

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:35 p.m. on January 18, 2005, in Room 123-S of the Capitol.

Committee members absent:

Committee staff present: Carolyn Rampey, Kansas Legislative Research Department  
Kathie Sparks, Kansas Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Dale Dennis, Deputy Commissioner, State Board of Education

Senator Schodorf began the meeting by introducing a newly assigned committee member, Senator Ralph Ostmeyer. She explained that he was replacing Senator Dennis Wilson who was reassigned to another committee.

On behalf of Senator Barnett, Senator Schodorf requested the introduction of a bill concerning math and science teacher scholarships. She explained that the bill would amend the current teacher service scholarship program to give preference to math and science teachers.

Senator Ostmeyer moved to introduce the bill, seconded by Senator Steineger. The motion carried.

Dale Dennis, Deputy Commissioner, State Board of Education, requested the introduction of a bill concerning the distribution of driver's license fees. He explained that a percentage of driver's license fees goes to schools for driver education. Currently, the statute provides that no more than \$1,540,000 can be appropriated to schools for driver education. The money is building up in the fund due to the statutory limitation. The bill would strike the limiting language.

Senator Steineger moved to introduce the bill, seconded by Senator Teichman. The motion carried.

Mr. Dennis requested the introduction of a bill which would amend the statute concerning teacher certification fees to allow the State Board to set the amount of the fee.

Senator Steineger moved to introduce the bill, seconded by Senator Teichman. The motion carried.

Mr. Dennis introduced the 2005 Kansas Teacher of the Year, Brett D. Potts, who teaches 9<sup>th</sup> grade biology at Blue Valley Northwest High School in Overland Park. Mr. Potts noted that the other teachers with him decided as a team that their fundamental beliefs include (1) Kids come first, and they should be the center piece to all decision making, (2) Kansas public schools are excellent and can continue to improve, and (3) It is very important that quality educators be recruited and retained. He then related his experiences with special education students in his classroom.

The following 2005 Regional Teachers of the Year related their classroom experiences and teaching challenges: Anne Farmer, Terry M. Hedge, Joyce C. Anschutz, Marilyn Bolton, Alma Cook, Jeff Handley, and Gary Wilkerson. (Attachment 1)

Committee members questioned the teachers with regard to the role of school administrators. All of the teachers agreed that the administrators are the principle instructional leaders and that further elimination of administrative positions would result in teachers having to undertake administrative duties, which would mean they would have less time for their teaching duties.

Senator Schodorf asked the teachers for their opinion with regard to closing the gap for bilingual and at-risk students. It was suggested that staff be increased to allow for smaller classes and more one-on-one help.

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:35 p.m. on January 18, 2005, in Room 123-S of the Capitol.

Senator Vratil asked the teachers to suggest things which the Legislature might do to recruit and retain good teachers. Suggestions included the following: provide for good staff and professional development, provide a mentoring program for new teachers, smaller classes, more para professionals, salaries that are competitive with other states and other occupations, and affordable health insurance plans.

Senator Schodorf called the Committee's attention to the minutes of the January 11 and 12 meetings.

Senator Teichman moved to approve the minutes of the January 11 and 12, 2005, minutes, seconded by Senator Apple. The motion carried.

Senator Schodorf called attention to copies of the Kansas Supreme Court ruling on *Montoy, et al. v. State of Kansas*, which had been distributed to members for their information. (Attachment 2)

The meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for January 19, 2005.

**SENATE EDUCATION COMMITTEE  
GUEST LIST**

DATE: January 18, 2005

NAME	REPRESENTING
BRETT POTTS	KS TEACHER OF THE YEAR TEAM
Terry Hedge	KS Teacher of the Year Team
Marilyn Bolton	KS Teacher of the Year Team
JEFF HANDLEY	KS. TEACHER of the year TEAM.
Gary Wilkerson	Ks. Teacher of the Year team
Alma Cook	Ks. Teacher of the Year team
Joyce Anschutz	Ks. Teacher of the Year Team
Anne Farmer	Ks Teacher of the Year Team
Val DeFave	SQE
Bob Hart	SELF -
Tom Trickett	Blue Valley Schools
Dr. J. Doubl	Hanover High School
Cynthia Menzel	KNEA -
Kathy Toelke	KSDE
Sherry Bukovatz	KSDE
Karla Denny	KSDE
Don Wilson	USA
Anna Millham	Sen. Mike Petersen
Elaine Frisbie	Div. of the Budget
Adam Osley	Gov. Office





