

Approved: 2-22-05

Date

MINUTES OF THE SELECT COMMITTEE ON SCHOOL FINANCE

The meeting was called to order by Chairman Kathe Decker at 9:00 A.M. on January 19, 2005 in Room 313-S of the Capitol.

Committee staff present: Kathie Sparks, Kansas Legislative Research
Carolyn Rampey, Kansas Legislative Research
Theresa Kiernan, Revisor of Statutes Office
Ann Deitcher, Committee Secretary

Conferee: Dan Biles, Attorney for the State Board of Education

The Chair called the Committee's attention to the individual files that had been set up for them that included all the weightings and different information received over the last few years. She also explained to them just what the work would be for the Select Committee.

Kathie Sparks then offered Legislative Research information to the Committee on the Supreme Court's decision regarding school finance. (Attachment 1).

Dan Biles spoke on the decision summary of the Supreme Court's expanded judicial standard. (Attachment 2).

A brief question and answer session followed.

The meeting adjourned at 9:45. The next Select Committee meeting is scheduled for Tues., Jan. 25, 2005.

January 3, 2005

Kansas Supreme Court Decision in *Montoy, et al. v. State of Kansas, et al.*

The Kansas Supreme Court on January 3 released an opinion on the school finance case, *Montoy v. State of Kansas*, in which the unanimous decision made the following findings:

- The current school financing formula does not violate the Equal Protection Clause of the Kansas or United States Constitutions.
- The current school financing formula does not have an unconstitutional disparate impact on minorities and/or other classes of students.
- The Legislature has failed to meet its burden to “make suitable provision for finance” of the public schools and “it is clear increased funding will be required.” The Supreme Court opinion goes on to state that:
 - “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.”
 - The Augenblick & Myers study concluded that both the formula and funding levels were inadequate to provide what the legislature had defined as a suitable education in KSA 46-1225(e).
 - The financing formula is based on former spending levels and political compromise. Lack of cost analysis may provide a distortion of the low enrollment, special education, vocational, bilingual education and the at-risk factors.
- The Legislature has not usurped the powers of the State Board of Education.
- The Kansas Supreme Court is retaining jurisdiction and is requiring that the Legislature comply with corrective legislation no later than April 12, 2005, approximately first adjournment of the 2005 Session.

For additional information, please contact Kathie Sparks, KathieS@klrd.state.ks.us or Carolyn Rampey, CarolynR@klrd.state.ks.us or at (785) 296-3181.

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 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.

MEMORANDUM

TO: SENATE EDUCATION COMMITTEE

FROM: DAN BILES
Attorney for the State Board of Education

DATE: JANUARY 13, 2005

RE: *MONTOY v. STATE OF KANSAS, et al.*
"MONTOY II"
Case No. 92,032; filed January 3, 2005

DECISION SUMMARY: The Court's *Per Curiam* Opinion sets an expanded judicial standard for Kan. Const. Art. 6, §6(b) – the requirement that the legislature “make suitable provision for finance” of public schools. This provision is no longer just about education adequacy. It is about funding a public school system using cost analysis based on educational criteria that is sufficient to achieve the “intellectual, educational, vocational and scientific improvement” required by Art. 6, §1, which is the constitutional purpose given to the legislature for establishing and maintaining public schools. There also must be a mechanism for constant monitoring to ascertain whether constitutional mandates are being achieved. Within these constitutional parameters, the legislature may act as it sees fit to comply. The Supreme Court retains jurisdiction to review what, if anything, the legislature does. But the Court's review will begin no later than April 12, 2005.

DISCUSSION POINTS

- I. THERE ARE FOUR PRIMARY HOLDINGS UNDER TWO CONSTITUTIONAL PROVISIONS – EQUAL PROTECTION AND THE EDUCATION ARTICLE
- A. EQUAL PROTECTION

Holding #1: Reversed the district court's ruling that SDFQPA violates the equal protection clause, saying the district court misapplied the rational basis test. This means the Supreme Court found the funding differentials (low enrollment weighting, at-risk, bilingual, correlation weighting, etc.) have a legitimate purpose and are rationally related to that purpose.

