

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
 IN THE MATTER OF PROCEEDINGS BEFORE THE
 THREE-JUDGE PANEL APPOINTED PURSUANT TO
 K.S.A. 72-64b03 IN RE SCHOOL FINANCE
 LITIGATION

FILED BY CLERK
 KS. DISTRICT COURT
 THIRD JUDICIAL DIST.
 TOPEKA, KS

2015 JAN 23 P 3:06

LUKE GANNON, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2010C1569
)	
STATE OF KANSAS,)	
)	
Defendant.)	
)	

MOTION AND MEMORANDUM OF THE STATE OF KANSAS TO ALTER AND AMEND THE PANEL’S OPINION AND ORDER ON REMAND

Pursuant to K.S.A. 60-259(f) and K.S.A. 60-252(b), Defendant State of Kansas (“State”) moves that the Panel alter and amend its “Opinion and Order on Remand” (“Remand Opinion”), filed December 30, 2014. In support of this motion the State declares the following:

I. The Remand Opinion *does not comply* with K.S.A. 60-252(a) and Supreme Court Rule 165 because the Panel’s vague decision regarding the parties’ extensive proposed findings of fact makes it impossible for the parties to take effective appeals and, more importantly, for the Supreme Court to engage in meaningful appellate review of the factual determinations the Panel has purported to make.

Critically, the Panel effectively failed to make findings of fact when it addressed the parties’ extensive proposed findings as follows:

We believe the Plaintiffs’ Proposed Findings of Fact attached to their pleadings for Judgment on the Existing Record speak the truth, as we also believed their original Proposed Findings of Fact spoke the truth. As before in our original *Opinion*, all facts, by whomever [sic] presented, could not reasonably be

discussed individually. Facts inconsistent with our original *Opinion* and our *Opinion* issued following are rejected implicit[ly].

Remand Opinion, p. 8.

The “speak the truth” and “spoke the truth” statements are, to be candid, extremely ambiguous and largely unhelpful for meaningful appellate review. Even blanket adoption of either side’s proposed findings would at least be clear, and certainly clearer than the Panel’s vague and uncertain declaration above. It does not appear that the Panel is, or in fact would, adopt either side’s proposed findings wholesale. Indeed, the Panel rejected or appeared to reject many of the findings the plaintiffs proposed after trial when the Panel issued its original “Memorandum Opinion and Entry of Judgment of January 2012” (“Initial Opinion”). Moreover, in the more recent proceedings since the remand, the State has vigorously and explicitly contended that many of the plaintiffs’ proposed findings offered before and after the appeal are not supported by any evidence or the weight of the evidence.

Unfortunately, the Panel’s cryptic statement about facts being “rejected implicitly” is truly unhelpful and creates great uncertainty about the factual record on appeal and the factual basis for the Panel’s most recent decision. Neither the parties nor the Kansas Supreme Court can be sure whether the Panel is now adopting *all* of the plaintiffs’ proposed findings of fact? Or, if not, is the Panel simply agreeing with the legal conclusions the plaintiffs urged it to draw? Or, if the Panel agrees with some of the proposed findings of the plaintiffs but not others, which proposed findings fall within each category?

The Panel’s “implicit” rejection of “facts,” whether presented by the plaintiffs or the State, “inconsistent with” the Remand Opinion or the Initial Opinion, will require the Supreme Court to acquire encyclopedic knowledge of the case and the record. Further, the “implicit” rejection without explicit findings will require both the parties and the Supreme Court to engage

in rank speculation and a high stakes guessing game as to what the Panel has determined are the actual facts and whether such facts are consistent or inconsistent under the Panel's legal conclusions.

Furthermore, the Panel included the following and similarly erroneous language in its opinion: "no evidence has been proffered to us otherwise" and "no evidence or proffer of evidence supports otherwise." Remand Opinion, pp. 34, 40. Specific findings of fact are necessary so that these erroneous conclusions are corrected to allow proper review by the Supreme Court.

For example, the Panel wrote:

. . . , it seems but obvious that for educational advancement, . . . , that the revenue streams which supported those results for students in that period of favorable funding needed to be continued to be provided in order to properly educate the continuing stream of new faces going forward, either initially entering the school system or advancing in grade. *No evidence or proffer of evidence supports otherwise.*

Opinion, pp. 39-40 (emphasis added). This is the Panel's *evaluation* [the State contends it is the Panel's *policy judgment* on the subject]. It is not a statement that the State failed to proffer and present evidence on the subject. Indeed, the cause of any such failure lies with the Panel and not with the State.

First, the State was precluded from presenting new evidence. Opposing the districts' motion for judgment, the State contended a judgment that current K-12 funding was inadequate could not be entered from the evidence presented before remand. The State asserted that it would present "evidence about all present sources of local district revenue; current educational standards; current school accreditations; implication of the present federal 'waiver'; districts satisfying requirements tied to the goals described in *Rose* under present funding levels; LPA studies on district efficiency and common core implementation performed and completed after

trial; data and information about present funding levels and finance system calculations aimed at satisfaction of the *Rose* standards/goals; and legislative history relating to recent legislative enactments.” “Response to Plaintiff’s Motion for Judgment” [June 9, 2014], p. 17. It was also stated that “[i]f the plaintiffs choose not to rest their case on the existing record, then some discovery will be necessary in order to prepare for and present the new facts the panel should review,” and suggested that the Panel set “deadlines for witness and substance of testimony identification, document/exhibit production, any opinion testimony disclosures and deposition discovery.” *Id.* at 20. When told it should propose post-remand findings for the Panel to consider them, the State provided detailed proposed findings, which incorporated post-remand data and information. Yet, the State explained:

The post-trial information described in these findings will be supported by the documents described in the following new exhibits 1500-1528 and in testimony that the State anticipates presenting at any subsequent evidentiary hearings. *However, its evidence must not be limited to the information described here. Some pertinent budget and spending evidence is just now becoming available. Moreover, the State insists upon the rights to conduct limited discovery necessary to locate and present relevant evidence to buttress the findings that it proposes and to support additional findings.*

“State’s Proposed Findings of Fact and Conclusions of Law” (July 31, 2014), p. 2, n. 1 (emphasis added). The State also objected to limited consideration of factual information that the Panel requested from the parties after the remand, “IF THE PANEL WILL NOT CONSIDER ALL RELEVANT EVIDENCE THAT THE STATE OFFERS ON THE SUBJECT OF ADEQUACY OF CURRENT PUBLIC K-12 FINANCING.” “State’s Objection to the Panel’s Requests for Information Not in the Trial Record” (August 1, 2014), ¶ 6 (emphasis original).

Second, evidence was proffered and presented, from which it could be inferred, that the 2009-10 state aid per pupil level of State K-12 revenue was not necessary for continued educational advancement, particularly when all sources of revenue and actual spending after

2009-10 are considered. The State presented detailed findings, citing to the record and current public documents, that: School spending in Kansas is at record levels; Revenue to schools exceeded the Panel's former target for adequate funding; The Plaintiff Districts' revenue has increased when all sources of revenue are considered; Cost studies presented at trial have only marginal relevance; School funding has approximated or exceeded the LPA Study's recommended foundation spending, if not its consultant's estimate; Substantial federal funding is annually available to Kansas schools; Funding is adequate to meet the accreditation requirements for Kansas schools and these requirements are reasonably calculated to have all Kansas students meet or exceed the standards set out in *Rose*; Objective evidence shows Kansas students are able to compete favorably with students in other States; and, The districts' outdated evidence of cuts to programs and staffing and claims of increased economic demands fail to prove that the present school financing system is not reasonably calculated to satisfy the *Rose* standards.

"State's Proposed Findings of Fact and Conclusions of Law" (July 31, 2014).

Ultimately, the litigants, the Supreme Court and Kansas citizens are entitled to a thorough, objective, and explicit identification of the facts that the Panel has found, the very facts essential to supporting the Panel's legal reasoning and ultimate conclusion. Otherwise, meaningful appellate review of the Panel's factual findings and ultimate decision is not possible.

In summary, while the State continues to maintain that the Panel was obligated to presume the constitutionality of the legislative actions and decisions the Plaintiff Districts challenge in this Article 6 adequacy inquiry, and in doing so must accept the Legislature's actual and presumed fact findings, the Panel should identify, by document and number, the proposed findings of fact that it accepts as accurate, and further modify any such findings where necessary. The Supreme Court should be given the whole of the Panel's findings of fact, not left to guess

about them along with the parties. The Panel should make these findings, even if it concludes the findings do not change its ultimate conclusions concerning the adequacy of present financing of K12 public education, if for no other reason than to guard against the necessity of additional lower court proceedings or a remand precisely to engage in such fact- finding.

All that said, the State does not waive its objections to the Panel refusing to permit the parties to introduce additional, more current evidence about the schools and education finance in Kansas, nor does the State waive its objection to the Panel refusing to permit the State additional discovery of more recent and relevant evidence regarding the Plaintiff Districts and their operations. The State also objects to the Panel's selective judicial notice of post-remand "evidence."

II. The State contends the following proposed findings are accurate and based upon undisputed testimony, unchallenged documents or proper judicial notice. The proposed findings come from the “State’s Proposed Findings of Fact and Conclusion of Law” [July 31, 2014] and “First Supplement to State’s Response to Panel’s Request for Information” [August 27, 2014].

The Panel should make these findings of fact:

1. Ex. 241, adopted in the Initial Opinion at 75-76, reported only the reduction in revenue if hypothetically the BSAPP had remained at \$4,492 after 2010; Special Education funding had not be reduced 2% during 2009; and capital outlay and LOB had been fully equalized per statutes. Ex. 241. The “cuts” described in the exhibit were to revenue districts expected to receive, not reductions from previous funding levels.

2. The Panel adopted the districts’ proposed Finding 260 in its Initial Opinion. Initial Opinion at 80. The finding relates to funding in 2011-12 and does not address all sources of revenue regularly available to districts. Federal and LOB revenue are excluded. Initial Opinion at 86-119 [analysis of cost studies], 132-37 & 142-43 [supplement aid discussions], 149 [consideration of LOB state aid is “contrary to the evidence on a basis of either costs or equity”]. Finding 260 relied upon Ex. 328. The spending data summarized and referenced in Ex. 328 reported per pupil expenditures were the highest in Kansas history in 2011-12 when all source of revenue are considered. Ex. 328 at KASB000340.

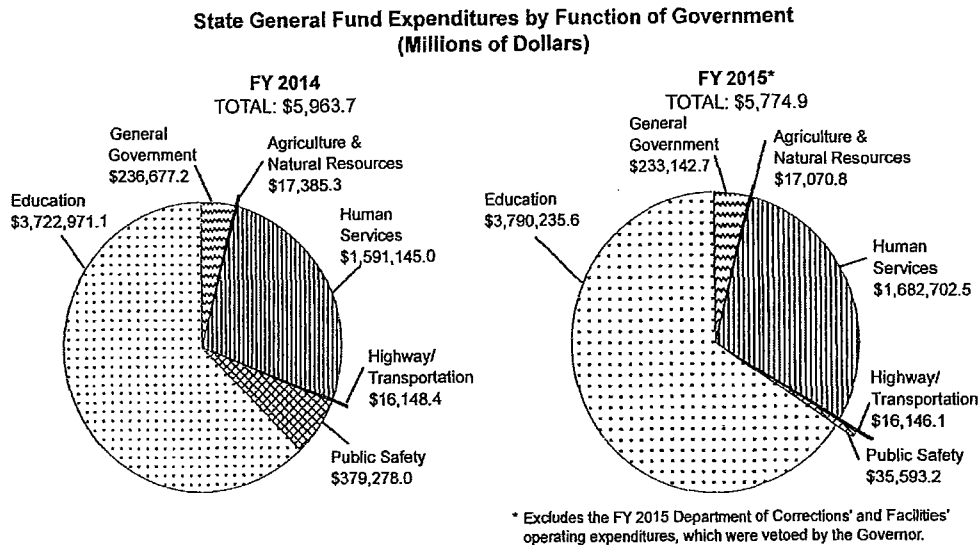
3. The State approved a \$3.8 billion FY2015 budget for its portion of the funding of primary and secondary education, which includes special education, general state aid, supplemental general state aid, discretionary grants, KPERS, pre-kindergarten, parent education and miscellaneous items.¹ Ex. 1502, pp. 2-157 to 2-161; *See also*, 2013 Kan. Sess. Laws, Ch. 136, § 144.

