IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
CIVIL DEPARTMENT

LUKE GANNON, ANDREW GANNON, and GRACE GANNON, by their next friends and guardians, Jeff and Meredith Gannon; JADA BURGESS and JETT BURGESS, by their next friend and guardian, Andrea Burgess; OLIVIA KENNEDY, by next friend and guardian, Jennifer Kennedy; COLTEN OAKMAN, by next friend and guardian, Schelena Oakman; CAMERON PINT, by next friend and guardian, Martha Pint; ALEXIS SEEBER and BRADY SEEBER, by their next friends and guardians, David and Misty Seeber; LEVI CAIN, by next friends and guardians, John and Becky Cain; JEREMY COX, by next friends and guardians, Darrin and Lois Cox; ALEC ELDREDGE, by next friends and guardians, Danie and Josh Eldredge; JOSEPH HOLMES, by next friends and guardians, Jim and Joy Holmes; LILY NEWTON, by next friends and guardians, Matt and Ivy Newton; ALEXANDER OWEN, by next friend and guardian, Glenn Owen; MIKE RANK, by next friend and guardian, Ryan Rank; QUANTEZ WALKER, by next friend and guardian, Beulah Walker; MARIXSA ALVAREZ, by next friend and guardian, Bianca Alvarez; PRISCILLA DEL REAL and VALERIA DEL REAL, by their next friend and guardian, Norma Del Real; TONATIUH FIGUEROA, by next friend and guardian, Adriana Figueroa; DULCE HERRERA, GISELLA HERRERA, and KAROL HERRERA, by their next friend and guardian, Eva Herrera; MIQUELA SHOTGUNN, by next friend and guardian, Rebecca Fralick; ALEXI TRETO, by next friend and guardian, Consuelo Treto; TED BYNUM, by next friend and guardian, Melissa Bynum; BRIEANNA CROSBY, by next friends and guardians, Evette Hawthorne-Crosby and Bryant Crosby; GEORGE MENDEZ, by next friends and guardians, George and Monica Mendez; AMALIA MURGUIA, by next friends and guardians, Sally and Ramon Murguia; NATALIE WALTON, by next friend and guardian, Clara Osborne; UNIFIED SCHOOL DISTRICT NO. 259; UNIFIED SCHOOL DISTRICT NO. 308; UNIFIED SCHOOL DISTRICT NO. 443; and UNIFIED SCHOOL DISTRICT NO. 500,

Plaintiffs,

v.

THE STATE OF KANSAS,

Defendant.

Case No.

PETITION

COMES NOW, the Plaintiffs, in the above-captioned matter, and for their Petition against Defendant, state and allege as follows:

Parties

1. Plaintiff Luke Gannon, by next friends and guardians, Jeff and Meredith Gannon, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
2. Plaintiff Andrew Gannon, by next friends and guardians, Jeff and Meredith Gannon, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
3. Plaintiff Grace Gannon, by next friends and guardians, Jeff and Meredith Gannon, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
4. Plaintiff Jada Burgess, by next friend and guardian, Andrea Burgess, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
5. Plaintiff Jett Burgess, by next friend and guardian, Andrea Burgess, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
6. Plaintiff Olivia Kennedy, by next friend and guardian, Jennifer Kennedy, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
7. Plaintiff Colten Oakman, by next friend and guardian, Schelena Oakman, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
8. Plaintiff Cameron Pint, by next friend and guardian, Martha Pint, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.

9. Plaintiff Alexis Seeber, by next friends and guardians, David and Misty Seeber, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
10. Plaintiff Brady Seeber, by next friends and guardians, David and Misty Seeber, is a student attending public school at U.S.D. 259 and is a citizen and resident of the State of Kansas.
11. Plaintiff Levi Cain, by next friends and guardians, John and Becky Cain, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
12. Plaintiff Jeremy Cox, by next friends and guardians, Darrin and Lois Cox, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
13. Plaintiff Alec Eldredge, by next friends and guardians, Danie and Josh Eldredge, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
14. Plaintiff Joseph Holmes, by next friends and guardians, Jim and Joy Holmes, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
15. Plaintiff Lily Newton, by next friends and guardians, Matt and Ivy Newton, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
16. Plaintiff Alexander Owen, by next friend and guardian, Glenn Owen, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
17. Plaintiff Mike Rank, by next friend and guardian, Ryan Rank, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
18. Plaintiff Quantez Walker, by next friend and guardian, Beulah Walker, is a student attending public school at U.S.D. 308 and is a citizen and resident of the State of Kansas.
19. Plaintiff Marixsa Alvarez, by next friend and guardian, Bianca Alvarez, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.