Holding #2: Reversed the district court's ruling that SDFQPA has an unconstitutional disparate impact on minorities or other classes. The Supreme Court said plaintiffs failed to show a discriminatory purpose to the law.

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B. KANSAS CONSTITUTION, ARTICLE 6 – THE EDUCATION ARTICLE

Holding #3: Affirmed the district court’s ruling that the legislature has NOT usurped the State Board of Education’s Art. 6, §2(a) authority for general supervision of the state’s educational interests.

Holding #4: Affirmed the district court’s holding that the legislature FAILED to meet its constitutional responsibility under Art. 6, §6(b) to “make suitable provision for finance” of public schools.

II. WHAT ARE THE IMPORTANT LEGAL ASPECTS TO THIS RULING?

- A. The Supreme Court has EXPANDED the standard to be used by the courts when they are asked to decide whether the legislature is making “suitable provision” for the finance of public school education.¹
- B. This necessarily means the judiciary’s role in this area is expanded as well.
- C. What the Court says about the “many aspects” of Art. 6, §6(b) and the role of the judiciary in its review of those “many aspects” is the heart of what we have in this opinion.

III. WHAT ARE THE “MANY ASPECTS” TO SUITABLE FINANCE?

- A. Improvement. The Court said, “First and perhaps foremost” the legislature must provide a level of funding that meets the constitutional requirement contained in Art. 6, §1, which states that: “The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools.”²
- B. Established Educational Criteria. The Court noted K.S.A. 72-6439(a) requires the State Board to design and adopt a school performance accreditation system “based upon improvement in performance that reflects high academic standards and is measurable.” It further noted K.S.A. 72-6439(c) mandates standards for individual and school performance levels “the achievement of which represents excellence in the

¹ The Court said, “The concept of ‘suitable provision for finance’ encompasses many aspects.” (Slip Opinion, p. 6).

² The Court said Art. 6, §1 “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.’” (Slip Opinion, p. 6), quoting dictionary definition for the word “improve.”

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academic area at the grade level to which the assessment applies.”³

NOTE: The Court left open the possibility for some future case that a court may find the educational criteria established by statute or regulation may be so inferior as to not adequately provide for a constitutionally “suitable” education. This leaves room for the judiciary’s ability to substitute other criteria.

C. Other factors.⁴

- Cost Analysis and Equity. These are determined to be Article 6, §6(b) requirements.⁵
- Constant Monitoring.⁶

IV. WHAT ARE THE COMPONENTS REQUIRED TO REMEDY THIS ARTICLE 6, §6(b) VIOLATION?

A. Increased Funding.⁷

B. Provide the systemic “improvement” required by Art. 6, §1.

C. Meet the Established Educational Criteria.

D. Satisfy the “other factors” required by Art. 6, §6(b).

- Conduct a cost analysis to justify what is given as BSAPP (note comment about LOB being for extras) and to justify weighting factors.

³ The Court then said, “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.’” (Slip Opinion, p. 7) quoting K.S.A. 72-6439(a).

⁴ The Court said, “[I]n 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.” (Slip Opinion, p. 8) (Emphasis Added).

⁵ The Court said, “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.” (Slip Opinion, p. 9).

⁶ The Court said, “[I]n *Montoy I*, we noted that the issue of suitability is not stagnant but requires constant monitoring.” (Slip Opinion, p. 5).

⁷ The Court said, “It is clear increased funding will be required; however, increased funding may not in and of itself make the financing formula constitutionally suitable.” (Slip Opinion, p. 9).

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- Equitable, which will probably be based on legitimacy of the cost analysis used.
- Contain a mechanism for constant monitoring. This monitoring should include analysis of changes in public education costs associated with societal changes, statutory amendments, State Board regulatory requirements, federal mandates, as well as an analysis as to how money is being spent and what outcomes are achieved with the money spent.