4. Then, by Senate Substitution for House Bill 2506 (“HB2506”), the State increased its FY2015 budget and appropriations for primary and secondary education. The bill appropriates an additional \$109.3 million for Supplemental General State Aid (LOB equalization) and arranges for transfer of \$25.2 million to the Capital Outlay Fund from the State General Fund. Additionally, HB 2506 made adjustments to K.S.A. 72-6405, et seq. (“School District Finance and Quality Performance Act” or “SDFQPA”). The Base State Aid Per Pupil (“BSAPP”) is increased for the 2014-15 school year to \$3,852 from \$3,838. The

¹ The FY2015 appropriation, made in 2013, is part of the current two year budgeting process. 2013 Kan. Sess. Laws, Ch. 136, § 144. The State appropriated approximately \$3 billion to the State General Fund for the budget, making up the \$3.8 billion with transfers from other funds. Ex. 1502 at 2-158.

net increase from the raised BSAPP in districts' revenue from state aid is estimated to be \$1.34 million. Ex(s). 1500, § 6; 1501.

5. Since 2000, more than half of the State General Fund, which is about half of the State's total budget, has been going to education. Tr., Tallman, at 1119-20. For FY2015, nearly two-thirds of the State General Fund was spent on Kansas education, including K-12 education. The following chart depicts this.

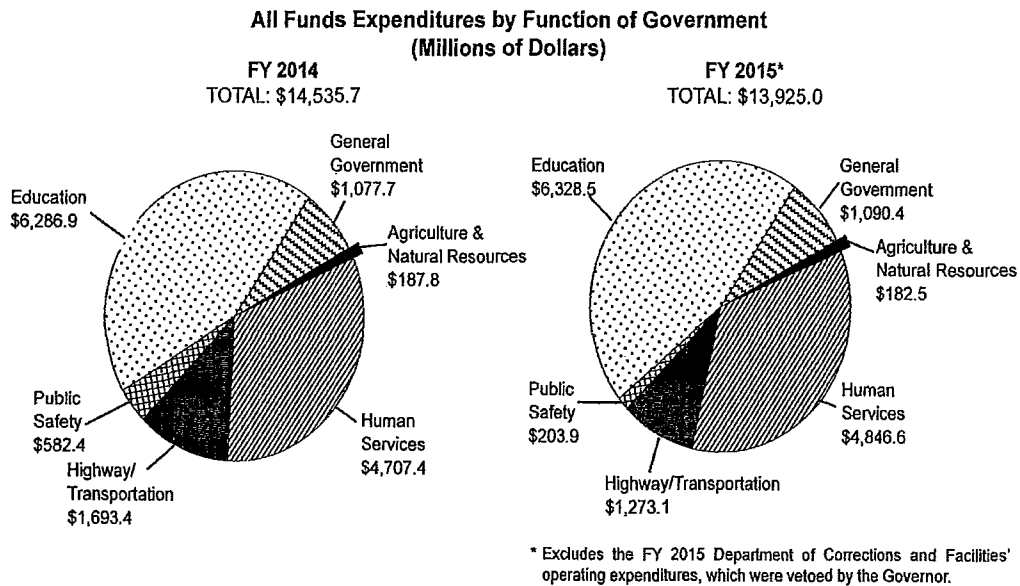


Ex. 1503 at 12.

6. At the trial, the most current local district spending data was from FY2011 because FY2012 data was not available until after 2011-12 school year had ended. Yet, even then, the total expenditures in FY2011 (state, local and federal) had decreased by 1.4% after the "Great Recession" (1.36% in FY2010 and .04% in FY2011). Ex. 1186.

7. As reported by the KSDE, FY2013 expenditures for K-12 education were \$81,459,983 higher than FY2012 and higher than any other time in Kansas history. [Ex. 1506 at 1] Revenue to districts has increased each year since FY2013. *Id.* Per pupil expenditures were the highest in history. [Judicial Notice, Ex. 1507 at III] Total operating expenditures per pupil were also the highest in history. *Compare* Ex. 1508 with Ex. 1037A. It is expected a new record for K-12 spending was set in FY2014; and a new record will be set in FY2015. Ex(s). 1500, §6; 1501; 1502, pp. 2-157 to 2-161. *See also*, 2013 Kan. Sess. Laws, Ch. 136, § 144.

8. For FY2015, nearly half all Kansas government spending, state and local, will be on Kansas education, including K-12 education.² The following chart depicts this.



Ex. 1503 at 10.

9. In FY2015, many districts will have greater flexibility to spend revenues. HB 2506 provides at least \$134 million in capital outlay and LOB equalization. Part of the LOB equalization (supplemental state aid) will reduce property taxes. But districts will likely increase capital outlay levies (and thereby capital outlay revenue) to take advantage of the capital outlay equalization without having to raise mill levies because of the increase in LOB equalization payments. Tr., D. Dennis testimony at June 11, 2014 hearing, p. 51. Further, districts may choose to use revenues for operational costs that they were allocating to capital outlay expenses because of the lack of capital outlay equalization.

10. K-12 funding as a result of the *Montoy* litigation peaked in 2008-09 just before the Great Recession. But present funding surpasses Plaintiff Districts' spending in 2008-09.

- Wichita budgeted to spend \$636,861,044 in FY2014. Ex. 1511 at 2. It estimated that it would spend \$13,107 per pupil. Excluding capital outlay and bond expense, it estimated \$11,798 would be spent per pupil. By comparison, Wichita spent \$603,976,572 in FY2009 and \$12,978 per pupil. *Id.*

² Estimated, approximately \$5.5 billion of this spending is for K-12 public education. Compare Ex. 1506 at 1 (\$5.4 billion state and local money spent on K-12 public education in FY2013).

- Hutchinson budgeted to spend \$66,242,354 in FY2014. Ex. 1512 at 2. It estimated that it would spend \$13,800 per pupil. Excluding capital outlay and bond expense, it estimated \$12,096 would be spent per pupil. By comparison, Hutchinson spent \$60,502,157 in FY2009 and \$13,076 per pupil. *Id.*
 - Dodge City budgeted to spend \$44,948,604 in FY2014. Ex. 1513 at 2. It estimated that it would spend \$13,833 per pupil. Excluding capital outlay and bond expense, it estimated \$ 12,180 would be spent per pupil. By comparison, Dodge City spent \$40,558,786 in FY2009 and \$13,269 per pupil. *Id.*
 - Kansas City budgeted to spend \$341,838,994 in FY2014. Ex. 1514 at 2. It estimated that it would spend \$18,006 per pupil. Excluding capital outlay and bond expense, it estimated \$15,251 would be spent per pupil. By comparison, Kansas City spent \$184,480,074 in FY2009 and \$ 17,790 per pupil. *Id.*
11. The Plaintiff Districts received LOB and federal revenues.
- Wichita’s LOB budget in FY2014 was \$109.4 million and had been \$95 million in FY2009. It received \$78.9 million in federal funds in FY2014 and \$56.2 million in FY2009. Ex. 1511 at 7.
 - Hutchinson’s LOB budget in FY2014 was \$9.1 million and had been \$7.3 million in FY2009. It received \$8.1 million in federal funds in FY2014 and \$7.1 million in FY2009. Ex. 1512 at 6.
 - Dodge City’s LOB budget in FY2014 was \$ 11.4 million and had been \$14.9 million in FY2009. It received \$7.9 million in federal funds in FY2014 and \$9.2 million in FY2009. Ex. 1513 at 6.
 - Kansas City’s LOB budget in FY2014 was \$44 million and had been \$39.4 million in FY2009. It received \$38.8 million in federal funds in FY2014 and \$26.8 million in FY2009. Ex. 1514 at7.

12. FY2015 federal funding to Kansas K-12 education is summarized in the following table.

	Statute or Regulatory Authority for Funding	Actual or Estimated FY2015 Funding	Breadth and substances of the program(s) funded	# of students served by program and locations of students
Federal funding	Elementary and Secondary Education Act Individuals with Disabilities Act	\$449,522,906	Federal Funds generally fall within one of three categories: 1. Food programs; 2.	Title I – 249,878 Neglected/Delinquent – 5,506 Special Education VIB – 56,519 Rural and Low Income Students –

	National School Lunch Program		Special education; and 3. Title programs to improve targeted student education. A description of the title programs is provided in Ex. A.	30,813 Title III Language Assisted – 37,385 Special Education Preschool – 10,850 Migrant – 3,849 National School Lunch Program Breakfast - 17,373,987 Lunch - 54,319,399 After School Snack Program - 1,652,237
--	-------------------------------	--	---	---

“State’s Response to Panel’s Request for Information,” [July 31, 2014], p. 1.

13. Evidence concerning the Augenblick & Myers “Calculation of the Cost of a Suitable Education in Kansas in 2000-2001 Using Two Different Approaches,” dated May 2002 (“A&M study”), Ex. 203, and the LPA “Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches,” dated January 2006 (“LPA study”), Ex. 199, was submitted at trial. *See, e.g.*, Initial Opinion at 238.

14. The legislature expressed its intent not to be bound by the study’s recommendations with the passage of K.S.A. 2013 Supp. 46-1226 (L. 2005, ch. 2, § 15 [Special Session]; L. 2008, ch. 112, § 1; May 1) (cost studies “shall not be binding upon the legislature” and the Legislature “may reject, at any time, any such analysis, audit or study and any conclusions and recommendations thereof”).

14. Neither the A&M, nor the LPA studies attempted to estimate FY2015 costs. The A&M Study estimated costs for three to five years, but recommended a new study thereafter. Tr., Myers, at 1661-62. The LPA Study was only designed to estimate costs for 2006 and 2007. Tr., Frank, at 2044-45.

15. All experts testifying at trial criticized both of the methods the A&M Study used to arrive at its cost estimates. None of the experts felt that the “successful school approach” to determine costs – the first of two approaches used in the A&M Study that its authors settled upon to recommend a foundation BSAPP, Ex. 203, p. VII-7 – had any value. *E.g.*, Tr., Baker, at 1421-23. The A&M Study acknowledged that the “professional judgment” methodology, the Study’s second approach, generate higher cost estimates. Ex. 203, p. II-4; Tr., Myers, at 1666. Dr. Eric Hanushek explained the professional judgment methodology generates a “wish list.” Tr., Hanushek, at 2272. Dr. Hanushek testified that teachers and administrators are not able to estimate actual costs to achieve desired outcomes, in part, because social scientific studies have not

identified the strategies that can produce the desired outcomes. *Id.* at 2267-81. The districts' expert, Dr. Bruce Baker, acknowledged that teachers and administrators are likely to be biased in favor of the strategies they themselves are using in classrooms, even though there often may be superior or equally effective strategies which cost less to implement. Tr., Baker, at 1417-21.

16. The LPA Study reported two approaches to calculate both total required funding and proper distribution of funding foundation education. Ex. 199 at 26, 123-25. The inputs part of the study produced cost estimates resulting in a range of proposed BSAPPs. *Id.* at 26. The inputs methodology did not include school finance weighting factors. *Id.* The study's "output" analysis was premised on the assumption that undirected increases in money to school districts will increase academic achievement. Ex. 199 at 123-25; App. 17 [C-7 – C-9]. A peer-reviewed and published statistical study, reviewing the same data used by the LPA Study, concluded there was little or no correlation between the amounts Kansas schools spent and their students' achievement. Ex. 1009. *See also*, Ex. 199 at 107-13 (LPA concluding educational research offers mixed opinions about whether increased spending for educational inputs is related to improved student outputs).

17. The LPA Study calculated the spending baseline by employing data about how much Kansas schools spent in the 1999-2000 to 2003-04 school years. Ex. 199 at 34, 123, Apx 17 [C-5 to C-6]. The economic efficiency of that spending was not questioned and, therefore, the LPA study necessarily failed to evaluate whether there are less costly methods to produce achievement on the Kansas assessment tests than those used in the 1999-2000 through 2003-04 school years. *See Id.*, at 125, Apx. 17 [C-14 to C 16]; Tr., Baker, at 1431-38.

