

Testimony before House K-12 Budget Committee
Jan. 29, 2024

HB 2594 – Education Funding Task Force

Mike O’Neal – Kansas Policy Institute

Written testimony in SUPPORT

mike@onealconsultingks.com

Madam Chair and members of the Committee

Thanks for the opportunity to provide written testimony in support of HB 2594.

It is time, once again, to review and make updated recommendations with respect to the state’s school finance system, particularly in light of the fact that the historic increases in funding have not solved the challenge the Court presented concerning those Kansas students who are being left behind educationally.

In that regard, I have attached an exhibit attached by the Gannon Plaintiff’s to their brief. (*The yellow highlights are present in the original appellate record*) The attached current performance data shows **no** improvement and an overall **decline** in performance. The goal of 75% proficiency remains, with virtually no hope of attainment without major adjustments in the direction of education delivery. We now know, and we’re certain that the Court is not blind to this fact, that simply ordering additional funding was not the solution. The allocation of that funding, i.e., **how** the funds are utilized, is the key. Funds don’t teach students, but the effective allocation of those funds in a targeted way to effectively train and support those who do educate the chronically educationally challenged, through proven educational modalities, will produce results.

The Gannon Court spelled out the test, requiring that school funding, “in structure and implementation” must be “reasonably calculated to have all students meet or exceed the educational goal established in K.S.A. 72-3218(c).” Legislators and the educational establishment know, however, that while the Legislature embraces the task of creating a school finance “structure” (the formula and appropriation of funds), the “implementation” part of the Gannon test is performed at the local level, through the actual allocation of those funds toward the goal of educating the students in their charge. While the Court has acknowledged that Legislature has the power to assume the role of controlling “implementation”, i.e., building-level allocation of funds, no one is suggesting that. Local control is important, and best, if appropriate and effective allocation of resources is made a priority toward the goal of improving student performance.

Sadly, truly effective allocation of resources has eluded many school districts, whether it be the twice-documented fact that audited districts haven’t been complying with state law regarding at-risk fund expenditures; the chronic underfunding of instruction and the classroom with the

constitutionally adequate funds the districts currently receive, contrary to the state policy goal in statute; the continued use in too many districts of now debunked literacy instruction; the apparent systemic failure to evaluate and make educational adjustments as a result of longitudinal tracking of our students year-to-year; or the ineffective use of statutorily required building-based needs assessments to inform budget decisions or drive the reallocation of resources, to name a few.

This too, must change if we have any hope of reversing the trend of lower student performance, particularly among the very groups of students the Gannon Court intended to benefit. We applaud the recent legislative efforts aimed at addressing many of these concerns and this proposed legislation will assist in keeping the focus on what is needed to assist all the stakeholders. First and foremost are the students and their parents who have entrusted the education and the future success of their children to our public schools. The proposed make-up of the Task Force includes most of the stakeholders, but we would recommend teacher representation be added as well. They are key stakeholders.

In terms of Task Force subject matter, in 1999 the Legislature required the SBOE to conduct a comprehensive study of the organization of school districts to determine if the public school system could be more efficiently and effectively operated under a different configuration. (K.S.A. 72-291) At the time, funding was a major consideration. But fast forward to today and we are experiencing a sad phenomenon of having the quality a child's education depend in large part on their zip code, i.e., the school district they are required to attend. Your debate on open enrollment legislation shockingly exposed overt elitism and racism. In *Brown v. Board*, the issue was about segregation. The argument against integration was that as long as schools were separate but equal, that should be ok. It wasn't, of course. Unfortunately, today we have in many ways regressed to an environment of "unified but unequal" districts. We have predominate or high density minority districts that are near the bottom in student performance and those students do not have the financial or legal ability to escape their educational plight. This, too, must change and should be a topic for exploration and action by the task force.

We are pleased that evaluation of special education delivery is included and agree with the repeal of the existing SPED task force. Legislation that created the task force directed it to "study and make recommendations for changes in the existing formula for funding of special education and related services." Unfortunately, the task force simply voted to recommend an increase in special education funding over four years without discussing structural inconsistencies in the formula or identifying SPED funding sources already in place but not counted. This is where the work of this proposed task force would more likely lead to the type of discussion and action that is needed.

NO. 113,267

IN THE SUPREME COURT OF THE STATE OF KANSAS

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

Plaintiffs/Appellees,

vs.