# Kansas Teacher of the Year Program

## 2005 Kansas Teacher of the Year



**Brett D. Potts**  
Blue Valley Northwest High Sch.  
13260 Switzer  
Overland Park, KS 66213  
(913) 239-3400  
Facsimile: (913) 681-7035  
E-Mail: [bpotts@bluevalleyk12.org](mailto:bpotts@bluevalleyk12.org)

## 2005 Kansas Regional Teachers of the Year



**Joyce C. Anschutz**  
Jefferson Elementary School  
2716 24<sup>th</sup> Street  
Great Bend, KS 67530  
(620) 793-1502  
Facsimile: (620) 793-1588  
E-Mail: [anschutj@usd428.org](mailto:anschutj@usd428.org)



**Jeffrey (Jeff) W. Handley**  
Washburn Rural High School  
5900 SW 61<sup>st</sup> Street  
Topeka, KS 66619-9404  
(785) 339-4100  
Facsimile: (785) 339-4125  
E-Mail: [handljef@usd437.net](mailto:handljef@usd437.net)



**Marilyn Bolton**  
Buhler High School  
611 N. Main Street  
P. O. Box 350  
Buhler, KS 67522  
(888) 662-8802  
Facsimile: (620) 543-2853  
E-Mail: [mbolton@usd313.k12.ks.us](mailto:mbolton@usd313.k12.ks.us)



**Teresa (Terry) M. Hedge**  
Edwardsville Elementary School  
1700 S. 104<sup>th</sup> Street  
Edwardsville, KS 66111  
(913) 422-4036  
Facsimile: (913) 422-7165  
E-Mail: [hedget@usd204.k12.ks.us](mailto:hedget@usd204.k12.ks.us)



**Alma Cook**  
Lincoln Elementary School  
801 Lincoln Avenue  
Baxter Springs, KS 66713  
(620) 856-3322  
Facsimile: (620) 856-4173  
E-Mail: [cooka@usd508.org](mailto:cooka@usd508.org)



**Gary Wilkerson**  
Tanglewood Elementary School  
830 Ridgecrest  
Derby, KS 67037  
(316) 788-8565  
Facsimile: (316) 788-8493  
E-Mail: [gwilkerson@usd260.com](mailto:gwilkerson@usd260.com)



**Anne Farmer**  
Douglass High School  
910 E. 1<sup>st</sup> Street  
P. O. Box 158  
Douglass, KS 67039  
(316) 747-3310  
Facsimile: (316) 747-3315  
E-Mail: [afarmer@usd396.net](mailto:afarmer@usd396.net)



Senate Education Committee  
1-18-05  
Attachment 1

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 92,032

RYAN MONTROY, *et al.*,  
*Appellees/Cross-appellants*,

v.

STATE OF KANSAS, *et al.*,  
*Appellants/Cross-appellees*.

Appeal from Shawnee district court; TERRY L. BULLOCK, judge. Opinion filed January 3, 2005. Affirmed in part and reversed in part.

*Curtis L. Tideman*, of Lathrop & Gage L.C., of Overland Park, argued the cause, and *Kenneth L. Weltz* and *Alok Ahuja*, of the same firm, and *David W. Davies*, assistant attorney general, and *Phill Kline*, attorney general, were with him on the briefs for appellant/cross-appellee State of Kansas.

*Dan Biles*, of Gates, Biles, Shields & Ryan, P.A., of Overland Park, argued the cause, and *Rodney J. Bieker*, of Kansas Department of Education, and *Cheryl Lynne Whelan*, of Lawrence, were with him on the briefs for appellants/cross-appellees Janet Waugh, Sue Gamble, John Bacon, Bill Wagon, Connie Morris, Bruce Wyatt, Kenneth Willard, Carol Rupe, Iris Van Meter, Steve Abrams, and Andy Tompkins.

*Alan L. Rupe*, of Kutak Rock LLP, of Wichita, argued the cause, and *Richard A. Olmstead*, of the same firm, and *John S. Robb*, of Somers Robb & Robb, of Newton, were with him on the briefs for appellees/cross-appellants.