18. Both the A&M and LPA Studies were specifically designed to estimate the amount of money needed for students to meet the then-existing state achievement standards as measured by Annual Yearly Progress ("AYP"). Ex. 203 at ES-1, I-1 to I-2, III-1 to III-3; Ex. 199 at 30, Apx. 17 [C-7 to C-9]. Under both studies, the "outputs" assessments effectively incorporated Kansas' AYP goals set to obtain federal funds under the Elementary and Secondary Education Act, known as the No Child Left Behind Act of 2001 ("NCLB"), 20 U.S.C. §§ 6301, *et seq.* The A&M Study's "professional judgment" approach used Panels of "qualified persons" to identify what was needed to obtain a "suitable education" as defined in the study. Ex. 203 at ES-2, ES-3. The LPA Study's cost function analysis tried to statistically determine the costs to achieve desired outputs. Ex. 199 at 31, 124-25, Apx. 17 [C-4 to C-5]. This study's suitable education definition required, as outputs, achieving the AYP percentages of students scoring "meets standard" or above on the annual Kansas assessment tests in math and reading and targeted graduation rates. *Id.* at 124-25, Apx. 17 [C-7 to C-9].

19. Kansas accountability measures now implement a multi-dimensional look at student performance reviewed against Annual Measurable Objectives (“AMOs”) replacing AYP performance targets. DeBacker Depo. at 31-33; Ex. 1300 at 65, 69-76.

20. Kansas assessments are designed to test whether students have grade level proficiency in the subjects tested. Ex. 1130. Student achievement tests are tied to the State’s education standards. Tr., Foster, at 2711-12. The standards, school curricula and assessment tests all have changed significantly since the 2006 LPA Study. Tr., Neuenswander, at 2114; Ex. 108; Ex. 1300 at 25-28. Most recently, the Kansas NCLB Waiver incorporated use of the Common Core Standards (“CCS”), adopted in Kansas in 2010. *Id.*

21. The principal author of the LPA “update” testified that he was uncomfortable using the 2006 study’s data to predict costs in 2013 or 2014; he explained the further one gets from the original data the less predictive the estimate. Tr., Frank, at 2044-45.

22. Local districts’ spending (“cost data”), used by the LPA to calculate what it believed had to be spent to achieve the desired outputs, included only certain categories of overall spending on primary and secondary public education. Tr., Frank, at 2007-08; Tr., Dennis, at 3378-79; Ex. 199 at 123; App. 17 [C-47, C-48, C-125]. Those categories were selected because of their purported impact on student achievement. Ex. 199 at 123; App. 17 [C-47, C-48, C-125]. At trial, the expenditures in these categories were called “operational expenditures.” Ex. 1192. Ultimately, the LPA Study estimated the BSAPP and weightings needed to fund local districts’ operational expenditures. Ex. 199 at 123, 125. The LPA Study did not draw a distinction between whether the operational expenditures were funded by federal, state or local money. Tr., Frank, at 2018.

23. After *Montoy*, the legislature adopted the LPA’s recommendation for weightings with modifications. *Montoy v. State*, 282 Kan. 9, 19, 138 P.3d 755 (2006). And the LPA Study did not entirely adopt its consultant’s conclusions. Ex. 199 at 127.

24. *Montoy* endorsed that the weightings adopted by the Legislature substantially complied with its orders to remedy Article 6 violations. *Gannon v. State*, 298 Kan. 1107, 1114, 319 P.3d 1196 (2014); *Montoy v. State*, 282 Kan. 9, 19, 138 P.3d 755 (2006).

25. In this case, the Panel evaluated the constitutionality of the weightings employed after *Montoy*. After noting, with the except for the bilingual weighting in LPA consultants’ study, the average of the weightings for bilingual students, at-risk students, and special education students are lower in the formula than those recommended by both the A&M and the consultant’s studies, Initial Opinion at

229-30, it found the districts had failed to show the weighting violated Article 6 of the Kansas Constitution. *Id.* at 230-31.

26. The districts did not appeal the Panel's judgment concerning the SDFQPA's weights.

27. Under the Elementary and Secondary Education Act, Kansas school districts receive federal funds, including funding under Title I (for supplemental services to schools and school districts with a high percentage of students from low-income families), Title II (for library resources, textbooks, and other instructional materials, including professional development), and Title III (for bilingual education). Federal funding is also provided for special education and food services. The FY2014 budgets of the Plaintiff Districts show anticipated federal revenue, exclusive of special education, vocational and food services funding, in the following amounts: Wichita \$34,036,357; Hutchinson \$4,872,000; Dodge City \$5,762,382; and Kansas City \$16,750,000. Ex(s). 1511 at 7, 1512 at 7, 1513 at 7 and 1514 at 7. Statewide federal revenue for FY2013 totaled \$460,323,467. Ex. 1506 at 1. No evidence exists that the federal government will no longer support Kansas schools in similar amounts in FY2015 and thereafter. Rather all federal funding to local districts in FY2015 is estimated at approximately \$449.5 million. Ex. 1505.

28. Since the 2012 Kansas ESEA Flexibility Request, schools will no longer be designated as for "improvement," "corrective action" or "restructuring" under NCLB. Ex. 1300 at 8, 9, 66. This allows Kansas to direct federal assistance to "priority schools," the lowest 5% achieving schools over the past 5 years, and "focus schools," 10% of schools with the largest standardized testing gaps between student scores over the last five years. Ex. 1300 at 126, 160; Ex. 1516; Ex. 1517. Doing so provides Kansas with greater flexibility to direct federal aid where it can be best put to use. *Id.* In FY2015 allocations of federal Title I, IIA, III and migrant funds to districts total approximately \$148 million. Ex. 1515.

29. The following are the current priority schools in the plaintiff districts which receive greater attention and federal money: **Wichita**: Marshall Middle School, Hamilton Middle School, Mead Middle School, Pleasant Valley Middle School, Truesdell Middle School, Jardine Technology Middle Magnet, Curtis Middle School, Mueller Aerospace/Engineering, Gordon Parks Academy, Spaght Multimedia Magnet, Cloud Elementary, Stanley Elementary and Anderson Elementary; **Kansas City**: M E Pearson Elementary, Northwest Middle School, Douglass Elementary, Rosedale Middle School, Grant Elementary, Mark Twain Elementary, Argentine Middle School, Whittier Elementary, Welborn Elementary, Banneker Elementary, Bertram Caruthers Elementary, New Stanley Elementary, Central Middle School, Coronado Middle School, West Middle School. Ex. 1517.

30. And the following are the current focus schools in the Plaintiff Districts which receive greater attention and federal money: **Wichita**: Pleasant Valley Elementary, Franklin Elementary, Lawrence Elementary, Linwood Elementary, Gardiner Elementary, Washington Accelerated Learning, Woodman Elementary, Jefferson Elementary, L'Ouverture Computer Technology, Cessna Elementary, Irving Elementary, Harry Street Elementary, Allen Elementary, Enterprise Elementary and Caldwell Elementary; **Hutchinson**: Lincoln Elementary School and McCandless Elementary; **Dodge City**: Sunnyside Elementary and Comanche Intermediate Center; **Kansas City**: McKinley Elementary School, Eugene Ware Elementary, Stony Point North Elementary, Silver City Elementary, John F. Kennedy Elementary, Quindaro Elementary, Chelsea Elementary, Frances Willard Elementary, Lindbergh Elementary, John Fiske Elementary, Noble Prentis Elementary, Stony Point South Elementary, Thomas A Edison Elementary and Hazel Grove Elementary. Ex. 1516.

31. Kansas accredits K-12 schools according to administrative regulations, known as Quality Performance Accreditation ("QPA"). Schools have been assigned accreditation status annually based upon performance and quality criteria. Ex. 1121. The QPA quality criteria are based upon eleven specific processes, programs, and policies that are required to be in place in each school, as follows:

(a) Each school shall be assigned its accreditation status based upon the extent to which the school has met the performance and quality criteria established by the state board in this regulation.

(b) The performance criteria shall be as follows:

(1) Except as provided in subsection (d), having met the percentage prescribed by the state board of students performing at or above the proficient level on state assessments or having increased overall student achievement by a percentage prescribed by the state board;

(2) having 95% or more of all students and 95% or more of each student subgroup take the state assessments;

(3) having an attendance rate equal to or greater than that prescribed by the state board; and

(4) for high schools, having a graduation rate equal to or greater than that prescribed by the state board.

(c) The quality criteria shall consist of the following quality measures, which shall be required to be in place at each school:

- (1) A school improvement plan that includes a results-based staff development plan;
- (2) an external technical assistance team;
- (3) locally determined assessments that are aligned with the state standards;
- (4) formal training for teachers regarding the state assessments and curriculum standards;
- (5) 100% of the teachers assigned to teach in those areas assessed by the state or described as core academic subjects by the United States department of education, and 95% or more of all other faculty, fully certified for the positions they hold;
- (6) policies that meet the requirements of S.B.R. 91-31-34 [concerning teacher staffing, minimum enrollment, records, interscholastic athletics, and athletic practice];
- (7) local graduation requirements that include at least those requirements imposed by the state board;
- (8) curricula that allow each student to meet the regent's qualified admissions requirements and the state scholarship program;
- (9) programs and services to support student learning and growth at both the elementary and secondary levels, including the following:
 - (A) Computer literacy;
 - (B) counseling services;
 - (C) fine arts;
 - (D) language arts;
 - (E) library services;
 - (F) mathematics;
 - (G) physical education, which shall include instruction in health and human sexuality;
 - (H) science;

(I) services for students with special learning needs; and

(J) history, government, and celebrate freedom week. Each local board of education shall include the following in its history and government curriculum:

(i) Within one of the grades seven through 12, a course of instruction in Kansas history and government. The course of instruction shall be offered for at least nine consecutive weeks. The local board of education shall waive this requirement for any student who transfers into the district at a grade level above that in which the course is taught; and

(ii) for grades kindergarten through eight, instruction concerning the original intent, meaning, and importance of the Declaration of Independence and the United States Constitution, including the Bill of Rights, in their historical contexts, pursuant to L. 2013, ch. 121, sec. 2 and amendments thereto. The study of the Declaration of Independence shall include the study of the relationship of the ideas expressed in that document to subsequent American history;

(10) programs and services to support student learning and growth at the secondary level, including the following:

(A) Business;

(B) family and consumer science;

(C) foreign language; and

(D) industrial and technical education; and

(11) local policies ensuring compliance with other accreditation regulations and state education laws.

(d) If the grade configuration of a school does not include any of the grades included in the state assessment program, the school shall use an assessment that is aligned with the state standards.

K.A.R. 91-31-32 (2014).

32. K.S.A. 72-1127, as amended, directed the State Board of Education to impose graduation requirements. It has, as follows:

(a) Each local board of education shall adopt a written policy specifying that pupils are eligible for graduation only upon completion of at least the following requirements:

(1) Four units of English language arts, which shall include reading, writing, literature, communication, and grammar. The building administrator may waive up to one unit of this requirement if the administrator determines that a pupil can profit more by taking another subject;

(2) three units of history and government, which shall include world history; United States history; United States government, including the Constitution of the United States; concepts of economics and geography; and, except as otherwise provided in S.B.R. 91-31-32, a course of instruction in Kansas history and government;

(3) three units of science, which shall include physical, biological, and earth and space science concepts and which shall include at least one unit as a laboratory course;

(4) three units of mathematics, including algebraic and geometric concepts;

(5) one unit of physical education, which shall include health and which may include safety, first aid, or physiology. This requirement shall be waived if the school district is provided with either of the following:

(A) A statement by a licensed physician that a pupil is mentally or physically incapable of participating in a regular or modified physical education program; or

(B) a statement, signed by a lawful custodian of the pupil, indicating that the requirement is contrary to the religious teachings of the pupil;

(6) one unit of fine arts, which may include art, music, dance, theatre, forensics, and other similar studies selected by a local board of education; and

(7) six units of elective courses.

(b) A minimum of 21 units of credit shall be required for graduation.

(c) Any local board of education may increase the number of units of credit required for graduation. Any additional requirements of the local board of education that increase the number of units of credit required for graduation shall apply to those students who will enter the ninth grade in the school year following the effective date of the additional requirement.

(d) Unless more stringent requirements are specified by existing local policy, the graduation requirements established by this regulation shall apply to those students who enter the ninth grade in the school year following the effective date of this regulation and to each subsequent class of students.

K.A.R. 91-31-34 (2014).