ENCLOSURE B

THE EDUCATION ARTICLE, KANSAS CONSTITUTION
(portions relevant to the State Board of Education)

§ 1. Schools and related institutions and activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

§ 2. State board of education and state board of regents. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests for the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or post baccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

§ 3. Members of the state board of education and state board of regents. (a). There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

§ 4. Commissioner of education. The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

§ 5. Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

§ 6. Finance. (b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law.

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B

July 13, 2001

TO: Legislative Educational Planning Committee

FROM: State Board of Education

SUBJECT: Professional Evaluation of School District Finance

As the Legislative Educational Planning Committee (LEPC) seeks to conduct a professional evaluation of school district finance to determine the cost of a suitable education for Kansas children, factors to be included as part of the evaluation need to be specifically determined.

2001 House Bill 2336, Section 10(e) provides for a definition of "suitable education." This definition 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, the courses in foreign language, fine arts, and physical education required to qualify for a state scholarship, and the courses included in the precollege curriculum prescribed by the State Board of Regents.

72-1101. Required subjects in elementary schools. Every accredited elementary school shall teach reading, writing, arithmetic, geography, spelling, English grammar and composition, history of the United States and of the State of Kansas, civil government and the duties of citizenship, health and hygiene, together with such other subjects as the State Board may determine. The State board shall be responsible for the selection of subject matter within the several fields of instruction and for its organization into courses of study and instruction for the guidance of teachers, principals and superintendents.

72-1103. Required courses of instruction; graduation requirements. All accredited schools, public, private or parochial, shall provide and give a complete course of instruction to all pupils, in civil government, and United States history, and in patriotism and the duties of a citizen, suitable to the elementary grades; in addition thereto, all accredited ~~high schools,~~ public, private or parochial, shall give a course of instruction concerning the government and institutions of the United States, and particularly of the Constitution of the United States; and no student who has not taken and satisfactorily passed such course shall be certified as having completed the course requirements necessary for graduation from high school.

72-1117. Kansas history and government, required courses; duties of State Board. (a) The State Board of Education shall provide for a course of instruction in Kansas history and government, which shall be required for all students graduating from an accredited high school in this state. (b) The State Board of Education shall prescribe the school year, not later than the 1990-91 school year, in which the requirement of subsection (a) shall become applicable and may provide for such waivers from the requirement as the Board deems appropriate.

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Qualified Admissions
Precollege Curriculum

4 units of English
3 units of Math

3 units of Natural Science
3 units of Social Studies
1 unit of Computer Technology
2 units of Foreign Language (preferred)
1 unit of Fine or Performing Arts (preferred)

State Scholarship Program
Precollege Curriculum

4 units of English/Language Arts
3 units of Natural Science
(1 each of Biology, Chemistry, and Physics)
4 units of Math
3 units of Social Studies
1 unit of Computer Technology
2 units of Foreign Language

Section 10(a) provides the following objectives be included in the evaluation and any other subjects that the LCC deem appropriate.

- A determination of the funding needed to provide a suitable education in typical K-12 schools of various sizes and locations include, but not limited to, per pupil cost.
- A determination of the additional support needed for special education, at-risk, limited English proficient pupils and pupils impacted by other special circumstances.
- A determination of funding adjustments necessary to ensure comparable purchasing power for all districts, regardless of size or location.
- A determination of an appropriate annual adjustment for inflation.


Senate Substitute for House Bill 2336 also provides that in addressing the objectives of the evaluation, consideration shall be given to the following.

- 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.
- The cost of providing suitable opportunities in elementary, middle, and high schools.
- The additional costs of providing special programming opportunities, including vocational education programs.
- The additional cost associated with educating at-risk children and those with limited English proficiency.
- The additional cost associated with meeting the needs of pupils with disabilities.
- The cost of opening new facilities.
- 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.

In addition to these requirements outlined in statute, the State Board of Education has adopted curricular standards for what students should know and be able to do in the core academic areas. Assessments have been developed based on these standards and accredited schools are required to participate in the assessment program. For this reason, the State Board believes these standards should be considered when determining essential elements to be funded in order to provide for a suitable education.

To assist the LEPC in arriving at the essential factors to be considered, the State Board of Education also offers the following.