20. Plaintiff Priscilla Del Real, by next friend and guardian, Norma Del Real, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
21. Plaintiff Valeria Del Real, by next friend and guardian, Norma Del Real, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
22. Plaintiff Tonatiuh Figueroa, by next friend and guardian, Adriana Figueroa, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
23. Plaintiff Dulce Herrera, by next friend and guardian, Eva Herrera, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
24. Plaintiff Gisella Herrera, by next friend and guardian, Eva Herrera, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
25. Plaintiff Karol Herrera, by next friend and guardian, Eva Herrera, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
26. Plaintiff Miquela Shotgunn, by next friend and guardian, Rebecca Fralick, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
27. Plaintiff Alexi Treto, by next friend and guardian, Consuelo Treto, is a student attending public school at U.S.D. 443 and is a citizen and resident of the State of Kansas.
28. Plaintiff Ted Bynum, by next friend and guardian, Melissa Bynum, is a student attending public school at U.S.D. 500 and is a citizen and resident of the State of Kansas.
29. Plaintiff Brieanna Crosby, by next friends and guardians, Evette Hawthorne-Crosby and Bryant Crosby, is a student attending public school at U.S.D. 500 and is a citizen and resident of the State of Kansas.

30. Plaintiff George Mendez, by next friends and guardians, George and Monica Mendez, is a student attending public school at U.S.D. 500 and is a citizen and resident of the State of Kansas.
31. Plaintiff Amalia Murguia, by next friends and guardians, Sally and Ramon Murguia, is a student attending public school at U.S.D. 500 and is a citizen and resident of the State of Kansas.
32. Plaintiff Natalie Walton, by next friend and guardian, Clara Osborne, is a student attending public school at U.S.D. 500 and is a citizen and resident of the State of Kansas.
33. Plaintiffs identified in Paragraphs 1 - 32 are collectively referred to as the "Individual Plaintiffs."
34. Plaintiff Unified School District No. 259 ("U.S.D. 259") is a school district formed pursuant to state law and is located in Wichita, Kansas.
35. Plaintiff Unified School District No. 308 ("U.S.D. 308") is a school district formed pursuant to state law and is located in Hutchinson, Kansas.
36. Plaintiff Unified School District No. 443 ("U.S.D. 443") is a school district formed pursuant to state law and is located in Dodge City, Kansas.
37. Plaintiff Unified School District No. 500 ("U.S.D. 500") is a school district formed pursuant to state law and is located in Kansas City, Kansas.
38. Plaintiffs U.S.D. 259, U.S.D. 308, U.S.D. 443, and U.S.D. 500 (collectively, the "Plaintiff School Districts") each posses the power to sue and be sued pursuant to state statute.
39. Individual Plaintiffs and Plaintiff School Districts (collectively, the "Plaintiffs") have standing to bring this claim.

40. Defendant State of Kansas is a state governmental entity and may be served with process by serving Kansas Attorney General, Steve Six, at Memorial Hall, 2nd Floor; 120 SW 10th Street; Topeka, Kansas 66612.

Jurisdiction and Venue

41. This court possesses original jurisdiction over Plaintiffs' claims arising under the Kansas Constitution, pursuant to K.S.A. 20-301.

42. Venue is proper in this court and in Shawnee County, pursuant to K.S.A. 60-602(2) and K.S.A. 72-64b04.

43. Plaintiffs complied with the requirements of K.S.A. 72-64b02(a) and properly filed a Notice of Claims with the required parties on June 17, 2010. [*See generally* Exhibit 1: Notice of Claims, incorporated completely and fully herein by reference].

