

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:35 p.m. on January 24, 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: None

Senator Schodorf distributed a worksheet to committee members concerning possible questions to consider and discuss with regard to school finance. She requested that members answer the questions as soon as possible and return the worksheet to her. (Attachment 1)

Senator Schodorf called upon Carolyn Rampey, Kansas Legislative Research Department, to present background information on the 2005 Kansas Supreme Court decision in the school finance case, *Montoy v. Kansas*. Ms. Rampey began by noting that the Court said that the issue of suitability is not stagnant and that the issue must be closely monitored. She followed with background information on *Montoy I* and *Montoy II*, focusing on the Augenblick and Myers (A&M) study, which features prominently in opinions and memoranda issued by the courts that considered the litigation. She also discussed the fiscal impact of the A&M recommendations and the changes which took place in the interval between the two Supreme Court school finance decisions (1994 and 2005) and the changes which have taken place since *Montoy* was filed in 1999 and since the Legislature commissioned the A&M study in 2001. During her presentation, she referred to the following attachments to her written report: an itemization of quality performance accreditation guidelines contained in the 1992 Act, a copy of K.S.A 2004 Supp. 46-1225 concerning quality performance guidelines contained in the original version of the current school finance act, and a list of components of a "suitable education" for purposes of the contract entered into with A&M. (Attachment 2) In addition, she referred to a copy of the Supreme Court opinion, with particular emphasis on pages 4, 5, and 9. (Attachment 3)

Dale Dennis, Deputy Commissioner, State Department of Education, distributed copies of a memorandum concerning the calculation of the cost of a suitable education in Kansas in 2000-01 using two different analytic approaches. (Attachment 4)

Senator Schodorf reminded the Committee that the Agenda for Wednesday, January 26, allows 45 minutes for committee discussion regarding the definition of a "suitable education."

The meeting was adjourned at 2:25 p.m.

The next meeting is scheduled for January 25, 2005.

**SENATE EDUCATION COMMITTEE
GUEST LIST**

DATE: January 24, 2005

NAME	REPRESENTING
Jamie Rutherford	2000 Gov't Rel.
Diane Gjersted	Wichita Public Schools
Anne S. Teigen	
Meghan Cassidy	
Bryan Cox	SM SMNW.com-
Jiff Edwards	KASB
Rob MEALY	HEIN Law Firm
David R. Corbin	K DOR
Bill Brady	SFFF
Dodie Wellhead Johnson	Patrick Hurley & Co.
KEN DAWTEL	Ks SMALLBIZ.com
TERRY FORSYTH	KNETA
BILL REARDON	KC. USD 500
Ashley Sherard	Levea Chamber
Wes Ashton	Overland Park Charter
Doug Bowman	CCECDS

The Senate Education Committee would like your input regarding school finance. Please complete the following questions and send by email or give to the chairperson, Jean Schodorf, of the Education Committee as soon as possible.

POSSIBLE QUESTIONS TO CONSIDER AND DISCUSS

1. Should there be a multi-year plan or a one-year plan with additional study to get better/more accurate cost data analysis?
2. How much money should be considered?
3. Should there be accountability measures built-in to ensure that the money is used the way it is supposed to be, i.e. to get to the targeted students, classroom, meeting the standards, etc. If so, what?
4. How should the package be financed? What revenue sources are available? Taxes? No taxes? Other sources?
5. Should the formula be changed?
6. Should we re-define a suitable education or use the definitions used by the Supreme Court?
7. What should, if anything, be done with Low Enrollment weighting? Voluntary consolidation incentives? Elimination of low-enrollment funding for districts below a certain number? County districts? Administration? Should voluntary incentives to merge administration between districts be considered? Phase-in period?
8. Should the LOB be raised/lowered/used for extras only and not basics?
9. Costs for weightings?
10. Special education, bilingual, vocational and at-risk? Should at-risk be re-defined?
11. What would/could you support?
12. Other considerations?
13. Long term solutions versus short term?