33. All of the *Rose* standards/goals are addressed by the programs and services required “to support student learning and growth at both the elementary and secondary levels” and the Board of Education’s graduation requirements. Required curriculums and areas of instruction are interrelated, but the curricula for computer literacy, library services, foreign language and language arts (which must include reading, writing, literature, communication, and grammar), at a minimum, are reasonably calculated to provide [standard 1] “oral and written communication skills”; the curriculums for history, government, family and consumer science and business are reasonably calculated, at a minimum, to provide [standard 2] “knowledge of economic, social and political systems”; the curriculums for history, government are reasonably calculated, at a minimum, to provide [standard 3] “understanding of governmental processes”; the curriculums for physical education, which shall include instruction in health and human sexuality are reasonably calculated, at a minimum, [standard 4] “knowledge of . . . mental and physical wellness”; the curriculums for fine arts (which may include art, music, dance, theatre, forensics, and other similar studies), language arts and library services are reasonably calculated, at a minimum, to provide [standard 5] “grounding in the arts.” The [standard 6] training or preparation for advanced training in either academic or vocational fields” and [standard 7] “academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states” are provided in the curriculums for each of the first five standards and in the curriculums for mathematics, science and industrial and technical education.

34. The Board of Education has approved, published and disseminated “standards” for: college and career-ready; English for speakers of other languages; English arts; mathematics; science; social studies; communication/marketing; driver’s education; fine arts; library; media; technology; physical education/health; social, emotional and character; development; and world languages. *See* <http://www.ksde.org/>. These standards shape the local districts curriculums.

35. In October of 2011, the U.S. Department of Education invited states to apply for a waiver of the specific requirements of the current Elementary and Secondary Education Act known as the No Child Left Behind Act of 2001 (“NCLB”), 20 U.S.C. §§ 6301, *et seq.* The Kansas ESEA Flexibility Request (“Waiver”) was approved in July 2012 during trial. DeBacker Depo. at 29-30; Ex.

1300. Then the Waiver was revised and amended twice, most recently in January of 2013.

<http://www.ksde.org/Portals/0/Title%20Programs%20and%20Services/KansasESERRequest201301.pdf>.

36. The Waiver addressed state standards. Ex. 1300 at 24-25. A new set of educational quality standards, known as Common Core Standards (“CCS”), had been adopted by the State Board of Education (“Board”) on October 12, 2010. Ex(s). 1130, 1131, 1300 at 26, 27, 243; Tr., Neuenswander, at 2084; 2114-15; DeBacker Depo. at 67-69. Use of the CCS was approved in the Waiver. DeBacker Depo. at 89.

37. The CCS is aligned to provide students with the required knowledge and skills to be “college or career ready” upon graduation. DeBacker Depo. at 64, 67-71. It is benchmarked so that students can be successful in either post-secondary education or with businesses and industry. *Id.*

38. The Waiver implements a multi-dimensional (four-part) look at student performance, in contrast to NCLB’s single focus on assessment test scores. Ex. 1300 at 81-82. The first look is achievement, still measured by math and reading scores on the Kansas assessment tests. *Id.* However, while test scores continue as part of measuring student performance, the Annual Yearly Progress (“AYP”) targets from NCLB for standardized test results are replaced by an index, the Annual Performance Index (“API”). Ex. 1300 at 39-40, 70, 81-106. Growth is the second look, which is measured by improvement of test scores. Ex. 1300 at 81-82, 107-09. Reduction of the gap between the students that score the highest and lowest on the tests is the third look. Ex. 1300 at 81, 109-11. Reduction of the number of students below standard is the last look. Ex. 1033 at 81, 112-14. Thus, under the Waiver, progress based upon multiple Annual Measurable Objectives (“AMOs”) replaces AYP performance targets for schools and local districts. Ex. 1300 at 81-82; DeBacker Depo. at 35-36, 39-40, 70.

39. After the Waiver, schools will no longer be designated as for “improvement,” “corrective action” or “restructuring” under NCLB. DeBacker Depo. at 51, 55-62.

40. The Waiver also addressed support to assure students are being instructed by “highly effective teachers,” as defined by federal law. Ex. 1300 at 202-14. In its waiver request, Kansas committed to having a model evaluation system that districts can use to review teacher performance. *Id.* A component of the model will take into account how well the teacher’s students are achieving. *Id.* Kansas has been piloting the Kansas Educator Evaluation Protocol (“KEEP”), developed by the KSDE and a consultant. *Id.* The Teaching in Kansas Commission II was formed to recommend how student achievement will be integrated into KEEP. *Id.* Full implementation of KEEP is scheduled for 2014-2015. <http://community.ksde.org/Default.aspx?tabid=4419>.

41. No evidence has been presented that any local district is now unable, because of lack of funds, to satisfy accreditation requirements implemented after *Montoy*.

42. Then KSDE Commissioner Dr. Diane DeBacker testified that the Waiver's student performance criteria, AMOs, are achievable. DeBacker Depo. at 47-48, 100. No evidence was presented that Kansas schools will be unable to successfully meet the AMOs under current funding levels.

43. All primary and secondary public schools in Kansas are accredited. Tr., Tallman, at 1075; Tr., Neuenswander, at 2124; Ex. 1139.

44. Every year, each school district submits a QPA summary report to the KSDE in which each school district provides written assurances to the KSDE that it has fully satisfied the QPA performance and quality criteria. Tr., Neuenswander, at 2126-27. The KSDE also independently audits licensed personnel reports from the school districts for compliance with that quality criteria. *Id.*

45. Each of the Plaintiff Districts provided written assurances that its schools fully satisfy accreditation requirements. Tr., Neuenswander, at 2124, 2128-29.

46. There was no showing that current accreditation standards are inadequate. The Panel expressly held that districts failed to prove that the educational standards, which are the bedrock Kansas' accreditation requirements, are too low. Initial Opinion at 151. ("No standards currently in effect, or in the process of implementation, stand here challenged [as] to their suitability by education professionals, except by Plaintiff Districts' expert Dr. Baker who raises, but which we find Plaintiff Districts have not proved, questions of whether, in fact, they are too low.").

47. At the trial, over continuing objection, the districts' witnesses testified as to what constituted a "suitable education." For example, the Kansas City, Kansas administrator, Dr. Cynthia Lane, opined "suitable education" was compliance with the federal "No Child Left Behind Act." Lane Tr., p. 108, l. 22 – p. 109, l. 10; p. 121, l. 21 – p. 122, l. 2; p. 136, ll. 19-22. This conclusion led to her assertion that if any single child failed to score proficient on any state assessment test, the State is obligated to provide more funding.

Q. Until we get that goal, as you understand it, and as you said, the State said it exists, funding will never be adequate, and you'll always be back in court asking for more money, won't you?

A. What we want to be able to do is access those resources that we know work, and they cost money. It's not unlimited but we need to be able to provide kids intervention, tutoring, extended –

Q. (By Mr. Chalmers) And that is, you indicated in your last answer there is some ending point where enough money is enough, where it's adequate, where it's suitable?

A. I believe what I talked about were the kinds of things that we need to be able to provide children. If we had the resources to provide those, then we can be successful with our kids.

Q. Is there an ending point where enough is enough?

A. I think you're suggesting that what I'm advocating for is unlimited resources, and that misses the point. What I'm advocating for is to implement for children the strategies they need to be successful, and they cost money.

Q. You don't want unlimited resources?

A. What I want is for our kids to be successful.

Q. You can agree that you don't want unlimited resources?

A. I want whatever it takes.

Q. There is a limit where you don't have to go anything more?

A. That limit is based on kids being successful.

Q. And you define that on every kid, no matter their circumstances, no matter what conditions, being able to satisfy the meets standards on the Kansas assessment tests?

A. Perhaps, Mr. Chalmers, it's not as important what I say as what the law is now requiring. Right now, No Child Left Behind says, 100 percent by 2014.

Tr., Lane, at 325–27. Similarly, Dr. Shelly Kiblinger admitted that her definition of a school's ability to provide a suitable education turned on whether there was a failure by any student to score proficient on the state assessment test or graduate on time. She contended this was the case regardless of whether the student's lack of success had anything to do with Kansas schools, much less the funding of the schools. She testified:

Q. We got a kid that moves into your high school, transfers in his or her junior year and is woefully behind, you do your best to educate that kid. They don't graduate, at least in the four years, or maybe they didn't even graduate in that five years. Has your district failed to provide to that kid a suitable education?

A. If they came from the State of Kansas, then Kansas has failed them.

Q. . . . Say that they came in from Samoa.

A. Well, we -- you know, they won't be able to graduate if -- if they aren't college and career -- if they're that far behind, you know, then they're going to become a dropout statistic so ... I said, they'll -- you know, they're going to become a dropout statistic. If we haven't -- if we haven't gotten them to their full potential by the time they get out of high school, then we -- we have failed them.

Tr., Kiblinger, at 3205-06. *See also*, superintendent and administrator testimony: Allison [Tr. at 2501-03, 2509-10, 2514, 2560], Cunningham [Tr. at 1857-58, 1863-37, 1909-10], Kiblinger [Tr. 3154-55, 3202-06] and from teachers or principals Davis [Tr. at 3043-47], Doyle [Tr. at 2874], Hungria [Tr. at 2900], Ortiz-Smith [Tr. at 1753], Ramsour [Tr. at 1780], Roehm [Tr. 3063-64], Stroh [Tr. at 3096-97]. Rather, each testified, in various ways, that students did not receive a “suitable education” if they did not score proficient on a state assessment test - apparently at any time, did not graduate within 5-years or were not ready for college. *See* principal and teacher testimony: Principal Stewart said cuts affected what her high school had wanted to do [Tr. at 920]; Teacher Feist said she had to do things which were less effective for students because of her increased class size [Tr. at 1700]; Teacher Rathbum testified focus on AYP has short-changed kindergarten and first grade students at her school so that they received less attention because they are not given assessment tests [Tr. at 3110-11].

48. Plaintiffs’ expert, Dr. Bruce Baker, testified that just one child not meeting proficiency on the State assessment tests does not mean that the State is not adequately funding a suitable education. Trial Transcript, Dr. Bruce Baker, p. 1362. Dr. Baker testified that the test as to whether a suitable education is being provided is whether each student is being given adequate access to opportunity to succeed, not whether the students are succeeding or failing in and of itself. *Id.*

49. The Kansas assessment tests are designed to test required knowledge and skills outlined in standards adopted by the State Board of Education. Tr., Foster, at 2703.

50. Cut scores are set within categories. There are five performance categories – academic warning, approaches standard, meets standards, exceeds standard and exemplary – with a cut score for each category. Trial Transcript, Dr. Tom Foster, p. 2685. For example, in third grade math, a student has to score between 70 and 84 points to meet the standard and if they score above 84, then they exceed the standard and if they score below 70, then they are approaching the standard. Trial Transcript, Dr. Tom Foster, p 2686. For high school math, the cut scores are 50 to 67. The 50 here is not the same as in the classroom, the 50 represents a very specific approach to how students do on assessments. In the process to determine the cut scores, a large group of experts determined that to be an appropriate score and the federal government also reviewed the cuts scores and determined them to be appropriate. Trial Transcript, Dr. Tom Foster, pp. 2686-87.

51. State academic standards and their associated assessment tests change over time. The Kansas assessment tests in place between 2006 and 2013 are based on the standards which predated adoption of the CCS. Tr., Foster, at 2683-84. The tests are now being redesigned because of the adoption of the CCS. *Id.* at 2707. This redesign started in 2011. *Id.* New tests go through a design, vetting and

approval process. *Id.* at 2708-09. Full implementation of the testing on the CCS was scheduled to occur in 2014-15. *Id.* at 2708.

52. In 2012-13, the State used assessment tests premised on measuring progress against the pre-CCS standards even though students received instruction under the CCS standards. The KSDE explained the impact:

As Kansas continues its transition to higher education standards for college and career readiness, many schools experienced a decline in the results of their students' latest state assessment scores. While this is never a desired outcome, in a time of transition it is certainly not altogether unexpected. Assessments are a critical component of the education process, but this transition period has created a bit of an anomaly. Because the new standards assessment was not available for the 2012-13 assessment period, students were assessed using the existing testing tool which is no longer aligned with the new instruction. As such, we caution the use of recent assessment scores as a true indication of the student's progress.

Ex. 1522 (emphasis added).

53. Results for the 2013-14 test are not available because of problems in the administration of the tests which invalidated the results. Tr., D. Dennis at June 11, 2014 hearing, p. 97.