A. The State Board believes that the most important feature of a suitable education is the outcomes achieved by students as required through the State Board of Education accreditation regulations.

 B. The State Board believes that in order to achieve these outcomes, the following programs and services must be available.

- Recruit, prepare, support, and retain a competent, caring, and qualified teacher for every classroom and leader for every school
- Meet all state and federal requirements for special education
- Provide a sufficient high school curriculum to ensure that all students have options to attend higher education or enter the work force or military
- Provide access to higher education for selected upper-level secondary students
- Ensure student and staff safety
- Provide early childhood programs
- Ensure appropriate class-size
- Provide extended learning time
- Provide technical education to students at the secondary level
- Provide technology training
- Provide library media services
- Provide foreign language
- Provide alternative school programs for selected students
- Provide fine arts
- Provide nursing services
- Provide counseling services
- Provide competitive and noncompetitive (co-curricular) activities/programs
- Provide transportation of students to and from school

Listed below is the definition of suitable education used by the Kansas Legislature in the Augenblick & Myers school finance study approved by the Legislature.

72-1101. Required subjects in elementary schools. Every accredited elementary school shall teach reading, writing, arithmetic, geography, spelling, English grammar and composition, history of the United States and of the State of Kansas, civil government and the duties of citizenship, health and hygiene, together with such other subjects as the State Board may determine. The State board shall be responsible for the selection of subject matter within the several fields of instruction and for its organization into courses of study and instruction for the guidance of teachers, principals and superintendents.

72-1103. Required courses of instruction; graduation requirements. All accredited schools, public, private or parochial, shall provide and give a complete course of instruction to all pupils, in civil government, and United States history, and in patriotism and the duties of a citizen, suitable to the elementary grades; in addition thereto, all accredited high schools, public, private or parochial, shall give a course of instruction concerning the government and institutions of the United States, and particularly of the Constitution of the United States; and no student who has not taken and satisfactorily passed such course shall be certified as having completed the course requirements necessary for graduation from high school.

72-1117. Kansas history and government, required courses; duties of State Board. (a) The State Board of Education shall provide for a course of instruction in Kansas history and government, which shall be required for all students graduating from an accredited high school in this state. (b) The State Board of Education shall prescribe the school year, not later than the 1990-91 school year, in which the requirement of subsection (a) shall become applicable and may provide for such waivers from the requirement as the Board deems appropriate.

Qualified Admissions
Precollege Curriculum

4 units of English
3 units of Math

3 units of Natural Science
3 units of Social Studies
1 unit of Computer Technology
2 units of Foreign Language (preferred)
1 unit of Fine or Performing Arts (preferred)

State Scholarship Program
Precollege Curriculum

4 units of English/Language Arts
3 units of Natural Science
(1 each of Biology, Chemistry, and Physics)
4 units of Math
3 units of Social Studies
1 unit of Computer Technology
2 units of Foreign Language

HIGH SCHOOL GRADUATION REQUIREMENTS

Four units of English language arts
Three units of history and government
Three units of science
Three units of mathematics
One unit of physical education
One unit of fine arts
Six units of elective courses

2-9

D

PROGRAMS AND SERVICES ADDED BY THE LEGISLATURE

- 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
- Qualified teacher in each classroom

*We assume technical education includes business, vocational agriculture, family consumer science, etc.