*Senate Education Committee
1-24-05
Attachment 1*

January 24, 2005

To: Senate Education Committee
From: Carolyn Rampey, Principal Analyst
Re: Background on Selected Items in the 2005 Kansas Supreme Court
School Finance Decision

The Kansas Supreme Court issued a decision in the school finance case, *Montoy v. Kansas*, on January 3, 2005.⁽¹⁾ This memorandum expands upon selected references made by the Court in its decision in order to provide background for Committee members. The memorandum will focus on the study done by Augenblick and Myers, which features prominently in opinions and memoranda issued by the courts that considered the litigation.

Litigation Background

Until the recent decision, the Kansas Supreme Court had considered school finance only one other time. Late in 1993, Shawnee County District Court Judge Marla Luckert found the 1992 School District Finance and Quality Performance Act, the current school finance plan, unconstitutional. The decision was immediately appealed to the Kansas Supreme Court, which, in December of 1994, overturned Judge Luckert.⁽²⁾ Although the Supreme Court reversed most of Judge Luckert's decision, it quoted approvingly from her district court opinion and gave the following caveat:

- γ The issue of suitability is not stagnant; past history teaches that this issue must be closely monitored. Previous school finance legislation, when initially attacked upon enactment or modification, was determined constitutional. Then, underfunding and inequitable distribution of finances lead to judicial determination that the legislation no longer complied with constitutional provisions.

Montoy v. Kansas was filed December 14, 1999. Shawnee County District Court Judge Terry Bullock originally dismissed the case, but the Kansas Supreme Court remanded the case to his court and listed issues he was to address ("Montoy 1").⁽³⁾

- "The state law no longer contains educational goals or standards, nor has the State Board of Education issued any regulations containing academic standards or objective criteria against which to measure the education Kansas children receive.
- The amount of Base State Aid Per Pupil has not kept up with inflation.
- School districts are required to raise capital outlay expenses locally and the four mill levy limit has been removed, allowing wealthier districts even greater access to capital outlay expenditures than poorer districts and thus increasing funding disparities.
- The school finance formula provides widely differing amounts of revenue to different districts.

Senate Education Committee
1-24-05
Attachment 2

- The number of minority students in the plaintiff school districts has increased dramatically and a substantial gap exists between the performance of minorities and whites and between students in the free and reduced lunch programs and those not in these programs on the state standardized tests.
- Plaintiff school districts must raise money locally through the 'local option budget' or the capital outlay fund to meet the minimum school accreditation requirements.
- Plaintiff school districts raise less money per pupil with each mill levied than wealthier districts and increased reliance on local taxes has resulted in a less advantageous education in the plaintiff school districts than in wealthier districts."

The recent *Montoy* decision ("Montoy II") makes reference to both the 1994 Supreme Court decision and its direction to Judge Bullock when the case was remanded to him. Specifically, in the recent decision, the Court notes that it upheld the constitutionality of the current school finance plan in 1994 but points out that, when it remanded the recent case to Judge Bullock in 2003, it noted that "the issue of suitability is not stagnant but requires constant monitoring."

To make its point, in the recent decision the Supreme Court lists a number of "statutory and societal changes" which have occurred since its 1994 decision. Included on the list is a reference to Quality Performance Accreditation (QPA) guidelines which were in the statutes when the Supreme Court first considered the constitutionality of the current school finance act in 1994, but which were removed by the Legislature in 1995. (The QPA guidelines are Attachment I.) In their place is the statutory directive to 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" (KSA 72-6439).

Also on the Supreme Court's list is a reference to a school finance oversight committee whose authorization was allowed to expire. When the current school finance act was enacted, it created the 16-member School District Finance and Quality Performance Committee comprised of 12 members of the Legislature representing the chairs and ranking minority members, or their designees, of the House and Senate education, taxation, and appropriations committees; two representatives of the general public appointed by the State Board of Education, and two public members appointed by the Governor. The Committee made annual reports to the Governor, the Legislature, and the State Board of Education and had a statutory termination date of June 30, 1994.