*Wm. Scott Hesse*, assistant attorney general, was on the brief for defendants/cross-appellees Governor Kathleen Sebelius and State Treasurer Lynn Jenkins.

*Jane L. Williams*, of Seigfreid, Bingham, Levy, Selzer & Gee, of Kansas City, Missouri, was on the brief for *amicus curiae* Kansas Families United for Public Education.

*Patricia E. Baker*, of Kansas Association of School Boards, of Topeka, was on the brief for *amicus curiae* Kansas Association of School Boards.

*David M. Schauner* and *Robert Blaufuss*, of Kansas National Education Association, of Topeka, were on the brief for *amicus curiae* Kansas National Education Association.

*Joseph W. Zima*, of Topeka Public Schools, was on the brief for *amicus curiae* Unified School District No. 501, Shawnee County, Kansas.

*Michael G. Norris* and *Melissa D. Hillman*, of Norris, Keplinger & Hillman, L.L.C., of Overland Park, were on the brief for *amici curiae* Unified School Districts Nos. 233, 229, and 232, Johnson County, Kansas.

*Anne M. Kindling*, of Goodell, Stratton, Edmonds & Palmer, L.L.P., of Topeka, was on the brief for *amicus curiae* Unified School District No. 512, Shawnee Mission, Kansas.

*Bernard T. Giefer*, of Giefer Law LLC, of WaKeeney, was on the brief for *amici curiae* Unified School District No. 208, Trego County, Kansas (WaKeeney), *et al.* (60 other Kansas school districts).

*Thomas R. Powell* and *Roger M. Theis*, of Hinkle Elkouri Law Firm L.L.C., of Wichita, were on the brief for *amicus curiae* Unified School District No. 259, Sedgwick

County, Kansas.

*Janice L. Mathis*, of Rainbow/PUSH Coalition, of Atlanta, Georgia, was on the brief for *amicus curiae* Rainbow/PUSH Coalition.

*Cynthia J. Sheppard*, of Weathers & Riley, of Topeka, was on the brief for *amicus curiae* Kansas Action for Children.

*Bob L. Corkins*, of Lawrence, was on the brief for *amicus curiae* Kansas Taxpayers Network.

*Kirk W. Lowry*, of Kansas Advocacy & Protective Services, of Topeka, was on the brief for *amicus curiae* Kansas Advocacy & Protective Services.

*Per Curiam*: The defendants in this case, the State of Kansas (appellant/cross-appellee) along with Janet Waugh, Sue Gamble, John Bacon, Bill Wagnon, Connie Morris, Bruce Wyatt, Kenneth Willard, Carol Rupe, Iris Van Meter, Steve Abrams and Andy Tompkins (the State Board of Education related defendants) (appellants/cross-appellees) appeal from a decision of the district court holding that the Kansas School District Finance and Quality Performance Act (SDFQPA), K.S.A. 72-6405 *et seq.*, is unconstitutional.

The plaintiffs in this case, U.S.D. No. 305 (Salina) and U.S.D. No. 443 (Dodge City), along with 36 individually named students in those districts, cross-appeal from the district court's determination that the legislature did not abrogate the constitutional obligations of the State Board of Education.

The constitutionality of the statutory scheme for funding the public schools in Kansas is at issue in this appeal. Because this court's resolution of this issue will have



statewide effect and require legislative action in the 2005 legislative session, we announce our decision in this brief opinion. A formal opinion will be filed at a later date.

After examining the record and giving full and complete consideration to the arguments raised in this appeal, we resolve the issue as follows:

1. We reverse the district court's holding that SDFQPA's financing formula is a violation of equal protection. Although the district court correctly determined that the rational basis test was the proper level of scrutiny, it misapplied that test. We conclude that all of the funding differentials as provided by the SDFQPA are rationally related to a legitimate legislative purpose. Thus, the SDFQPA does not violate the Equal Protection Clause of the Kansas or United States Constitutions.

2. We also reverse the district court's holding that the SDFQPA financing formula has an unconstitutional disparate impact on minorities and/or other classes. In order to establish an equal protection violation on this basis, one must show not only that there is a disparate impact, but also that the impact can be traced to a discriminatory purpose. *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 272, 60 L. Ed. 2d 870, 99 S. Ct. 2282 (1979). No discriminatory purpose was shown by the plaintiffs. Thus, the SDFQPA is not unconstitutional based solely on its "disparate impact."