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8-11

A. §46-1225(e)	Attachment I to RFP for Study on Cost of Suitable Education	KSBE's attachment to RFP	A&M Contract with State of Kansas	A&M Report, Sec. III: Setting a Suitable Education Definition	A&M Report, Appendix B, Suitability Defined
<p>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.</p>	<p>SUITABLE EDUCATION DEFINED For the purpose of this study the term "suitable education" means a curricular program consisting of the subjects and courses:</p> <ul style="list-style-type: none"> • Required under the provisions of KSA 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 KSA 72-6810 through 72-6816, and amendments thereto; and • The courses included in the pre-college curriculum prescribed by the Board of Regents under the provisions of KSA 76-717, and amendments thereto. <p>NOTE: There are no physical education or fine arts requirements for qualification for state scholarship programs.</p> <p>The courses and programs are identified below:</p> <ol style="list-style-type: none"> 1. The requirements of KSA 72-1101, 72-1103, and 72-1117, as amended. <p>72-1101. <i>Required Subjects in Elementary Schools.</i> Every accredited elementary school shall teach reading, writing, arithmetic, geography, spelling, English grammar and composition, history of the United States and of the State of Kansas, civil government and the duties of citizenship, health and</p>	<p>As the Legislative Educational Planning Committee (LEPC) seeks to conduct a professional evaluation of school district finance to determine the cost of a suitable education for Kansas children, factors to be included as part of the evaluation need to be specifically determined.</p> <p>2001 House Bill 2336, Section 10(e) provides for a definition of "suitable education." This definition 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, the courses in foreign language, fine arts, and physical education required to qualify for a state scholarship, and the courses included in the precollege curriculum prescribed by the State Board of Regents .</p> <p>In addition to these requirements outlined in statute, the State Board of Education has adopted curricular standards for what students should know and be able to do in the core academic areas. Assessments have been</p>	<p>Contract</p> <p>SECTION 1. CONSULTANT RESPONSIBILITIES</p> <p>2. Perform a professional evaluation of school district finance in the State of Kansas to determine the cost of a suitable education for Kansas children . . .</p> <p>A. The evaluation of the SDFQPA by this paragraph shall include, at a minimum, the following items:</p> <ol style="list-style-type: none"> i. Determine the funding needed to provide a suitable education in typical kindergarten through 12th grade (K-12) schools of various sizes and locations including, but not limited to, per pupil cost; ii. Determine the additional support needed for special education, at-risk, limited English proficient pupils, and pupils impacted by other special circumstances; 	<p>III. SETTING A SUITABLE EDUCATION DEFINITION</p> <p><u>Introduction</u></p> <p>In order to calculate the cost of a suitable education in Kansas, A&M needed to have a specific definition of what that constituted. We began by reviewing information in the request for proposals, provided by the Legislative Education Planning Commission (LEPC), and comparing how it related to approaches to adequacy (suitability) other states have taken. A&M then examined what measures of success, already in existence in Kansas, could be used to define a suitable education. Finally, we worked with the LEPC to create a specific definition of a suitable education in Kansas. This section will review these three steps and discuss how A&M applied the definition of a suitable education in both the professional judgement [sic] approach and the successful schools approach.</p> <p><u>Examples of Adequacy</u></p>	<p>Appendix B Suitable Education Defined</p> <p><u>Required Subjects in Elementary Schools</u></p> <p>Every accredited elementary school shall teach:</p> <p>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</p> <p><u>Qualified Admissions Pre-College Curriculum</u></p> <p>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.</p> <p>Natural Science (3 Units) Students must take three units chosen from the following courses: Biology, Advanced Biology, Physical/Earth/Space</p>