Among other things, the Committee was directed to:

- monitor the implementation and operation of the School District Finance and Quality Performance Act and Quality Performance Accreditation;
- evaluate the Act to determine if there is a fair and equitable relationship between the costs of weighted components and the assigned weightings;
- determine if additional school district operations should be weighted;
- evaluate the effect of the Act and system on local control;

- review the amount of Base State Aid Per Pupil (BSAPP) and determine if the amount of state financial aid for school districts is sufficient to provide quality educational opportunities for Kansas children; and
- explore ways of decreasing local option budget (LOB) spending authority in conjunction with increases in the amount of the BSAPP, by adjusting any weighted component of the Act, or by weighting any additional school district operation.

suitability →
Moving to other items in *Montoy II*, the Supreme Court notes that the student performance accreditation measures that existed in 2001 were the ones the Legislature used when it commissioned a study to determine the costs of a suitable education for Kansas school children. That study figured prominently in both the district court opinion and in the opinion of the Supreme Court, which said: “In authorizing the study, the legislature defined “suitable education....” The Legislative Education[al] 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 study concluded that both the formula and funding levels were inadequate to provide what the legislature had defined as a suitable education.”

Most of the rest of this memorandum discusses that study and its recommendations.

The Augenblick and Myers Study

In 2001, the Legislature enacted legislation (KSA 46-1225, included as Attachment 2) directing the Legislative Coordinating Council (LCC) to provide for a professional evaluation of school district finance to determine the cost of a suitable education for Kansas children. The study was to address inadequacies and inequities inherent in the School District Finance and Quality Performance Act, as well as other items listed in the statute. They included a determination of the funding needed to provide a suitable education in typical schools of various sizes and locations and a determination of the additional support needed for special education, at-risk, limited English proficient pupils, and pupils impacted by other special circumstances.

For purposes of the study, the legislation defined “suitable” to mean a curricular program consisting of courses that were statutorily required, those additional courses required to qualify for a State Scholarship, and the courses included in the precollege curriculum prescribed by the State Board of Regents for purposes of meeting qualified admissions eligibility requirements. (These requirements are contained in Attachment 3.) The sum of \$225,000 was appropriated to the LCC to hire consultants and the LCC designated the Legislative Educational Planning Committee (LEPC) to oversee the study.⁴

The LEPC issued a request for proposals in August 2001 and received one bid. It was from the Denver-based firm headed by Dr. John Augenblick and John Myers (A&M). The proposal envisioned a team composed of staff from the National Conference of State Legislatures and the Education Commission of the States to work with A&M personnel on the project. A contract between the LCC and A&M was signed in October 2001, with a completion date of May 2002.

A&M met with the LEPC three times during the course of the study and a fourth time to present the final report.⁵ At one of the early meetings, the LEPC, with input from the State Board of Education, expanded the definition of “suitable education” to include the following programs and services: student and staff safety, early childhood programs, extended learning time, alternative

schools, technical education, technology training, library media services, foreign language, fine arts, nursing and counseling services, activities programs, student transportation, and a qualified teacher in each classroom.

high result method

A&M used two methodologies to do the study. The Professional Judgment method used teams of experienced educators to specify the resources prototype schools need in order to assure that school districts could meet state expectations. This method has the advantage of being able to identify resources associated with students with special needs and tends to result in higher costs than other methods that can be used. According to A&M, this is because experienced educators tend to recommend higher staffing levels and the addition of programs, such as professional development for teachers and full-day kindergarten.

The second methodology used was the Successful School District model. Using this approach, A&M identified 85 school districts in Kansas that were deemed to be "successful" using criteria set by the LEPC. "Successful districts" were those that met QPA requirements and whose students performed well on the basis of statewide achievement tests in 2000. Expenditure patterns for these districts were analyzed and a base cost per pupil determined. The analysis included only those costs needed to educate an average student and excluded costs associated with special education, bilingual education, or services related to being at-risk. Expenditures for capital outlay, food service, and transportation also were excluded. Partly because of these reasons, the Successful School District model usually results in a lower cost per pupil figure than the Professional Judgment model. A&M discovered that the successful schools approach shows higher performing districts in Kansas spend more than lower performing districts and concluded that, to improve overall performance in the state, spending might have to be increased.

f

In May 2002, A&M presented its recommendations to the LEPC, which, quoting from the Committee's final report to the 2003 Legislature, "generally support[ed] the comments and findings of the suitability study" and commend[ed] the study to the incoming Governor and the 2003 Legislature "to use to increase state funding for schools over three years and to implement needed reforms in the school finance formula." The Committee specifically called attention to the fact that what constitutes a suitable education is defined statutorily and "the Legislature either should affirm that definition or take action to change it."