STATE OF KANSAS, *et al.*,

Defendants/Appellants.

OPENING BRIEF OF PLAINTIFFS/APPELLEES
APPENDICES 1-11

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

Alan L. Rupe, #08914
Jessica L. Skladzien, #24178
LEWIS BRISBOIS BISGAARD & SMITH LLP
1605 N. Waterfront Parkway, Suite 150
Wichita, Kansas 67206
(316) 609-7900 (Telephone)
(316) 462-5746 (Facsimile)

John S. Robb, #09844
SOMERS, ROBB & ROBB
110 East Broadway
Newton, Kansas 67114
(316) 283-4650 (Telephone)
(316) 283-5049 (Facsimile)
Attorneys for Plaintiffs

Appendix 1:
**Excerpt from Kansas' Consolidated
State Plan Regarding 2016
Performance Levels**

This Chart is an excerpt from the State of Kansas' Consolidated State Plan (attached as Appendix 2). (Plaintiffs added the red text demonstrating the failure rates.) Kansas is required to submit a plan pursuant to the Elementary and Secondary Education Act of 1965 ("ESEA"), as amended by the Every Student Succeeds Act ("ESSA"). Kansas submitted a Plan signed by both Commissioner of Education Randy Watson and former Governor Brownback.

That plan is publicly available at:
[http://www.ksde.org/Portals/0/ECSETS/ESEA/KSconsolidatedstateplan01182018 Approved.pdf](http://www.ksde.org/Portals/0/ECSETS/ESEA/KSconsolidatedstateplan01182018%20Approved.pdf). It is appropriate for this Court to take judicial notice of the Consolidated State Plan, and Plaintiffs respectfully request that this Court do so. K.S.A. 60-409(b)(4); K.S.A. 60-412(c).

Kansas Performance Levels

*The Kansas Assessment Program (KAP) results are reported in four performance levels. Level 1 indicates that the student has demonstrated limited ability to understand and use the skills and knowledge necessary for college and career readiness. Level 2 indicates that the student has demonstrated a basic ability to understand and use the skills and knowledge necessary for college and career readiness. Level 3 indicates that the student has demonstrated an effective ability to understand and use the skills and knowledge needed for college and career readiness. Level 4 indicates that the student has demonstrated an excellent ability to understand and use the skills and knowledge necessary for college and career readiness. **Levels 1 and 2 are categorized as not proficient. Levels 3 and 4 are proficient.***

(i) Baseline data. The following table shows the state 2016 baseline data for all students and subgroups of students:

Subgroups	Reading/ Language Arts: Baseline Data	Percentage Not Proficient	Reading/ Language Arts: Long-term Goal	Math: Baseline Data	Percentage Not Proficient	Math: Long-term Goal
	(% scoring in Level 3 & Level 4) 2016	(% not scoring in Level 3 & Level 4)	(% scoring in Level 3 & Level 4) 2030	(% scoring in Level 3 & Level 4) 2016	(% not scoring in Level 3 & Level 4)	(% scoring in Level 3 & Level 4) 2030
All students	42.0	58.0%	75.0	33.0	67.0%	75.0
Economically disadvantaged students	27.7	72.3%	75.0	19.8	80.2%	75.0
Children with disabilities	15.4	84.6%	75.0	10.9	89.1%	75.0
English learners	19.7	80.3%	75.0	15.4	84.6%	75.0
African- American students	21.0	79.0%	75.0	13.2	86.8%	75.0
Hispanic students	26.1	73.9%	75.0	18.7	81.3%	75.0
White students	48.4	51.6%	75.0	38.7	61.3%	75.0
Asian students	55.7	44.3%	75.0	54.6	45.4%	75.0
American Indian or Alaska Native students	31.5	68.5%	75.0	21.8	78.2%	75.0

2023 State Assessment		ELA / Reading		Math	
Year	Proficient	Not Proficient	Proficient	Not Proficient	
All Students	33%	67%	31%	69%	
Economically Disadvantaged	20%	80%	18%	82%	
W/ Disabilities	12%	88%	12%	88%	
English Language Learners	5%	95%	8%	92%	
African American	16%	84%	12%	88%	
Hispanic	19%	81%	17%	83%	
White	40%	60%	38%	62%	
Asian	49%	51%	52%	48%	
Am. Indian / Alaska	24%	76%	22%	78%	

Source: KSDE; all students tested, rounded to the nearest whole number