3. We affirm the district court's holding that the legislature has failed to meet its burden as imposed by Art. 6, § 6 of the Kansas Constitution to "make suitable provision for finance" of the public schools.

The district court reached this conclusion after an 8-day bench trial which

resulted in a record of approximately 1,400 pages of transcript and 9,600 pages of exhibits. Most of the witnesses were experts in the fields of primary and secondary education. The trial followed this court's decision in *Montoy v. State*, 275 Kan. 145, 152-53, 62 P.3d 228 (2003) (*Montoy I*), in which we held, in part, that the issue of suitability was not resolved by *U.S.D. No. 229 v. State*, 256 Kan. 232, 885 P.2d 1170 (1994), *cert. denied* 515 U.S. 1144 (1995). We had held in *U.S.D. No. 229* that the SDFQPA as originally adopted in 1992 made suitable provision for the finance of public education. See 256 Kan. at 254-59. Later, in *Montoy I*, we noted that the issue of suitability is not stagnant but requires constant monitoring. See 275 Kan. at 153.

Following the trial, the district court made findings regarding the various statutory and societal changes which occurred after the decision in *U.S.D. No. 229* and affected school funding. Regarding societal changes, the district court found: (1) 36% of Kansas public school students now qualify for free or reduced-price lunches; (2) the number of students with limited proficiency in English has increased dramatically; (3) the number of immigrants has increased dramatically; and (4) state institutions of higher learning now use more rigorous admission standards.

Additionally, the district court found a number of statutory changes made after the decision in *U.S.D. No. 229* which affected the way the financing formula delivers funds: (1) the goals set out in K.S.A. 72-6439(a) were removed; (2) the SDFQPA's provision requiring an oversight committee to ensure fair and equitable funding was allowed to expire; (3) the low enrollment weighting was changed; (4) correlation weighting was added; (5) at-risk pupil weighting was changed; (6) the mill levy was decreased from 35 mills to 20 mills; (7) a \$20,000 exemption for residential property was added to the mill levy, also decreasing revenue; (8) a new facilities weighting was added; (9) special education funds were added to the calculation to increase the base on which

the local option budget funding was calculated; (10) ancillary weighting was added; (11) the cap on capital outlay authority was removed; and (12) most special education funds were limited to reimbursement for 85 percent of the costs incurred in hiring special education teachers and paraprofessionals.

Our standard of review requires us to determine whether the district court made findings of fact which are supported by substantial competent evidence and are sufficient to support the conclusions of law. *McCain Foods USA, Inc. v. Central Processors, Inc.*, 275 Kan. 1, 12, 61 P.3d 68 (2002). We conclude that the district court's findings regarding the societal and legislative changes are supported by substantial competent evidence.

The plaintiffs argued and the district court found that the cumulative result of these changes is a financing formula which does not make suitable provision for finance of public schools, leaving them inadequately funded. Before determining whether there is substantial competent evidence to support these findings, we must examine the standard for determining whether the current version of the SDFQPA makes suitable provision for the finance of public school education. The concept of "suitable provision for finance" encompasses many aspects. First and perhaps foremost it must reflect a level of funding which meets the constitutional requirement that "[t]he legislature shall provide for intellectual, educational, vocational and scientific *improvement* by establishing and maintaining public schools . . . ." (Emphasis added.) Kan. Const. art. 6, § 1. The Kansas Constitution thus imposes a mandate that our educational system cannot be static or regressive but must be one which "advance[s] to a better quality or state." See Webster's II New College Dictionary 557 (1999) (defining "improve"). In apparent recognition of this concept, the legislature incorporated performance levels and standards into the SDFQPA and, although repealing the 10 goals which served as the

foundation for measuring suitability in the *U.S.D. No. 229* decision, has retained a provision which requires the State Board of Education to design and adopt a school performance accreditation system "based upon improvement in performance that reflects high academic standards and is measurable." K.S.A. 72-6439(a). Moreover, the legislature mandated standards for individual and school performance levels "the achievement of which represents excellence in the academic area at the grade level to which the assessment applies." K.S.A. 72-6439(c).

Through these provisions, the legislature has imposed a criteria for determining whether it has made suitable provision for the finance of education: Do the schools meet the accreditation requirements and are students achieving an "improvement in performance that reflects high academic standards and is measurable"? K.S.A. 72-6439(a).