Major recommendations of the study are the following:

- *Kansas should continue to use a foundation program in combination with the LOB as the primary basis for distributing public school support. A&M concluded that there is strong support for the way state aid is allocated to schools in Kansas, based on its interviews and responses to questionnaires from teachers, school and school district administrators, school board members, members of the business community, and others, but interviewees and questionnaire respondents believed the foundation level and weights were too low and that the local contribution to the foundation program (the 20 mill property tax) should be increased.*
- *The foundation level (base cost) should be raised in the future to a level that would be equivalent to \$4,650 in 2000-01. (At the time of the study, Base State Aid Per Pupil was \$3,820.) Adjusted for inflation, the recommended base cost would be \$5,033 for FY 2005.*
- *The foundation level should be adjusted by a regional cost factor using figures from the National Center for Education Statistics until such time as the state conducts its own study. A&M observed that the cost of doing business may vary from district to district, based on*

factors over which the district has little control, such as staff salaries, and certain supplies and materials.

- *The foundation level should be adjusted in recognition of the higher costs associated with (1) the operation of moderate size and small school districts; (2) the needs of students in special education programs; (3) the needs of at-risk students (based on the number of students participating in the free lunch program); and (4) the needs of bilingual students. The adjustments should be based on formulas that are sensitive to the enrollment level of school districts. A&M recommended higher levels of funding for smaller districts, meaning that there would be an inverse relationship between funding and enrollment which would replace the low enrollment and correlation weighting in the current formula. They recommended weights for higher costs of serving special education (excluding gifted), at-risk, and bilingual students. With regard to at-risk and bilingual students, the change recommended was to increase the weights and recognize increasing costs for larger districts. With regard to special education, the recommended change was to eliminate the present categorical aid program, which is based on a per-teaching unit distribution of resources, and replace it with a weight in the basic school finance formula that also is sensitive to school district size. The recommendation assumes that costs associated with providing services to special needs students generally increases with the size of the district.*
- *There should be no pupil weight specifically for vocational education; rather, the cost of vocational education should be included in the base cost figure. A&M concluded that the current 0.50 weight for vocational education was unjustified because costs for providing vocational education courses were no different from costs associated with providing laboratory science courses or any number of other courses for which no special funding was provided.*
- *The weight for students in newly opened schools [the ancillary school facilities weight] should continue to be used although it should be used for three years, not two years, and the weight should decrease each year. Presently, pupils enrolled in school facilities whose operation began in the past two years are assigned an additional weight of 0.25, in recognition of special costs associated with starting up a new building. Only districts that are levying their full LOB authority are eligible to receive the weight. A&M recommended that the weight be applied for three, not two, years, but that it decrease over time as the costs of starting operations in a new building decrease.*
- *School districts should be expected to contribute to the foundation program based on a property tax rate of 25 mills. The rationale for this recommendation was that if state aid increased significantly as the result of adopting a higher foundation level, the local contribution also should increase so that the state did not bear the full impact of the higher funding level.*
- *The LOB should continue as it is and permit districts to raise up to 25 percent more than the revenue generated by the foundation program.*
- *The foundation level should be restudied every four to six years or when there is either a significant change in the state student performance expectations or a significant change in the way education services are provided. In intervening years, the foundation level should be increased based on the work of a committee designated by the legislature to determine an annual rate of increase, which should consider annual changes in the Consumer Price Index (CPI) in Kansas.*

- *The state should continue to use its density-based formula for transportation support but include the full cost of serving students living 1.25 miles from school as part of the analysis.*