Relevant Facts

44. Efforts to compel the Legislature to provide adequate funding for education through litigation began in Kansas as early as 1972. [*See* Exhibit 1: Notice of Claims, at 8].

45. Despite extensive efforts to compel the Legislature's compliance with the Constitution, the Legislature has continuously evaded its duties by adopting new legislation, the only purpose of which is to end the litigation, and not remedy the problems underlying the school funding scheme. [*See* Exhibit 1: Notice of Claims, at 11].

46. The Legislature is fully aware that adopting new school funding schemes mid-litigation does little other than to put the issue "beyond the reach of the Supreme Court in the school finance case." [*See* Exhibit 1: Notice of Claims, at 11; *see also* Exhibit 2: Kansas State Board of Education Special Meeting Minutes, July 5, 2005, pg. 1].

47. The State of Kansas currently funds its public schools, grades K-12, through various statutes, including the School District Finance and Quality Performance Act, K.S.A. 72-6405, *et seq.* Pursuant to these statutes, all public school districts in Kansas are allotted funds to operate their educational programs according to the statutory funding formula.

48. The current funding scheme exists in its present form in large part due to litigation in the *Mock v. Kansas*, Case No. 91-CV-1009, slip op. at 491 (Kan. Dist. Ct. Shawnee Co., Oct. 14, 1991, *Unified School District Number 229 v. State,* 256 Kan. 232 (1994), and the *Montoy v. State of Kansas* line of cases. [*See* Exhibit 1: Notice of Claims, at 9-10].

49. Under the current funding formula, each public school district receives a set amount of money per student enrolled in the district ("base state aid per pupil" or "BSAPP").

50. The Legislature set the BSAPP at $4492 for the 2009-10 fiscal year, an amount of state aid that it determined was adequate to properly fund education in Kansas.

51. Defendant, through the actions of the Governor and the Legislature have, in tandem, reduced the BSAPP to $4012 for the 2010-11 fiscal year, through the following legislative acts and budget allotments:

    a. The enactment of S.B. 23 on February 12, 2009, which cut thirty-three dollars from the BSAPP (lowering the base from $4433 to $4400), and reduced the funding for special education by one percent. This cut reduced school funding statewide in the amount of $25,345,039 for fiscal year 2009. [*See* Exhibit 1: Notice of Claims, at 13].

    b. The March 31, 2009 enactment of H.B. 2354, which cut an *additional* $33 from the BSAPP (lowering it from $4400 to $4367), and cut an *additional* one percent from the special education budget. This cut reduced school funding statewide in the amount of $27,009,474. [*See* Exhibit 1: Notice of Claims, at 13].

c. The enactment of H.B. 2373 on May 7, 2009, which cut another $87 from the BSAPP (lowering it from $4367 to $4280), and purported to eliminate equalization aid for capital outlay. This cut reduced school funding statewide in the amount of $54,630,111 for the cut to the base, and an additional $22,338,825 for the loss of capital outlay equalization aid. [*See* Exhibit 1: Notice of Claims, at 13].

d. Governor Mark Parkinson's approval of a budget allotment, which cut an *additional* $39,327,580 from school funding on July 2, 2009. The budget allotment cut another $62 from the BSAPP, lowering it from $4280 to $4218. [*See* Exhibit 1: Notice of Claims, at 13].

e. Governor Mark Parkinson's approval of a second budget allotment on November 23, 2009, which cut another $206 from the BSAPP, lowering it from $4218 to $4012. This budget allotment cut an *additional* $134,355,363 from school funding. [*See* Exhibit 1: Notice of Claims, at 13].

Count One: Suitability of Funding Under the Kansas Constitution

52. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-51 above as though fully set out herein.

53. Article 6 of the Kansas Constitution compels the legislature to provide for the educational interests of the State of Kansas and further commands it to make suitable provision for the financing of said educational interests.

54. When the Legislature enacted S.B. 549, it enacted an unconstitutional funding scheme that did not properly fund Kansas education.