2-12

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<p>(b) In addressing the objectives of the evaluation as specified in subsection (a), consideration shall be given to:</p> <p>(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.</p> <p>(c) Within the limits of appropriations therefore, the legislative coordinating council shall secure consultant services to conduct the professional</p>	<p>hygiene, together with such other subjects as the State Board [State Board of Education] may determine.</p> <p><i>72-1103. Required Courses of Instruction; Graduation Requirements.</i> All accredited schools, public, private or-parochial, shall provide and give a complete course of instruction to all pupils, in civil government, and United States history, and in patriotism and the duties of a citizen, suitable to the elementary grades; in addition thereto, all accredited high schools, public private, or parochial, shall give a course of instruction concerning the government and institutions of the United States, and particularly of the <i>Constitution of the United States.</i></p> <p><i>72-1117. Kansas History and Government, Required Course; Duties of State Board.</i> The State Board of Education shall provide for a course of instruction in Kansas history and government, which shall be required for all students graduating from an accredited high school in this state.</p> <p>2. Requirements for the State Scholarship Program that differ from the pre-college curriculum under KSA 76-717, as amended are shown below. However, only the foreign language requirement applies to the RFP.</p> <p>The student must complete two high school units in one foreign language. One additional unit of mathematics is</p>	<p>developed based on these standards and accredited schools are required to participate in the assessment program. For this reason, the State Board believes these standards should be considered when determining essential elements to be funded in order to provide for a suitable education.</p> <p>To assist the LEPC in arriving at the essential factors to be considered, the State Board of Education also offers the following.</p> <p>A. The State Board believes that the most important feature of a suitable education is the outcomes achieved by students as required through the State Board of Education accreditation regulations.</p> <p>B. The State Board believes that in order to achieve these outcomes, the following programs and services must be available.</p> <ul style="list-style-type: none"> Recruit, prepare, 	<p>iii. Determine funding adjustments necessary to ensure comparable purchasing power for all districts, regardless of size or location ; and</p> <p>iv. Determine an appropriate annual adjustment for inflation.</p> <p>B. In performing the evaluation of the SDFQPA required by this paragraph, CONSULTANT shall examine and give consideration of the following items:</p> <p>i. 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 populations sparsity (SIC) as well as differences in annual operating costs;</p> <p>ii. The cost of providing suitable opportunities in elementary, middle, and high schools;</p>	<p><u>[sic] (Suitability) Definitions</u></p> <p>In defining a suitable or adequate education, states primarily use two types of measures of success; input and output measures.</p> <p><u>Current Kansas Measures</u></p> <p>Included in the request for proposals was information on the extensive system of input measures that are contained in Kansas Quality Performance Act (QPA). The state uses a school district accreditation system that is driven by course offering requirements. These include separate measures for elementary and high school. Elementary schools must teach a number of areas ranging reading to hygiene. The high school requirements are more specific in the types of courses and the number of courses that must be taken. For example, students must take 3 units math that must include one unit of Algebra I, Algebra II, and Geometry. There are also requirements in English, Natural Science,</p>	<p>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.</p> <p>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 Admission. 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.</p> <p>Social Science (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.</p>

9-13

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<p>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</p>	<p>required (total=4 units). In addition to algebra I, algebra II, and geometry, this additional unit of mathematics must be selected from analytical geometry, trigonometry, advanced algebra, probability and statistics, functions, or calculus.</p> <p>3. The Qualified Admissions Pre-College Curriculum is shown below: <u>Courses Required to Complete Qualified Admissions Curriculum.</u> <u>Units Required for College Admission/Units Required for College Admission/Comments</u></p> <p>English 4 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.</p> <p>Natural Science 3 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</p>	<p>support, and retain a competent, caring, and qualified teacher for every classroom and leader for every school</p> <ul style="list-style-type: none"> • Meet all state and federal requirements for special education • Provide a sufficient high school curriculum to ensure that all students have options to attend higher education or enter the work force or military • Provide access to higher education for selected upper-level secondary students • Ensure student and staff safety • Provide early childhood programs • Ensure appropriate class-size • Provide extended learning time • Provide technical education to students at the secondary level • Provide technology training • Provide library media services • Provide foreign language • Provide alternative school programs for selected students • Provide fine arts 	<p>iii. The additional costs of providing special programming opportunities, including vocational education programs;</p> <p>iv. The additional cost associated with educating at-risk children and those with limited English proficiency;</p> <p>v. The additional cost associated with meeting the needs of pupils with disabilities;</p> <p>vi. The cost of opening new facilities; and</p> <p>vii. 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.</p> <p>16. <u>ADDITIONAL DEFINITIONS.</u> (b) The parties hereto mutually agree that the term "suitable education" as defined in L. 2001, Ch. 215, Sec. 10, also shall be deemed to include a mix</p>	<p>Mathematics, Social Science, and Computer Technology. An added requirement for the state scholarship program includes two units of foreign language.</p> <p>Kansas has a system of statewide student performance assessment tests, given each year to students in every district. Although these tests are not currently used to evaluate the success of school districts, they do measure the success of students in several different content areas and at different grade levels. The content areas that are tested are reading, math, writing, science, and social studies. The tests were given in grades 4 through 11. The wide range of tests, in both content area and grade span, set up a system that could very easily be used to evaluate the success of school districts</p> <p><u>Setting the Suitability Definition</u></p> <p>A&M worked with the LEPC to develop a more specific definition of a</p>	<p>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.</p> <p>Computer Technology (1 Unit) Students are required to have one unit of computer technology. At some schools students may fulfill this requirement by passing a proficiency examination.</p> <p><u>Requirements for the State Scholarship Program that differ from the pre-college curriculum</u></p> <p>Foreign Language (2 Units) This requirement is in addition to all requirements listed above for the Qualified Admissions Pre-College Curriculum.</p>