Fiscal Impact

The State Department of Education has calculated the fiscal impact of the A&M recommendations, adjusted for inflation, as follows:

BSAPP	\$ 817,468,000
At-Risk Weight	296,725,813
Bilingual Weight	37,126,000
Special Education Weight	132,093,000
New Facilities Weight	3,398,664
Transportation	21,647,200
Deletion of Low Enrollment and Correlation Weight	(301,074,000)
Deletion of Vocational Weight	(30,000,000)
TOTAL	<u>\$ 977,384,677</u>

Note that this calculation does not take into account shifts in funding that could occur if the school district property tax were increased, as A&M recommends. Under the recommendations, the full fiscal impact of increased funding would not fall on the state entirely, but would be borne in part by increased funding at the local level.

Other Considerations

Not only did changes take place in the interval between the two Supreme Court school finance decisions (1994 and 2005), but changes have taken place since *Montoy* was filed in 1999 and since the Legislature commissioned the A&M study in 2001. Foremost among these is the enactment of the No Child Left Behind Act in January of 2002. This law imposes on states a series of requirements, including increased testing, performance levels that student populations as a whole and student subgroups must meet or else sanctions will be imposed, increased standards for teacher quality, increased data collection and reporting requirements, and increased parental choice. Each of these components has a funding consequence that, for the most part, still is unknown but which must be dealt with in order for states to meet the federal mandate. In addition, states must deal with the recent reauthorization of the federal Individuals with Disabilities Education Act. Further, since the study was done, the State Board of Education has changed its QPA accreditation regulations, one effect being that, beginning July 1, 2005, high school graduation requirements will increase.

x The significance of these changes is that, while they may not have figured in the litigation *per se*, they are now being required of Kansas schools and surely must be taken into consideration by the Legislature in determining what constitutes adequate funding for education.

Endnotes:

- ⁽¹⁾ *Montoy, et. al. v. State of Kansas, et. al.*, Case No. 92, 032 (“*Montoy II*”).
- ⁽²⁾ *Unified School District Number 229 v. State*, 256 Kan. 232, 885 P. 2d 1170.
- ⁽³⁾ *Montoy v. State*, 275 Kan. 145, 152-53, 62 P.3d 228 (2003) (“*Montoy I*”).
- ⁽⁴⁾ The definition of “suitable education” was addressed by the 2004 Legislature in bills considered by both chambers, which did not pass. Different versions of the legislation were introduced, but, in general, the legislation would have established in the statutes a list of basic courses, some of which already were statutorily required, which schools would be required to provide. Some versions of the legislation also listed additional programs or services that could be provided. The purpose of the legislation was to enact a statutory benchmark of what all school districts in Kansas would be required to offer, which would establish the legal presumption that Kansas schools were providing a suitable education, as defined by the Legislature.
- ⁽⁵⁾ *Calculation of the Cost of a Suitable Education in Kansas in 2000-2001 Using Two Different Analytic Approaches*, by John Augenblick, John Myers, Justin Silverstein, and Anne Barkis of Augenblick & Myers, Inc., May, 2002.

ATTACHMENT I

Quality Performance Accreditation Guidelines Contained in the 1992 Act

The State Board of Education is directed to design and adopt a quality performance accreditation (QPA) system for Kansas schools. This system will be based upon goals for schools that are framed in measurable terms and will define the following outcomes:

1. Teachers establish high expectations for learning and monitoring pupil achievement through multiple assessment techniques.
2. Schools have a basic mission which prepares the learners to live, learn, and work in a global society.
3. Schools provide planned learning activities within an orderly and safe environment which is conducive to learning.
4. Schools provide instructional leadership which results in improved pupil performance in an effective school environment.
5. Pupils have the communication skills necessary to live, learn, and work in a global society.
6. Pupils think creatively and solve problems in order to live, learn, and work in a global society.
7. Pupils work effectively both independently and in groups in order to live, learn, and work in a global society.
8. Pupils have the physical and emotional well-being necessary to live, learn, and work in a global society.
9. All staff engage in ongoing professional development.
10. Pupils participate in lifelong learning.