54. Kansas schools have made progress in advancing students not only across the proficiency line, but into the highest performance levels and across all levels of the spectrum of the test since the enactment of NCLB. Tr., Foster, at 2721-23; Ex. 1129 at 40-44; Ex. 1218; Ex. 1223; Ex. 1300 at 84. Evidence at trial showed that Kansas students' proficiency on assessment tests has increased 40% over the last decade and now exceeds 80% at each level. Ex. 131 at 2; Ex. 1300 at 88.

55. From 2003 to 2011, the State saw improvement on state assessment test scores for the all students group in math and reading. Ex. 1207; Ex. 1217; Ex. 1224. Math scores for all students increased from 73.5% proficient in 2003 to 87.6% in 2011 for 4th grade; increased from 60% proficient in 2003 to 81.6% in 2011 for 7th grade; and increased from 45.6% proficient in 2003 to 81.5% in 2011 for 11th grade. *Id.* Reading scores for all students increased from 68.7% proficient in 2003 to 86.7% in 2011 for 5th grade; increased from 75.1% proficient in 2003 to 87.1% in 2011 for 8th grade; and increased from 60.6% in 2003 to 88.3% in 2011 for 11th grade. *Id.*

56. Additionally, the Kansas test scores improved from 2003, when *Montoy* was tried, to 2011 on state assessment test scores in math and reading for its "free and reduced lunch" students. Even among the "free and reduced lunch students," math scores increased from 61.1% proficient in 2003 to 81.9% in 2011 for 4th

grade; increased from 40.7% proficient in 2003 to 72.1% in 2011 for 7th grade; and increased from 25.8% proficient in 2003 to 69.9% in 2011 for 11th grade. Ex(s). 1229-1239, 1207. Reading scores increased from 55.1% proficient in 2003 to 79.8% in 2011 for 5th grade; increased from 70.5% proficient in 2003 to 78.9% in 2011 for 8th grade; and increased from 42.9% proficient in 2003 to 80% in 2011 for 11th grade. *Id.*

57. The Kansas Report Card for 2011-12, Ex. 1524, shows that the percentage proficient on the math test increased for all students and for free and reduced lunch, ELL, African-American, Hispanic, White, Asian, American Indian/Alaska Native and Native Hawaiian/Pacific Islander above 2010-2011 percentages. The percentages increase on the reading test for Students with Disabilities, White, Asian, American Indian/Alaska Native and Native Hawaiian/Pacific Islander. The all student percentage proficiency was only 0.1% less than in 2010-2011. *Id.* at 1.

58. Below are the statewide results for the percentages of students who tested at or above proficient in Reading.

Reading	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
All students	70.5	73.7	80.3	81	84.3	85.8	86.3	87.8	87.6
Free & Reduced Lunch	57.8	62.7	67.7	70.4	74	76.5	77.7	80.5	79.8
Students with Disabilities	45.2	50.3	57.4	64.3	66.6	69.4	69.6	71.6	71.2
ELL Students	55.3	64.2	49.8	55.1	63.5	65.5	57.4	72.2	71.8
African-American Students	48.9	53.7	60.3	61.4	66.1	68.2	69.4	73	71.1
Hispanic	56	61.5	61.5	63.8	69	71.9	75.2	78.4	77.9
White	74.6	77.6	85.2	86.8	89	90.4	90.7	91.7	91.7
American Indian	59.9	64.7	75.3	77.3	79.5	80.7	81.4	84.3	84.7
Multi-Racial	68.8	70.3	77.7	68.2	82.6	83.5	85	86.9	85.9
Asian/Pacific Islanders	69.5	74.7	80.8	81.7	86	86.8			
Asian							88	89	89.1
Native Hawaiian/Pacific Islander							85.7	81.6	84.8

Exhibit 1153 (FY 2003-2011); Exhibit 412 and Exhibit 1230 (FY 2012 Preliminary Data)

59. Below are the statewide results for the percentages of students who tested at or above proficiency in Math.

Math	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
All students	65.3	68.6	74.7	78.3	82	83.5	83.6	85.4	85.9
Free & Reduced Lunch	52.2	56.6	62.6	68.4	72	74.3	75	77.8	78.2
Students with Disabilities	46.4	50.5	52.7	59.8	64.9	67.2	66.8	69.5	68.6
ELL Students	45.1	48.7	55.7	61.6	68.3	69.9	71.2	74.8	75.2
African-American Students	40.9	44.4	51.5	57.2	61.3	63.8	64.2	67.4	67.7
Hispanic	48.1	51.6	59.3	65.2	70.1	72.4	74.2	77.4	77.8
White	70.2	73.6	79.4	83.4	86.3	87.7	87.7	89.1	89.8
American Indian	52.5	58.2	66.5	72.3	74.5	76.8	76.8	79.4	81.4
Multi-Racial	62	64.5	72.2	66	79.7	80.5	81.0	82.2	83
Asian/Pacific Islanders	70.9	74.8	82.4	84.7	88.3	89.5			
Asian							90.5	91.9	92.3
Native Hawaiian/Pacific Islander							80.9	80	86.5

Exhibit 1153 (FY 2003-2011); Exhibit 412 and Exhibit 1230 (FY 2012 Preliminary Data)

60. Statewide Kansas graduation rates have improved, both for all students and in the major student subgroups. Almost universally, the same is true for the four Plaintiff Districts. Starting in the 2010-11 school year graduation rate calculations were changed so that 4-year and 5-year graduation cohort rates were collected and reported.

Although the KSDE Website cautions: “NOTE: Due to changes in the graduation formula, it is imperative that no comparisons be made between graduation data from 2009 and earlier and graduation data from 2010 and beyond because: The 2009-2010 graduation data and beyond uses the Four-Year Adjusted Cohort formula which is significantly different than the NCES and NCLB formulas. The 2002-2003 through 2008-2009 graduation data uses the No Child Left Behind (NCLB) formula. Graduation data available from this site prior to 2002-2003 uses the National Center for Education Statistics (NCES) formula. See http://cpfs.ksde.org/cpfs/custom_rpts5.aspx?display_wait=1. (emphasis supplied)

61. The following tables set out the graduation rates.]

Percentage Graduation Rate on 4-year Cohort

All Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	80.7	63.1	80.6	82.7	59.7
2011-12	83	66.2	82.4	82	62.9
2012-13	84.9	74.1	83.2	84.2	66.8

Free and Reduced Lunch Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	70.1	61.6	72.9	80.1	59.4
2011-12	72.2	70.1	74.3	78.8	62.2
2012-13	76	69.2	76.9	82.6	65.9

Hispanic

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	70.3	59.3	82	78.4	55.1
2011-12	72.9	70.3	81.4	76.2	58.3
2012-13	76.4	70.2	83.8	83.6	63.2

African American

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	66.2	59.9	73.1	80	65.8
2011-12	69	66.2	76.2	75	69.6
2012-13	75.9	73.2	77.8	85.7	71.9

White

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	84.5	65.5	80.8	86.8	51.3
2011-12	85.5	84.5	82	89.3	52.4
2012-13	87.7	74.8	82.6	84	57.3

Percentage Graduation Rate on 5-year Cohort

All Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	75.2	60.2	68.7	77.7	48.3
2011-12	82.1	66.7	80.7	82.8	61.9
2012-13	84.4	69.3	83.2	81.4	66.2

Free and Reduced Lunch Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	63.3	59.2	60.5	72.6	50.2
2011-12	72.2	65.5	73	80.8	62
2012-13	75.3	66.4	75.1	78.3	65.6

Hispanic

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	62.1	52.6	64.3	77.7	46.9
2011-12	72.9	64.3	82	78.9	58
2012-13	75.2	62.1	83.3	76.2	61.3

African American

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	50	58.1	70.8	60.5	53.4
2011-12	69	61.4	73.1	80	67.5
2012-13	74.6	70.5	80	83.3	72.6

White

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	81.1	64.2	75.7	85.7	43.9
2011-12	85.5	68.3	80.9	86.4	53.2
2012-13	87.3	71.1	82.3	86.9	56.9

Ex(s). 1521 at 1, 1523 at 1, 1524 at 1.

62. Kansas schools are preparing more students for college than in the past. Tr., Tallman, at 2734-49; Ex. 131 at 1, 6, 7. Kansas scores for college-bound students rank in the top 10 of all states and have improved over the past 15 years. *Id.* While, ACT Benchmarks are different than the Kansas standards currently in place and thus are not designed for comparison with the Kansas standards, Kansas has a higher percentage of students who meet the ACT College Readiness Benchmarks (“Benchmarks”) than the national average. Ex. 166 at SIG-ACT64.

63. The undisputed fact is that no teacher, school, district, or State – anywhere in the United States or around the world – has found a way to satisfactorily educate *every* student.

64. “Gap” is a term used to describe the difference in scores on assessment tests between groups of students, usually between non-free or reduced lunch white students and the other groups, *e.g.*, Hispanic or African American. Tr., Foster, at 1396. Achievement gaps have always existed and are a national problem. Tr., Neuenswander, at 2123; Tr., Baker, at 1524-26. No school district anywhere has been able to fully close the gaps. *Id.* This fact is not surprising given that social and family background factors generally far beyond a school’s ability to influence achievement gaps. *Id.*

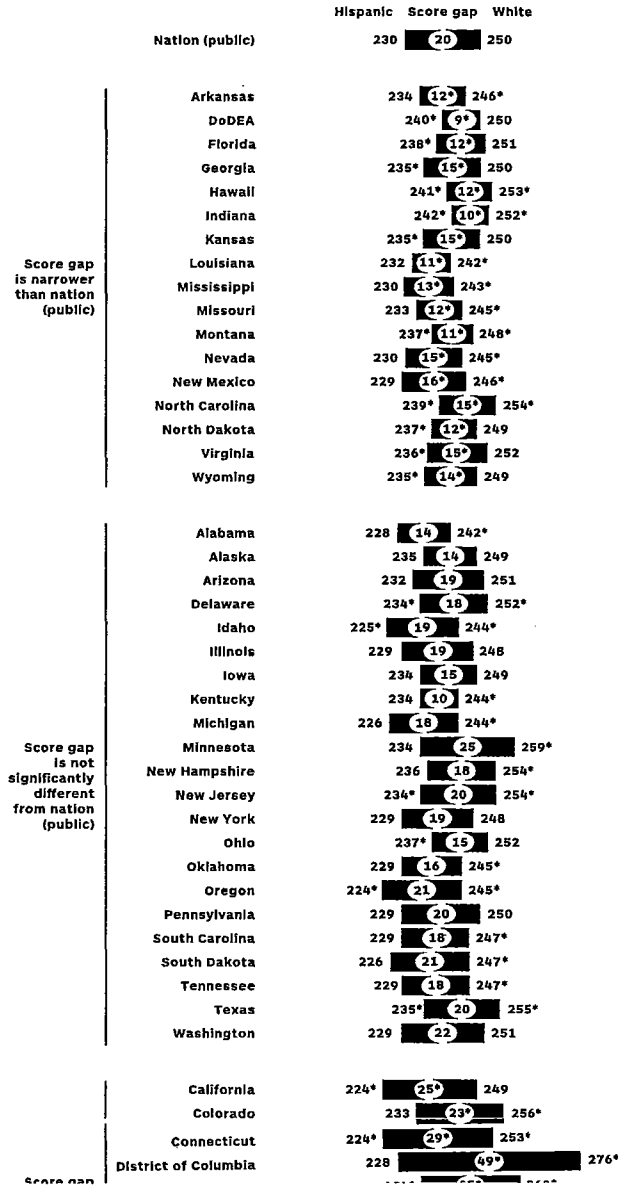
65. The following figures show the test score gaps between Hispanic/White students and African American/White students on NAEP’s 2013 fourth-grade mathematics exam. They illustrate gaps on standardized achievement tests exist and also show the gaps in Kansas are less than the national average.