2-14

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<p>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.</p> <p>(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</p>	<p>encouraged to take one additional unit of science chosen from the previously mentioned courses.</p> <p>Mathematics 3 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 Qualified Admissions math requirement. 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.</p> <p>Social Science 3 Students must complete the following: one unit of U.S. history and one-half unit of U.S. government; one unit select-ed from: psychology, economics, civil history, current social issues, sociology, anthropology, race and ethnic group relations, or geography; one-half unit selected from: world history, world geography, one-half unit selected from: world history, world geography, or international relations.</p> <p>Computer Technology 1 Students are required to have one unit of computer technology. At some</p>	<ul style="list-style-type: none"> • Provide nursing services • Provide counseling services • Provide competitive and noncompetitive (co-curricular) activities/program • Provide transportation of students to and from school 	<p>of 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 provision of a qualified teacher in each classroom.</p>	<p>suitable education. We suggested using a combination of both input and output measures. For the input measures, it was decided that the current QPA requirements would be used, along with some added language provided by the LEPC. This additional language included vocational education as a required course offering, and identified other programs and services that might be provided as part of a suitable education.</p> <p>Next we set the performance measures that would be used. Again, A&M worked with the LEPC. Together we determined which content areas and grade levels would be used. The math and reading tests are given in the same grade levels every year, the writing, science and social studies tests are given in alternating years. A&M felt that the reading and math tests, which are given every year, gave us the most flexibility in setting the output measures.</p> <p>Tables III-1 and III-2</p>	<p><u>A Suitable Education Must Also Include:</u></p> <p>Vocational Education</p> <p>And a mix of the Following Programs and Services: Student and Staff Safety, Early Childhood Programs, Extended Learning Time, Alternative Schools, Technical Education, Technical Training, Library Media Services, Foreign Language, Fine Arts, Nursing and Counseling Services, Activities Programs, Student Transportation, Qualified Teachers</p> <p><u>Outcomes:</u></p> <p>In addition to the inputs represented by the required courses described above, a suitable education should also yield the following outcomes in five years:</p> <p>On statewide assessment scores in reading, 70% of 5th graders must score Satisfactory or above; 65% of 8th graders must score Satisfactory or above; and 60% of 11th graders must</p>

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<p>regents under the provisions of K.S.A. 76-717, and amendments thereto.</p>	<p>schools students may fulfill this requirement by passing a proficiency examination</p> <p>Foreign Language 0</p>			<p>show information on all the reading and math tests for 2000 and 2001. The tables show the number of districts that took each test, and the average percentage of students statewide who scored at either the basic or satisfactory level. From this information, it was determined that districts would need a period of time to meet the new performance standard related to a suitable education. Districts would be given five years to get a certain percentage of their students to the satisfactory level on the tests. This percentage would differ for each of the six tests. It would be 70% for 5th grade reading, 65% for 8th grade reading, 60% for 11th grade reading, 65% for 4th grade math, 60% for 7th grade math and 55% for 10th grade math. The full definition, both inputs and output measures, can be seen in Appendix B.</p>	<p>score Satisfactory or above And on statewide assessment scores in math,</p> <p>65% of 4th graders must score Satisfactory or above;</p> <p>60% of 7th graders must score Satisfactory or above; and</p> <p>55% of 10th graders must score Satisfactory or above.</p>