ATTACHMENT 2

Quality Performance Guidelines Contained in the Original Version of the Current School Finance Act (KSA 2004 Supp. 46-1225)

46-1225. School district finance, professional evaluation. (a) The legislative coordinating council shall provide for a professional evaluation of school district finance to determine the cost of a suitable education for Kansas children. The evaluation shall include a thorough study of the school district finance and quality performance act with the objective of addressing inadequacies and inequities inherent in the act. In addition to any other subjects the legislative coordinating council deems appropriate, the evaluation shall address the following objectives:

(1) A determination of the funding needed to provide a suitable education in typical K-12 schools of various sizes and locations including, but not limited to, per pupil cost;

(2) a determination of the additional support needed for special education, at-risk, limited English proficient pupils and pupils impacted by other special circumstances;

(3) a determination of funding adjustments necessary to ensure comparable purchasing power for all districts, regardless of size or location; and

(4) a determination of an appropriate annual adjustment for inflation.

(b) In addressing the objectives of the evaluation as specified in subsection (a), consideration shall be given to:

(1) The cost of providing comparable opportunities in the state's small rural schools as well as the larger, more urban schools, including differences in transportation needs resulting from population sparsity as well as differences in annual operating costs;

(2) the cost of providing suitable opportunities in elementary, middle and high schools;

(3) the additional costs of providing special programming opportunities, including vocational education programs;

(4) the additional cost associated with educating at-risk children and those with limited English proficiency;

(5) the additional cost associated with meeting the needs of pupils with disabilities;

(6) the cost of opening new facilities; and

(7) the geographic variations in costs of personnel, materials, supplies and equipment and other fixed costs so that districts across the state are afforded comparable purchasing power.

(c) Within the limits of appropriations therefor, the legislative coordinating council shall secure consultant services to conduct the professional evaluation of school district finance required by this section and provide for a presentation to the governor and the legislature of the findings of the evaluation along with recommendations for components of a school district finance plan that will fulfill the state's obligation to provide a suitable education for Kansas children. The findings of the evaluation and recommendations shall be presented to the governor and the legislature at the beginning of the 2002 legislative session.

(d) The legislative coordinating council shall designate a special committee to assist the council in discharging its responsibilities under this section, including prepare a request for proposals for the conduct of school finance system evaluation; advertise nationally for such proposals; evaluate the proposals; recommend to the council a consultant or consultants best qualified to conduct the study; consult with the council concerning terms and conditions of the consulting contract; act in an advisory capacity to assist the consultant in the conduct of the evaluation; on behalf of the council, receive from the consultant regular reports of progress; and receive the final report of the consultant three weeks prior to formal submission of the report to the 2002 legislature on January 14, 2002. The special committee shall be composed of some or all of the members of the legislative educational planning committee as determined by the legislative coordinating council. The legislative coordinating council shall determine the number of members of the special committee who shall be members of the house of representatives, members of the senate, members of the majority party and members of the minority party.

(e) For the purpose of the professional evaluation of school district finance, the term "suitable education" means a curricular program consisting of the subjects and courses required under the provisions of K.S.A. 72-1101, 72-1103 and 72-1117, and amendments thereto, the courses in foreign language, fine arts and physical education

required to qualify for a state scholarship under the provisions of K.S.A. 72-6810 through 72-6816, and amendments thereto, and the courses included in the precollege curriculum prescribed by the board of regents under the provisions of K.S.A. 76-717, and amendments thereto.

History: L. 2001, ch. 215, § 10; May 31.

ATTACHMENT 3

COMPONENTS OF A "SUITABLE EDUCATION" FOR PURPOSES OF THE CONTRACT ENTERED INTO WITH AUGENBLICK AND MYERS

Required Subjects in Elementary Schools

Every accredited elementary school shall teach:

Reading	Writing
Arithmetic	Geography
Spelling	English Grammar and Composition
Health and Hygiene	History of the U.S. and State of Kansas
Civil Government, Patriotism, and the Duties of Citizenship	

Qualified Admissions Pre-College Curriculum

English (4 Units) Students must take at least one unit of English for each year of high school. Although students are encouraged to take courses in journalism, speech, drama/theatre, and/or debate in addition to the English requirement, these courses cannot fill any part of the English requirement.