MATHEMATICS 4TH GRADE

RACE/ETHNICITY

WHITE - HISPANIC

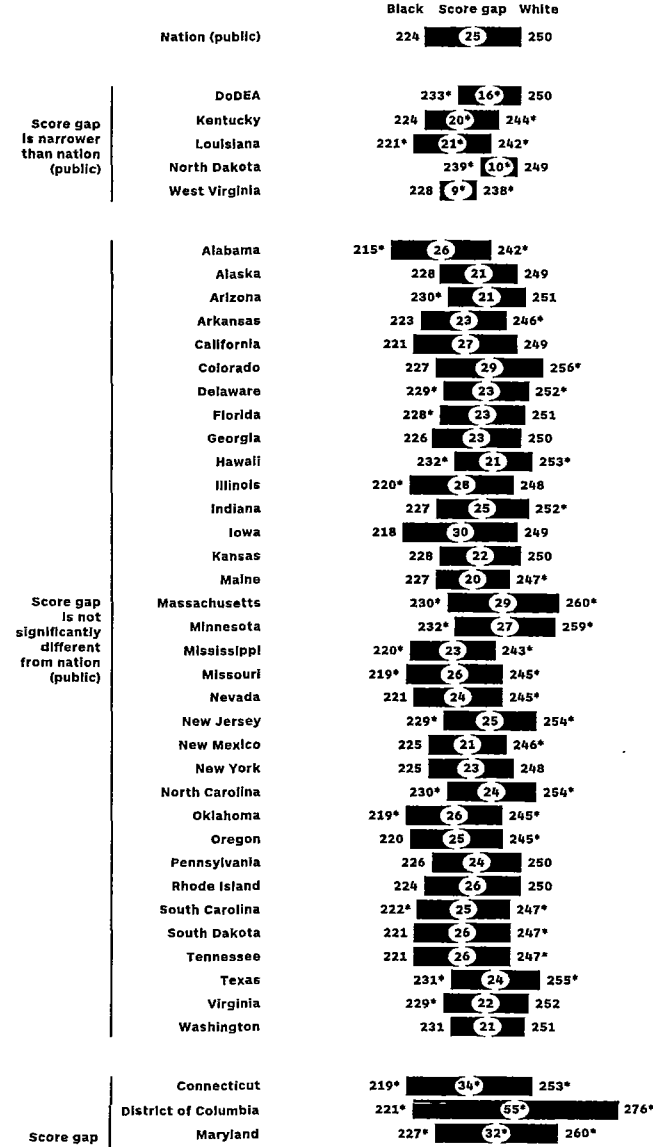
Average scores and score gaps in NAEP mathematics for White and Hispanic fourth-grade public school students, by state/jurisdiction: 2013



MATHEMATICS 4TH GRADE

WHITE - BLACK

Average scores and score gaps in NAEP mathematics for White and Black fourth-grade public school students, by state/jurisdiction: 2013

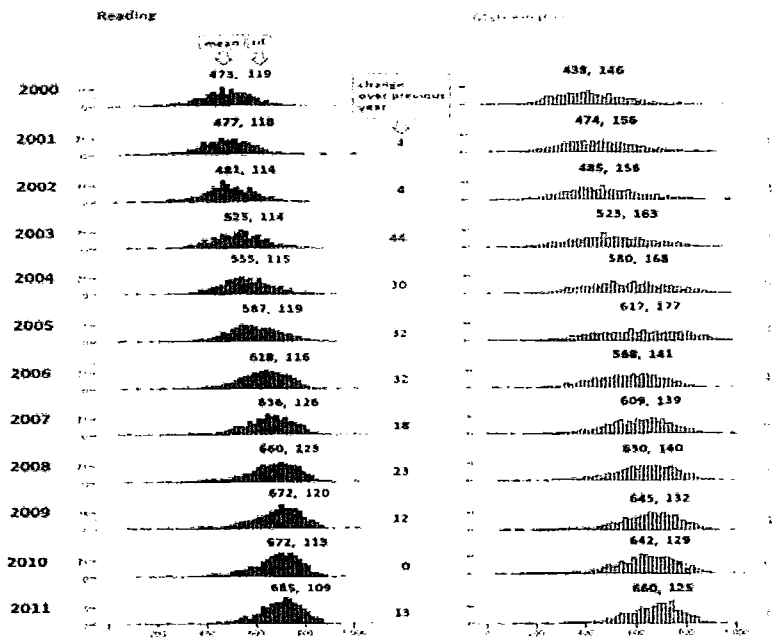


Ex. 1520 at 3, 4, 7, 8.

66. Kansas has made progress in narrowing achievement gaps. R. Vol. 11, p. 1396, ¶ 232. For example, in 2006 every major subgroup was below 65 percent proficient in math. By 2011, every group was above 65 percent and had an average increase of 15 percentage points from 2006. Ex. 131 at KASB319-321; Tr., Tallman, at 1126; Tr. Neuenswander, at 2123. In 2006, every major subgroup was below 70 percent proficient in reading. By 2011, every group was above 70 percent and had increased at least 10 percentage points from 2006. *Id.* The final 2011-12 data was not available at the trial. The Kansas Report Card for 2011-12

shows, by 2012 the proficient percentages of every major subgroup remained above 65 percent in math and 70 percent in reading. Ex. 1523 at 1.

67. When analyzed against the new API, two important conclusions emerge: (1) Kansas test scores within every performance category have *increased* since 2000; and (2) the gap between the lowest performing students and highest performing students *has narrowed*. The API graphs, in Ex. 1300 at 88 [below], show Kansas math and reading assessment test score distributions starting in 2000 through 2011. *Id.* Rightward movement demonstrates improvement on test scores across all categories. *Id.* The clustering proves the gap between students who score the lowest on the tests and students who score the highest is narrowing. *Id.*



68. In January of 2012, the Kansas Association of School Boards ranked Kansas public education among the top 10 of all states in the “all student” and “free and reduced lunch” categories for reading and math, based on NAEP scores for the past several years. Tr., Tallman, 1127-28; Ex. 131 at 2, 4, 5.

69. For the years 2003, 2005, 2007, 2009, 2011 and 2013, Kansas test scores on the National Assessment of Educational Progress (“NAEP”) are higher than the national average, and the scores have also generally improved over those years. Ex(s). 1225 & 1519 & 1521. NAEP administers nationwide assessments to try to determine progress students are making over time. Tr., Foster, at 2673-74. It is often called the Nation’s Report Card. *Id.* Because each state uses different assessment tests, scores on the NAEP tests are the only way to judge how Kansas schools are performing compared to other states. Tr., Hanushek, at 2214-15.

70. At trial the most recent NAEP test results were for 2011. These results were:

- Kansas ranked 7th in the Nation on the 2011 NAEP 4th grade math test for all students. Ex. 1169 at 1.
 - Kansas ranked 11th in the Nation on the 2011 NAEP 8th grade math test for all students. Ex. 1169 at 2.
 - Kansas ranked 4th in the Nation on the 2011 NAEP 4th grade math test for free and reduced lunch students. Ex. 1169 at 3.
 - Kansas ranked 8th in the Nation on the 2011 NAEP 8th grade math test for free and reduced lunch students. Ex. 1169 at 4.
 - Kansas ranked 14th in the Nation on the 2011 NAEP 4th grade reading test for all students. Ex. 1169 at 5.
 - Kansas ranked 20th in the Nation on the 2011 NAEP 8th grade reading test for all students. Ex. 1169 at 6.
 - Kansas ranked 13th in the Nation on the 2011 NAEP 4th grade reading test for free and reduced lunch students. Ex. 1169 at 7.
 - Kansas ranked 13th on the 2011 NAEP 8th grade reading test for free and reduced lunch students. Ex. 1169 at 8.
71. 2013 NAEP results support Kansas Students continue to perform well in comparison to other states.
- The average scores of Kansas, in all of NAEP tests Kansas students took in 2013, exceeded the national average scores.
 - Only 4 states scored better on the 2013 NAEP 4th grade math test for all students.
 - Only 5 states scored better on the 2013 NAEP 8th grade math test for all students.
 - Only 9 states scored better on the 2013 NAEP 8th grade reading test for all students.
 - Only 15 states scored better on the 2013 NAEP 8th grade reading test for all students.
 - The relatively small performance gaps, in comparison to the rest of the nation, between free and reduced lunch students and all students did not significantly change on any of the 2013 tests.

Ex. 1521.

71. Kansas has done even better in statewide comparisons with at-risk students. Tr., Hanushek, at 2217. Kansas students rank in the top for all students and for low-income students, who traditionally have had lower academic performance. Tr., Tallman, at 2217. The poverty students in Kansas are 4th in the Nation in terms of performance compared to other states. Tr., Hanushek, at 2217. In January 2012, the Kansas Association of School Boards ranked Kansas public education in the top 10 of all states in the all student and free and reduced lunch categories for reading and math, based on NAEP scores for the past several years, Tr., Tallman, at 1127-28; Ex. 131 at KASB319, -322-23, finding that Kansas school districts produced these top 10 results with per pupil spending near the national average. *Id.*

72. The Figure 1 below is reprinted from the Kansas Association of School Board's (KASB) website. http://tallmankasb.blogspot.com/2014_05_01_archive.html. It displays a state-by-state comparison on the basis of student performance on various 2012 standardized tests. Kansas is among the highest ranked states; and ranks equal to Missouri and above Nebraska, Colorado and Oklahoma, its surrounding sister-states. Supporting Figures 2-5 for these ratings are also set out below and are found at findthebest website, <http://public-schools.findthebest.com>. The darker the blue, the higher the states' average score.

