salary-related expenses.

7. In addition to the previous reductions in BSAPP, the District is also facing the possibility of an additional \$750,000 reduction for the current (FY2011) budget, and an additional \$1.5 million loss for FY2012, based on the Governor's proposed budgets.

8. The USD 443 Board of Education – through its budgetary priorities – has tried to keep the effects of the reductions in BSAPP away from the classrooms, as much as possible. However, increasing student enrollment coupled with a lack of additional classrooms in the District, have resulted in class sizes that are at, or approaching, pre-*Montoy* levels. This is not desirable; especially for the long term.

9. The community has defeated two bond issues for additional school facilities since February of 2009. In both instances, surveys indicated that voters were aware of the need for the facilities, but were unwilling to levy additional taxes to fund them.

10. Furthermore, the Supplemental General Fund, or Local Option Budget, is already at the state average of 30%. There is no likelihood of a successful vote to go beyond that level. The loss of equalization for the capital outlay budget has necessitated transfers from the General Fund in order to maintain current facilities and make needed improvements.

11. As a result of the defeated bond issues and loss of capital outlay equalization, the Board was also forced to make additional budget reductions (beyond those made by the State) in order to address necessary infrastructure repairs to current facilities.

12. The following list represents some of the budget adjustments made by the USD 443

Board of Education as part of its budgetary priorities in response to reductions in BSAPP, the loss of capital outlay equalization, and growing student population:

- a. In an effort to identify opportunities to increase revenue to the District, the Board: (1) implemented instructional materials fees for all students; (2) maintained the District's all-day Kindergarten program utilizing ARRA Title I funds for teacher salaries (half); and (3) reallocated qualifying expenses, including salaries, to other funds such as Title I, Title III, Bilingual, etc.;
- b. In an effort to eliminate, reduce, or defer potential/future additional expenses, the Board: (1) maintained the current number of staff positions; (2) negotiated a freeze for grandfathered employees receiving "cash in lieu of" insurance benefits at the 2009 level; (3) rescinded the Board's Early Retirement Incentive Program; and (4) negotiated a freeze in base salary for special salaries at the 2009 level;
- c. In an effort to reduce and/or defer non-salary expenses, the Board: (1) reduced capital outlay projects previously approved by the Board; (2) reduced current budgeted expenses for transportation; (3) deferred instructional materials (i.e., textbook) adoptions; and (4) reduced or deferred transfers and carry-over balances in various budget accounts;
- d. In an effort to reduce or defer programs and services not mandated by federal or state statute, the Board: (1) reduced the District's summer school program by 30%; (2) reduced the District's after school remedial programs by 80%; (3) restricted out-of-area staff travel for staff development to 250 miles, with rubric; (4) reduced other staff development expenses by 20%; and (5) reduced buildings' discretionary budgets for instructional materials by 20 %; and

- e. In an effort to reduce and/or defer extra duty and supplemental (non-instructional) salary expenses, the Board: (1) reduced overtime and temporary staff by 25%; (2) reduced extra-duty budgets by 25%; and (3) eliminated the District's Director of Information Technology position.

13. These budget adjustments, along with the growth in student enrollment, have permitted USD 443 to "weather" the budget reductions, while maintaining the most critical services for our students. However, growth in enrollment and the at-risk nature of the majority of students served by USD 443 necessitate a better student/teacher ratio than we are currently able to offer.<sup>1</sup> In addition, our experience and success with programs for additional learning time has demonstrated that our students can learn and succeed at higher levels when afforded opportunities to overcome some of the deficits with which they arrive at our schools.

14. USD 443 did not make Adequate Yearly Progress ("AYP") as a District during the last school year. Specifically, the student subgroups that did not achieve AYP included the most at-risk students – English language learners – with special education students only attaining AYP by the slightest of margins. This is directly attributed to increasing class sizes (pupil/teacher ratios), as well as the inability of the District to fully fund many of its opportunities for extended learning, such as after school remedial programs and summer school. Funds for these programs<sup>2</sup> have been either eliminated completely, or diverted to primary programs and services for which funding was cut by the State.

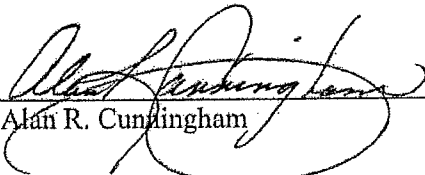
15. USD 443 students are smart. They just need highly qualified and well-trained

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<sup>1</sup> USD 443 serves a population that is over 75% Hispanic, 80% from economically disadvantaged families, and 55% English language learners. In addition, because of the nature of employment in the community, the District has one of the State's largest migrant populations, which often results in students with an educational history showing significant interruptions in the continuity of their schooling.

teachers, adequate resources, and additional time to be successful. The District's Board of Education has tried to avoid making cuts that directly affect these areas. The District is beginning to experience the effects of reductions in funding on student achievement, however, and these effects are most apparent among our most vulnerable students.

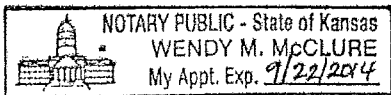
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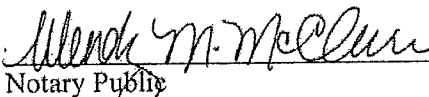
  
Alan R. Cunningham

STATE OF KANSAS        )  
                                  ) ss:  
COUNTY OF FORD        )

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of February, 2011 by Alan R. Cunningham.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



  
Notary Public

My Commission Expires: September 22, 2014