Natural Science (3 Units) Students must take three units chosen from the following courses: Biology, Advanced Biology, Physical/Earth/Space Science/General Science, Chemistry, Physics (at least one unit must be in Chemistry or Physics). There are other courses that may substitute for some of these. Students are encouraged to take one additional unit of science chosen from the previously mentioned courses.

Mathematics (3 Units) Students must take one unit each of: Algebra I, Algebra II, and Geometry. If a student completes any of the required math courses in middle school or junior high school, it can count toward the math requirement for Qualified Admissions. Completion of both applied mathematics I and II can be substituted for Algebra I only. Students are strongly encouraged to take a mathematics course every year of high school.

Social Sciences (3 Units) Students must complete the following: one unit of U.S. History, and one-half unit of U.S. Government; one unit selected from: Psychology, Economics, Civics, History, Current Social Issues, Sociology, Anthropology, Race and Ethnic Group Relations, or Geography; one-half unit selected from World History, World Geography, or International Relations. All high schools (public or private) must provide a course of instruction concerning the government and institutions of the U.S., and particularly of the Constitution of the United States. The State Board of Education will

also provide a course of instruction in Kansas History and Government, which shall be required for all students graduating from an accredited high school in the state.

Computer Technology (1 Unit) Students are required to have one unit of computer technology. At some school students may fulfill this requirement by passing a proficiency examination.

Requirements for the State Scholarship Program that differ from the pre-college curriculum

Foreign Language (2 Units) This requirement is in addition to all requirements listed above for the Qualified Admissions Pre-College curriculum.

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 92,032

RYAN MONTOY, *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 Wagnon, 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.



July 8, 2002

TO: State Board of Education

FROM: Dale M. Dennis, Deputy
Commissioner of Education

SUBJECT: Calculation of the Cost of a Suitable Education in Kansas in 2000-01 Using Two
Different Analytic Approaches--Projected Implementation Costs

The Legislature employed the firm of Augenblick & Myers, Inc. (A & M) to study the adequacy of school funding in Kansas. The Legislative Coordinating Council delegated the responsibilities of monitoring the work to the Legislative Planning Committee. The primary purpose of the study was to determine the funding level necessary for school districts to meet the objectives of a "suitable" education.

A & M formed a team to complete work which included the National Conference of State Legislatures (NCSL) and the Education Commission of the States (ECS). John Augenblick, John Myers, Justin Silverstein, and Anne Barkis participated in the team from A & M; David Shreve, Steve Smith, and Josiah Pettersen represented NCSL; and Michael Griffith participated from ECS.

SUMMARY OF RECOMMENDATIONS

- Kansas should continue to use a foundation program in combination with a second tier (Local Option Budget) as the primary basis for distributing public school support.
- The foundation level (base cost) should be raised in the future to a level that would be equivalent to \$4,650 in 2000-01.
- The foundation level should be adjusted by a regional cost factor using figures from the National Center for Education Statistics until such time as the state conducts its own study.
- The foundation level should be adjusted in recognition of the higher costs associated with: (1) the operation of moderate size and small school districts; (2) the needs of students in special education programs; (3) the needs of at-risk students (based on the number of students participating in the free lunch program); and (4) the needs of bilingual students. The adjustments should be based on formulas that are sensitive to the enrollment level of school districts.
- There should be no pupil weight specifically for vocational education; rather, the cost of vocational education should be included in the base cost figure.
- The weight for students in newly opened schools should continue to be used although it should be used for three years, not two years, and the weight should decrease each year.