Figure 1, States' School Ratings

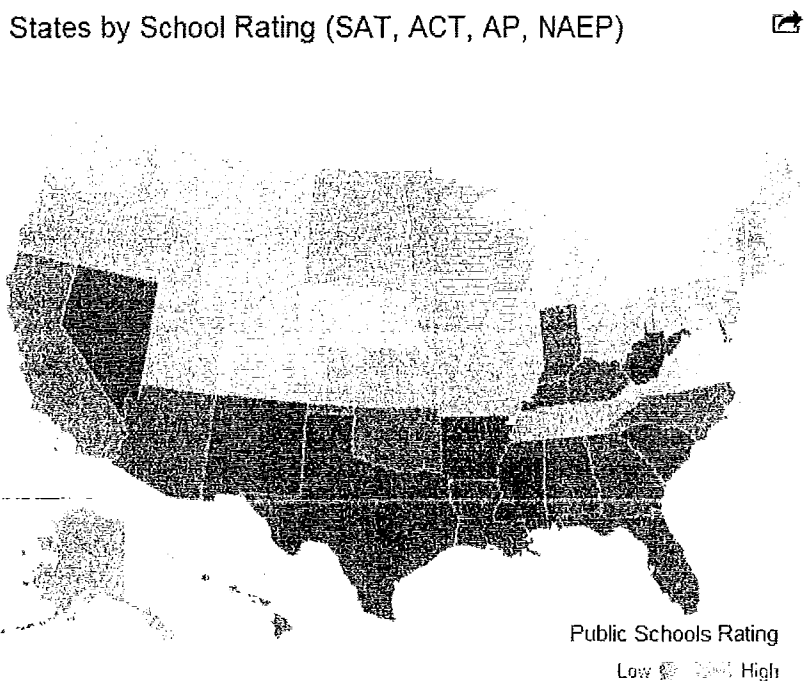


Figure 2, ACT Average Scores

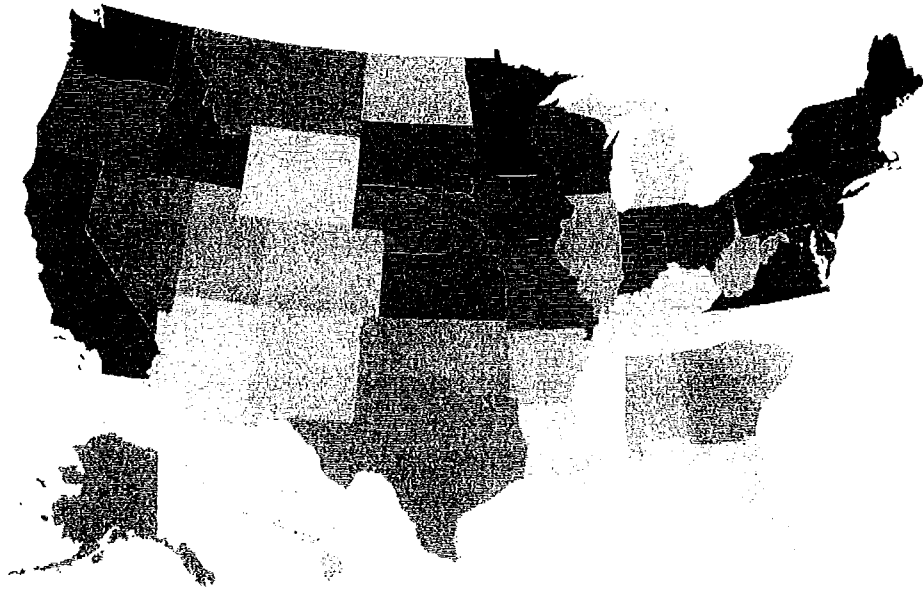


Figure 3, SAT Average Scores

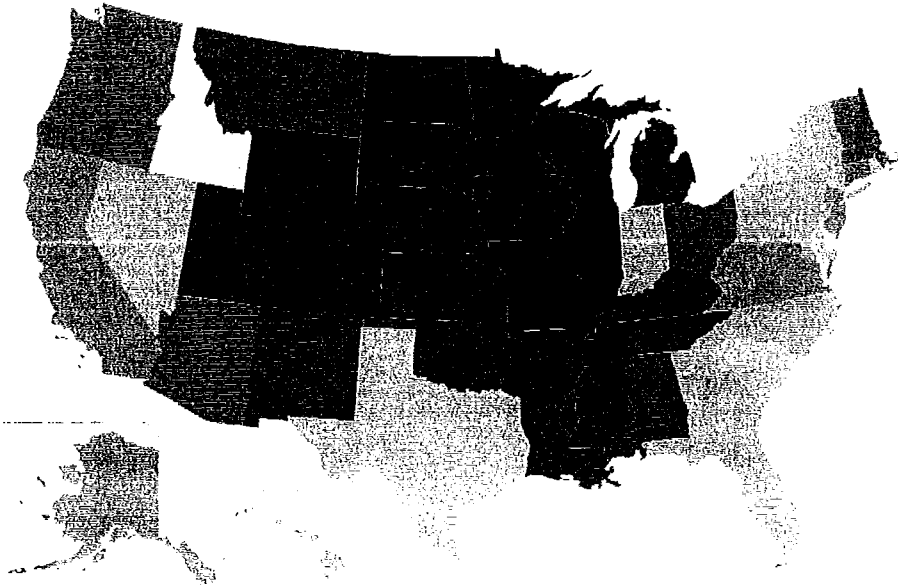


Figure 4, 4th Grade NAEP Assessments

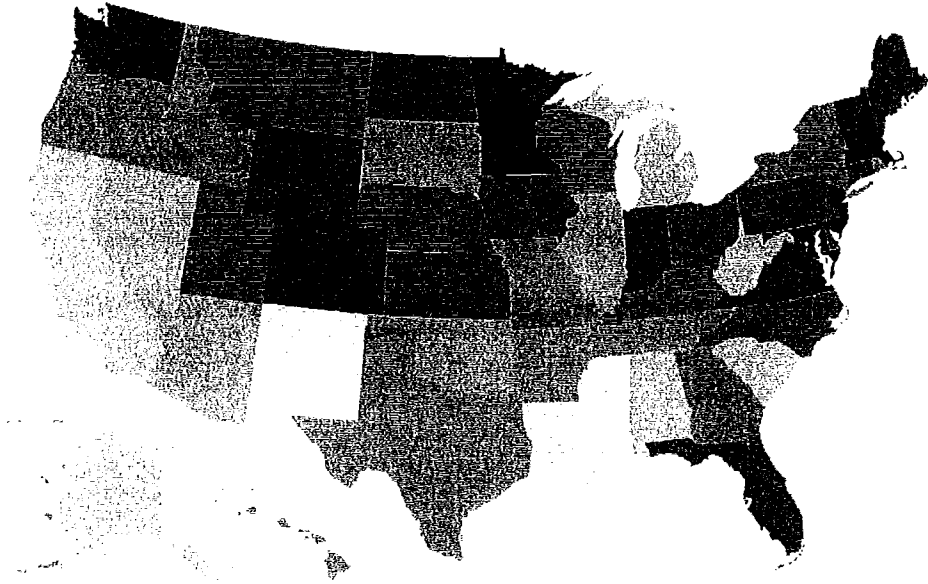
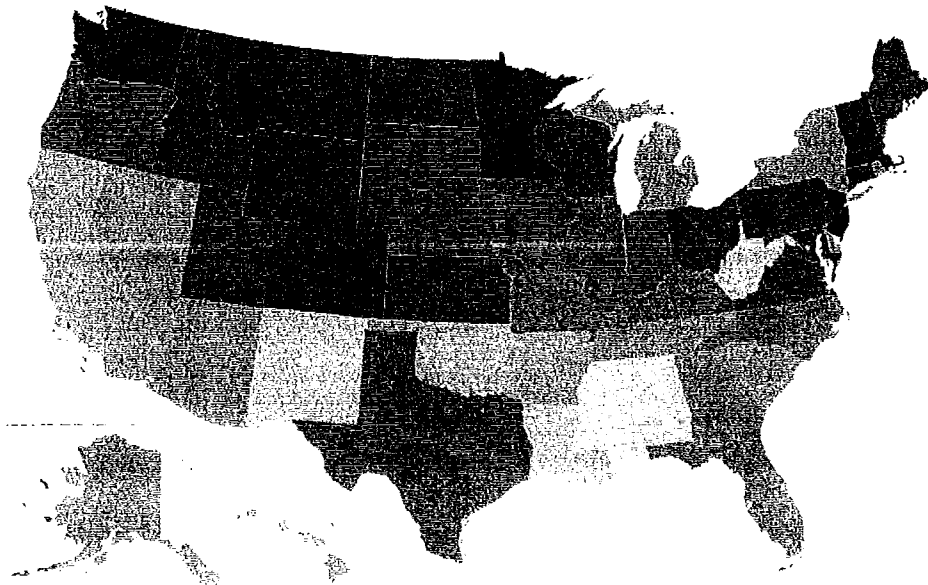


Figure 5, 8th Grade NAEP Assessment



73 None of the evidence presented at trial applies to school programs and staffing after 2012. Most of the “cuts” described in the evidence were to programs and staffing in 2009-10. Very little evidence was presented about the possibility of additional cuts to personnel and programs in the Plaintiff Districts for after FY2012. No state-wide evidence was presented that school districts generally were required to make additional cuts to personnel or programs after FY2011. No evidence has been provided of actual cuts in FY2012, FY2013 or FY2014, or of cuts planned for FY2015.

74. A comparison of FY2009 to FY2014 data (the most recent available) demonstrates that there were more teachers employed by the Plaintiff Districts than before the complained-of “cuts.” The chart below reports the applicable data from the districts’ own budget materials.

2008-2009	FTE Administrators (certified/non-certified)	FTE Teachers (full-time)	FTE Other Certified (licensed) Personnel	FTE Classified Personnel	Budget for substitute and temporary help
Wichita	242.6	3340.4	738.3	2457.5	\$12.5 million
Hutchinson	34	339	71.1	284.1	\$400,000
Dodge City	42	385.4	28	353	\$1 million
Kansas City	133	1527	169	1019	\$3 million

2013-2014	FTE Administrators (certified/non-certified)	FTE Teachers (full-time)	FTE Other Certified (licensed) Personnel	FTE Classified Personnel	Budget for substitute and temporary help
Wichita	229.1	3449.4	734.1	2081.3	\$18.4 million
Hutchinson	29	341	75.3	309.7	\$550,000
Dodge City	53	405	36.8	474	Not reported
Kansas City	124	1653	93	1375	\$2.6 million

Ex(s) 1511, at 11, 1512 at 11, 1513 at 11, 1514 at 11.

75. There have been only modest changes in pupil teacher ratios since the “cuts” to the BSAPP. There is no evidence that the *Rose* goals cannot be satisfied by the modest increases in these ratios.

Pupil Teacher Ratios	2008-2009	2012-2013
State	14.4	15.1
Wichita	15.5	15.6
Hutchinson	15.1	16.2
Dodge City	16.5	15.8
Kansas City	15	16.7

Ex. 1525 at [2013-14] 2, 3, 5, 6, [2008-09] 2, 5, 6.

76. The Plaintiff Districts attempted to keep any “cuts” they made out of the classroom. *See, e.g.,* Tr., Allison, at 2526-27; Tr., Kiblinger, at 3151; Tr., Blakesley, at 2997. KSDE data, which reports district spending by categories,

shows “instructional” category spending – direct spending on classroom education – generally continued to increase after the reductions in the BSAPP. Ex. 1037A. The last available data from FY13 shows \$2,969,190,760 was spent statewide instructional expenditures. This was the highest in Kansas history. *Compare* Ex 1037A to Ex. 1508 at 1. Wichita, instructional spending went from \$286,676,689 in 2008-09 to \$295,744,587 in 2012-13. Ex. 1037 at 6; Ex. 1508 at 2. Wichita budgeted instructional spending in 2013-14 for \$324,987,173. Ex. 1511 at 2. In Hutchinson, instructional spending went from \$27,245,024 in 2008-09 to \$29,219,016 in 2012-13. Ex. 1037 at 13; Ex. 1508 at 5. Hutchinson budgeted instructional spending in 2013-14 for \$36,262,988. Ex. 1512 at 2. In Dodge City, instructional spending went from \$36,020,253 in 2008-09 to \$38,666,897 in 2012-13. Ex. 1037 at 21; Ex. 1508 at 6. Dodge City budgeted instructional spending in 2013-14 for \$44,948,604. Ex. 1513 at 2. In Kansas City, instructional spending went from \$134,157,945 in 2008-09 to \$128,848,175 in 2012-13. Ex. 1037 at 28; Ex. 1508 at 7. Kansas City budgeted instructional spending in 2013-14 for \$183,409,105. Ex. 1514 at 2.

77. Since 1997, average Kansas administrator and teacher salaries, with benefits, have steadily increased each year with the single exception being the average superintendent salaries declined .69% in 2010-2011. This is shown in the following KSDE tables.

Table I: State Average Classroom Teachers' Salary

School Year	Average Salary for Classroom Teachers	Average Extra Pay (Supplemental & Summer School Salaries)	Average Fringe Benefits	TOTAL Average Salary (Including Salary + Supplemental & Summer School Salaries + Fringe Benefits)	Total Salary Percentage Increase from prior year
1997-1998	33,579	1,296	1,336	36,211	2.16%
1998-1999	34,369	1,601	1,536	37,507	2.74
1999-2000	35,953	1,666	1,669	39,288	3.26
2000-2001	35,794	1,753	1,862	39,409	2.86
2001-2002	37,099	1,854	2,223	41,176	4.47
2002-2003	38,030	1,888	2,640	42,558	3.37
2003-2004	38,830	1,912	2,921	43,663	2.61
2004-2005	39,351	1,924	3,146	44,421	2.20
2005-2006	40,467	2,122	3,462	46,051	3.92
2006-2007	43,318	2,260	3,674	49,252	4.68
2007-2008	44,745	2,310	3,864	50,919	3.48
2008-2009	46,234	2,312	4,166	52,712	3.42
2009-2010	46,660	2,419	4,324	53,398	0.90
2010-2011	46,585	2,086	4,574	53,247	0.11
2011-2012	46,723	2,175	4,804	53,702	0.85
*2012-2013	47,361	2,127	4,935	54,423	1.82

State Average Classroom Teachers' Salary

(including Supplemental and Summer School Salaries and Fringe Benefits)

School Year	Low	Median	High	FTE - Total Teachers
2001-2002	24,840	38,584	46,924	35,740
2002-2003	26,551	39,639	51,551	36,085.1
2003-2004	26,909	40,722	53,736	35,420.6
2004-2005	27,059	41,678	53,955	35,596.7
2005-2006	33,192	43,485	57,210	36,741.0
2006-2007	33,809	44,987	58,864	38,143.5
2007-2008	39,344	46,710	60,866	38,767.7
2008-2009	32,993	48,257	63,666	39,232.8
2009-2010	30,636	48,756	66,701	38,510.3
2010-2011	34,067	48,984	66,483	38,027.0
2011-2012	34,420	49,040	65,443	37,570.0
*2012-2013	33,961	49,750	66,899	37,906.0

*Contracted

See next page for definitions of column headings.

Ex. 1526.