These student performance accreditation measures were utilized in 2001 when the legislature directed that a professional evaluation be performed to determine the costs of a suitable education for Kansas school children. In authorizing the study, the legislature defined "suitable education." K.S.A. 2003 Supp. 46-1225(e). The Legislative Education Planning Committee (LEPC), to whom the task of overseeing the study was delegated, determined which performance measures would be utilized in determining if Kansas' school children were receiving a suitable education. The evaluation, performed by Augenblick & Myers, utilized the criteria established by the LEPC, and, in part, examined whether the current financing formula and funding levels were adequate for schools to meet accreditation standards and performance criteria. The study concluded that both the formula and funding levels were inadequate to provide what the legislature had defined as a suitable education.

Although in *Montoy I*, 275 Kan. at 153-55, we concluded that accreditation standards may not always adequately define a suitable education, our examination of the extensive record in this case leads us to conclude that we need look no further than the legislature's own definition of suitable education to determine that the standard is not being met under the current financing formula. Within that record there is substantial competent evidence, including the Augenblick & Myers study, establishing that a suitable education, as that term is defined by the legislature, is not being provided. In particular, the plaintiff school districts (Salina and Dodge City) established that the SDFQPA fails to provide adequate funding for a suitable education for students of their and other similarly situated districts, *i.e.*, middle- and large-sized districts with a high proportion of minority and/or at-risk and special education students. Additional evidence of the inadequacy of the funding is found in the fact that, while the original intent of the provision for local option budgets within the financing formula was to fund "extra" expenses, some school districts have been forced to use local option budgets to finance general education.

Furthermore, in determining if the legislature has made suitable provision for the finance of public education, there are other factors to be considered in addition to whether students are provided a suitable education. Specifically, the district court found that the financing formula was not based upon actual costs to educate children but was instead based on former spending levels and political compromise. This failure to do any cost analysis distorted the low enrollment, special education, vocational, bilingual education, and the at-risk student weighting factors.

Thus, there is substantial competent evidence to support the district court's findings discussed above. These findings are sufficient to support the conclusion that the legislature has failed to "make suitable provisions for finance" of the public school



system as required by Art. 6, § 6 of the Kansas Constitution.

4. As to the cross-appeal, we affirm the district court's holding that the legislature has not usurped the powers of the State Board of Education.

In addressing the appropriate remedy, as the district court noted, there are "literally hundreds of ways" the financing formula can be altered to comply with Art. 6, § 6. Similarly, there are many ways to re-create or reestablish a suitable financing formula. We do not dictate the precise way in which the legislature must fulfill its constitutional duty. That is for the legislators to decide, consistent with the Kansas Constitution.

It is clear increased funding will be required; however, increased funding may not in and of itself make the financing formula constitutionally suitable. The equity with which the funds are distributed and the actual costs of education, including appropriate levels of administrative costs, are critical factors for the legislature to consider in achieving a suitable formula for financing education. By contrast, the present financing formula increases disparities in funding, not based on a cost analysis, but rather on political and other factors not relevant to education.

We are aware that our decision (1) raises questions about continuing the present financing formula pending corrective action by the legislature; (2) could have the potential to disrupt the public schools; and (3) requires the legislature to act expeditiously to provide constitutionally suitable financing for the public school system. Accordingly, at this time we do not remand this case to the district court or consider a final remedy, but instead we will retain jurisdiction and stay all further proceedings to allow the legislature a reasonable time to correct the constitutional infirmity in the present financing formula. In the meantime, the present financing formula and funding will remain in effect until further order of this court.

We have in this brief opinion endeavored to identify problem areas in the present formula as well as legislative changes in the immediate past that have contributed to the present funding deficiencies. We have done so in order that the legislature take steps it deems necessary to fulfill its constitutional responsibility. Its failure to act in the face of this opinion would require this court to direct action to be taken to carry out that responsibility. We believe further court action at this time would not be in the best interests of the school children of this state.

The legislature, by its action or lack thereof in the 2005 session, will dictate what form our final remedy, if necessary, will take. To ensure the legislature complies with our holding, we will withhold our formal opinion until corrective legislation has been enacted or April 12, 2005, whichever occurs first, and stay the issuance of our mandate in this case.

Affirmed in part and reversed in part.