- School districts should be expected to contribute to the foundation program based on a property tax rate of 25 mills on assessed valuation.
- The second tier (Local Option Budget) should permit districts to raise up to 25 percent more than the revenue generated by the foundation program (based on the foundation level and the adjustments for size, special education, at-risk students, and bilingual students). The state should continue to equalize the second tier in the same manner as it does currently.
- The foundation level should be restudied every 4-6 years or when there is either a significant change in state student performance expectations or a significant change in the way education services are provided. In intervening years, the foundation level should be increased based on the work of a committee designated by the Legislature to determine an annual rate of increase, which should consider annual changes in the consumer price index (CPI) in Kansas.
- The state should continue to use its density-based formula for transportation support but include the full cost of serving students living 1.25 miles from school as part of the analysis.

PROJECTED IMPLEMENTATION COSTS

COMPUTATION OF BASE STATE AID PER PUPIL (BSAPP)

(Using formula below using \$4,650 base cost)

Less than 430 students	$[(430 - \text{Enrollment}) \div 10 \times .01 \times \$4,650] + \$5,923$
430 - 1,300 students	$[(1,300 - \text{Enrollment}) \div 80 \times .01 \times \$4,650] + \$5,417$
1,300 - 11,200 students	$[(11,200 - \text{Enrollment}) \div 600 \times .01 \times \$4,650] + \$4,650$
Over 11,200 students	\$4,650

Listed below is an example of the BSAPP in different enrollment categories.

<u>ENROLLMENT</u>	<u>BSAPP</u>
100	\$ 7,458
250	6,760
500	5,882
750	5,737
1,000	5,591
2,500	5,324
5,000	5,130
7,500	4,937
15,000	4,650
30,000	4,650

ESTIMATED STATE COST: \$623,329,967

PUPIL WEIGHTINGS

<u>Enrollment</u>	<u>Special Need Category</u>		
	<u>Special Education</u>	<u>At-Risk</u>	<u>Bilingual</u>
100	.90	.20	.15
250	.91	.28	.15
500	.91	.44	.15
750	.92	.49	.50
1,000	.92	.52	.85
2,500	.95	.57	.86
7,500	1.05	.59	.88
15,000	1.20	.59	.91
30,000	1.50	.60	.97

Special Education

FORMULA: Special education weight = .90 + (enrollment x .00002)

ESTIMATED STATE COST: \$102,897,059

At-Risk

FORMULA: More than 200 students At-risk weight = $.60 - [(1,000/\text{enrollment}) \times .08]$
Less than 200 students At-risk weight = .20

ESTIMATED STATE COST: \$270,333,813

Bilingual

FORMULA: Bilingual weight = .15 for districts with less than 500 students
Bilingual weight = $.15 + [.0014 \times (\text{enrollment} - 500)]$ for districts with between 500 and 1,000 students
Bilingual weight = $.85 + [.000004 \times (\text{enrollment} - 1,000)]$ for districts with more than 1,000 students

ESTIMATED STATE COST: \$33,465,190

New Facilities

The increase in new facilities weighting is a result of the increase in the BSAPP.

ESTIMATED STATE COST: \$2,160,664

TRANSPORTATION

Reduction of mileage limitation from 2.5 to 1.25 miles from home to school.

ESTIMATED STATE COST: \$20,000,000

ENROLLMENT WEIGHTING

REDUCTION IN STATE AID: (\$301,095,456)

ELIMINATION OF VOCATIONAL WEIGHTING

REDUCTION IN STATE AID: (\$25,421,336)

SUMMARY OF INCREASES/DECREASES IN STATE AID

PROJECTED COSTS:

Base State Aid Per Pupil	\$ 623,329,967
At-Risk	270,333,813
Bilingual	33,465,190
Special Education	102,897,059
New Facilities	2,160,664
Transportation	20,000,000

REDUCTIONS IN STATE AID:

Enrollment Weighting	\$ (301,095,456)
Vocational Weighting	(25,421,336)

SUBTOTAL \$ 725,669,901

Reduction in Supplemental General Fund State Aid 2000-01
(75 percent reduction in local option budgets) \$ (63,192,000)

Inflation Factor (approx. 2 percent) for 2001-02	\$ 62,000,000
Inflation Factor (approx. 2 percent) for 2002-03	\$ 63,500,000
Inflation Factor (approx. 2 percent) for 2003-04	\$ 64,800,000

TOTAL \$ 852,777,901