Table I: State Average Principals' Salary

School Year	Average Salary	Average Fringe Benefits	Average Salary (with fringe benefits)	Percentage increase (salary with fringe benefits)
1997-1998	55,081	2,010	57,049	2.73%
1998-1999	57,121	2,010	59,130	3.65
1999-2000	58,879	2,265	61,144	3.44
2000-2001	60,743	2,599	63,342	3.59
2001-2002	62,763	2,985	65,748	3.80
2002-2003	64,469	3,455	67,924	3.30
2003-2004	65,986	3,898	69,884	2.86
2004-2005	67,484	4,161	71,645	2.55
2005-2006	69,499	4,354	73,853	3.07
2006-2007	73,351	4,575	77,927	4.22
2007-2008	76,449	4,763	80,882	3.79
2008-2009	78,510	5,256	83,767	3.57
2009-2010	79,473	5,383	84,856	1.32
2010-2011	79,202	5,909	85,192	-0.57
2011-2012	79,546	6,374	85,920	0.61
*2012-2013	80,934	6,339	87,272	1.82

Average Principals' Salary (including Fringe Benefits)

School Year	Low	Median	High
2001-2002	16,500	30,128	93,256
2002-2003	36,240	63,050	96,314
2003-2004	30,000	64,009	98,083
2004-2005	30,000	66,858	99,966
2005-2006	30,000	68,358	102,763
2006-2007	30,000	70,978	103,693
2007-2008	30,000	72,511	108,884
2008-2009	54,843	76,035	115,103
2009-2010	39,882	78,073	110,727
2010-2011	35,528	77,965	118,569
2011-2012	38,528	79,088	116,578
*2012-2013	33,423	79,935	117,811

*Contracted

Ex. 1527.

Average Superintendent Salary

School Year	Average Superintendent Salary (with supplemental and fringe benefits)	Percentage Change
1997-1998	\$72,341	3.96
1998-1999	\$74,959	3.62
1999-2000	\$77,474	2.86
2000-2001	\$78,662	2.02
2001-2002	\$81,730	3.90
2002-2003	\$83,920	2.68
2003-2004	\$86,222	2.44
2004-2005	\$88,503	2.98
2005-2006	\$90,192	1.9
2006-2007	\$95,544	5.60
2007-2008	\$98,313	2.9
2008-2009	\$103,258	5.03
2009-2010	\$105,638	2.29
2010-2011	\$104,966	-0.69
2011-2012	\$107,280	2.16
*2012-2013	\$108,893	1.02

State Average Superintendent Salaries

School Year	Low	Median	High
1997-1998	4,266	59,891	173,253
1998-1999	15,408	71,731	179,257
1999-2000	19,090	73,810	187,436
2000-2001	5,000	75,904	202,153
2001-2002	19,800	78,350	211,200
2002-2003	36,300	80,240	225,879
2003-2004	30,000	82,630	232,838
2004-2005	13,350	84,566	240,413
2005-2006	7,250	88,000	249,700
2006-2007	5,880	91,373	265,048
2007-2008	20,000	92,783	267,354
2008-2009	11,487	97,255	304,092
2009-2010	34,391	97,188	287,200
2010-2011	15,000	98,600	274,890
2011-2012	12,500	100,000	275,000
*2012-2013	41,500	102,348	279,002

*Contracted

Ex. 1528.

78. While the Panel accepted general opinion testimony that districts were confronted with increased economic demands, it now makes no findings quantifying the increase or its impact on whether any single district, including the Districts, could meet accreditation and its associated requirements. *E.g.*, Initial Opinion at 169. No evidence was presented that tended to establish a range or dollar amount of the alleged increase in costs to either any local district or state-wide. In fact, no evidence was presented on whether adoption of Common Core Standard or other parts of the NCLB Waiver would cause districts to incur expense significantly beyond already budgeted, planned expense for replacement of class room materials or professional development. DeBacker Depo. at 77-78; Tr., Mather, at 453; Tr., Schaeffer, at 1803; Ex(s). 1021-1028.

79. The Panel found that “[w]hile evidence has been presented about the likely increases in costs to be brought to our school system due to increased standards and the State’s Waiver from the No Child Left Behind Act, exactly what those exact costs are likely to be has *not* been presented to us.” Initial Opinion at 236.

80. Costs associated with implementation of the Kansas Waiver, CCS and Regents’ admission requirements are tied together. The Waiver adopted continued compliance with the CCS. The CCS is designed to provide students with the required knowledge and skills to be “college or career ready” upon graduation. Tr., Neuenswander, at 2084. The Board of Regents committed to allowing high school graduates who score proficient or above in subjects on Kansas assessment tests aligned with the CCS to immediately take credit courses in those subjects. DeBacker Depo. at 68-69; Ex. 1300, Attachment 5.

81. After the trial, the LPA completed a study estimating potential costs related to the implementation of the Kansas Waiver. That study concluded all local districts together are likely to incurred only between \$15 million and \$25 million in real (additional expense above currently budgeted funds) or opportunity (other professional training deferred or replaced) costs to implement the Waiver in FY2015. Ex. 1504 at 15. The cumulative total, most of which has already been incurred, was estimated at \$32 million to \$60 million in real or opportunity costs through FY2015. *Id.* at 9.

82. In its Initial Opinion, the Panel did not find any increase in demands on local districts that was unaccounted for by the SDFQPA, as a result of changing student demographics. Rather, under the school finance formulas more funds are provided to local districts for every increase in student enrollment. The BSAPP is only the starting point for application of weightings to arrive at a school district’s General Fund balance. Initial Opinion at 88-89.

83. The following tables summarize some of the data from the Plaintiff Districts’ draft 2014-2015 budget documents. These tables were submitted to the Panel in August of 2104 before the final budget documents were passed and submitted to the KSDE. Final budgets are now available, but are not part of the record. The tabled contrast current funding levels with the districts’ expenditures in 2008-2009, reported both in actual and 2015 dollars.

Table 1 – USD 259 (Wichita)

	Est. 2014-2015 ³	Actual 2013-2014	Actual 2008-2009 ⁴	Actual 2008-2009 in 2015 dollars ⁵
Total Expenditures	\$680.12 million	\$623.62 million	\$573.94 million	\$650.76 million
Instructional Expenditures	\$341.99 million	\$313.82 million	\$293.70 million	\$333.01 million
Total Estimated Local Tax Rates (mills)	53.619	57.215	53.309	
Estimated Rate (mills): Supplemental General	16.139	25.200	20.411	
Estimated Rate (mills): Capital outlay	8	4.254	7	
Total Expenditures Per Pupil	\$13,753	\$12,687	\$12,332	\$13,983
Total Expenditure Per Pupil Current Expenditures	\$12,016	\$11,388	Not reported	
# Full Time Equivalent Teachers	3,492	3,451	3,340.4	
Average Teacher Salary	\$59,486	\$57,858	\$58,466	

³ Exhibit 1530 and Exhibit 1531.

⁴ Exhibit 214, pp. 290-98.

⁵ The 2015 dollar calculations in this document used the on-line U.S. Bureau of Labor Statistics “CPI inflation calculator,” <http://data.bls.gov/cgi-bin/cpicalc.pl>, to arrive at a 2014 figure and then added 2.1 percent based on the Kansas Division of the Budget and Kansas Legislative Research Department 2015 inflation estimate.

Table 2 - USD 308 (Hutchinson)

	Est. 2014-2015 ⁶	Actual 2013-2014	Actual 2008-2009 ⁷	Actual 2008-2009 in 2015 dollars
Total Expenditures	\$68.58 million	\$60.04 million	\$53.4 million	\$60.55 million
Instructional Expenditures	\$38.26 million	\$33.60 million	\$29.33 million	\$33.25 million
Total Estimated Local Tax Rates (mills)	52.102	60.183	45.850	
Estimated Rate (mills): Supplemental General	13.426	22.871	15.120	
Estimated Rate (mills): Capital outlay	4	3.957	3.9	
Total Expenditures Per Pupil	\$14,133	\$12,372	\$11,759	\$13,333
Total Expenditure Per Pupil Current Expenditures	\$12,136	\$10,984	Not reported	
# Full Time Equivalent Teachers	340	340	343	
Average Teacher Salary	\$54,618	\$53,790	\$52,008	

⁶ Exhibit 1532

⁷ Exhibit 218, pp. 260-68.

Table 3 - USD 443 (Dodge City)

	Est. 2014-2015 ⁸	Actual 2013-2014	Actual 2008-2009 ⁹	Actual 2008-2009 in 2015 dollars
Total Expenditures	\$90.84 million	\$81.7 million	\$71.40 million	\$80.96 million
Instructional Expenditures	\$47.34 million	\$43.37 million	\$38.02 million	\$43.11 million
Total Estimated Local Tax Rates (mills)	56.998	60.616	56.778	
Estimated Rate (mills): Supplemental General	16.618	30.446	19.73	
Estimated Rate (mills): Capital outlay	8	.35	3.997	
Total Expenditures Per Pupil	\$14,212	\$13,195	\$11,903	\$13,496
Total Expenditure Per Pupil Current Expenditures	\$12,386	\$11,572	Not reported	
# Full Time Equivalent Teachers	415	405	385.4	
Average Teacher Salary	\$51,822	\$50,025	\$52,443	

⁸ Exhibit 1533.

⁹ Exhibit 224, pp. 180-88.

Table 4 - USD 500 (Kansas City)

	Est. 2014-2015 ¹⁰	Actual 2013-2014	Actual 2008-2009 ¹¹	Actual 2008-2009 in 2015 dollars
Total Expenditures	\$433.37 million	\$389.846 million	\$300.76 million	\$341.01 million
Instructional Expenditures	Not Available	Not Available [estimated \$183.41 million ¹²]	\$163.45 million	\$185.33 million
Total Estimated Local Tax Rates (mills)	49.204	60.204	53.441	
Estimated Rate (mills): Supplemental General	13.414	30.994	21.781	
Estimated Rate (mills): Capital outlay	8	4.476	3.97	
Total Expenditures Per Pupil	Not Available	Not Available [estimated \$18,006]	\$16,322	\$18,506.74
Total Expenditure Per Pupil Current Expenditures	Not Available	Not Available [estimated \$15,251]	Not reported	
# Full Time Equivalent Teachers	Not Available	Not Available	1,527	
Average Teacher Salary	Not Available	Not Available	\$53,714	


¹⁰ Exhibit 1534.

¹¹ Exhibit 228, pp. 180-91.

¹² Exhibit 1514.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

By: 
Derek Schmidt, KS Sup. Ct. No. 17781

Attorney General of Kansas

Jeffrey A. Chanay, KS Sup. Ct. No. 12056

Chief Deputy Attorney General

Stephen R. McAllister, KS Sup. Ct. No. 15845

Solicitor General of Kansas

M. J. Willoughby, KS Sup. Ct. No. 14059

Assistant Attorney General

Memorial Bldg., 2nd Floor

120 SW 10th Avenue

Topeka, Kansas 66612-1597

Tel: (785) 296-2215

Fax: (785) 291-3767

E-mail: jeff.chanay@ag.ks.gov

stevermac@fastmail.fm

mj.willoughby@ag.ks.gov

and

HITE, FANNING & HONEYMAN, LLP

Arthur S. Chalmers, KS Sup. Ct. No. 11088

Gaye B. Tibbets, KS Sup. Ct. No. 13240

Jerry D. Hawkins, KS Sup. Ct. No. 18222

Rachel E. Lomas, KS Sup. Ct. No. 23767

100 North Broadway, Suite 950

Wichita, Kansas 67202

Tel: (316) 265-7741

Fax: (316) 267-7803

E-mail: chalmers@hitefanning.com

tibbets@hitefanning.com

hawkins@hitefanning.com

lomas@hitefanning.com

Attorneys for the State of Kansas

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of January, 2015, a true and correct copy of the above and foregoing was mailed, postage prepaid, and delivered by electronic mail to:

Mr. Alan L. Rupe
Kutak Rock LLP
1605 N. Waterfront Pkwy, Ste. 150
Wichita, KS 67206

Mr. John S. Robb
Somers, Robb & Robb
110 East Broadway
Newton, KS 67114-0544

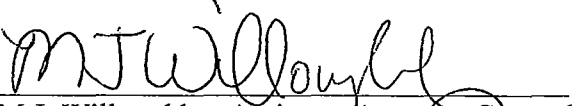
Attorneys for Plaintiffs

And was mailed, postage prepaid, to:

The Honorable Franklin R. Theis
Shawnee County District Court
200 S.E. 7th Street, Room 324
Topeka, KS 66603

The Honorable Robert J. Fleming
Labette County District Court
201 South Central Street
Parsons, KS 67357

The Honorable Jack L. Burr
Sherman District Court
813 Broadway, Room 201
Goodland, KS 67735



M.J. Willoughby, Assistant Attorney General