55. With the Legislature's continued legislative enactments and the Governor's budget allotments, the Defendant has further reduced the total amount of state aid, from an already unconstitutional level to an even lower level.

56. The Kansas Constitution imposes a general mandate that our educational system cannot be static or regressive, but must be one which "advance[s] to a better quality or state." *Montoy v. State of Kansas*, 278 Kan. 769, 773, 120 P.3d 306 (2005) (*Montoy II*). By reducing the BSAPP from $4492 to $4012, the Defendant has failed to meet this constitutional duty. [*See* Exhibit 1: Notice of Claims, at 12-13].

57. Two critical factors which must be taken into consideration before a school finance formula can be deemed constitutional are (1) actual costs of providing adequate education and (2) equity of distribution. *Montoy II*, 278 Kan. at 275; *Montoy v. State of Kansas*, 282 Kan. 9, 10, 138 P.3d 75 (2006) (*Montoy V*). [*See* Exhibit 1: Notice of Claims, at 11].

58. The actual costs of providing an adequate education to Kansas school children has increased. [*See* Exhibit 1: Notice of Claims, at 13, 15].

    a. The Legislative Post Audit study (which was used as a basis for the accepted formula in *Montoy V*), was updated by the Legislature in the summer of 2008 to show that Kansas schools need an *additional* $635.9 million to be adequately funded for 2010-11. [*See* Exhibit 1: Notice of Claims, at Exhibit K, pg. 4].

    b. The Kansas State Board of Education, at its July 15, 2009 meeting, reviewed school funding levels. Upon motion duly made, seconded, and carried, by a vote of 8-1, the State Board voted to recommend that the Legislature replace the cut funding and return the Base to its statutory level of $4492. This motion requested a $281,780,223

increase in school funding. [*See* Exhibit 1: Notice of Claims, at Exhibit J, pg. 3]. Defendant did not do so.

c. The Kansas State Board of Education, at its July 13, 2010 meeting, reviewed school funding levels. Upon motion duly made, seconded, and carried, by a vote of 7-1-1, the State Board voted to recommend that the Legislature replace the cut funding and return the Base to its statutory level of $4492. This motion requested a $471,761,017 increase in school funding. Defendant did not do so. [*See* Exhibit 3: Kansas State Board of Education Meeting Minutes, July 13, 2010, pg. 3].

d. Defendant has a duty to educate students and comply with the No Child Left Behind Act of 2001, as amended ("NCLB"), and the Individuals with Disabilities Education Act, as amended ("IDEA"), including the Individuals with Disabilities Improvement Act of 2004 ("IDEIA") (collectively, the "Federal Requirements"). It is the Legislature's duty to ensure that the current funding level is high enough so that school districts can properly educate children to meet these Federal Requirements. The standards of these Federal Requirements continue to increase (with a 100% target for 2013-2014), which has increased the costs of funding an adequate education. [*See* Exhibit 4: Kansas State Department of Education New AYP Targets; *see also* Exhibit 1: Notice of Claims, at 12].

59. The actual costs of providing an adequate education to Kansas school children will continue to increase.

a. Inflation has continuously caused the cost of education to increase, while the BSAPP has yet to be adjusted to reflect such an increase. [*See* Exhibit 1: Notice of Claims, at 13].

b. The Adequate Yearly Progress ("AYP") targets, as defined by the Federal No Child Left Behind Act ("NCLB"), continue to increase every year, which necessarily causes the cost of educating students to those targets to increase.

c. A review of the 2010-2011 school district budgets indicates that there will be an increase in the number of free lunch applications in Kansas school districts. Although the exact increase is not ascertainable as of the filing of this Petition, an increase as slight as three percent would result in the need for an additional $9.4 million in funding.

d. Future enrollment projections predict a 5% increase between the 2010-2011 and 2014-2015 school years, which means that enrollment is steadily increasing to the highest statewide level since the early 1970's. [*See* Exhibit 5: K-12 Headcount Enrollment Project for Kansas].

e. Kansas recently adopted the Common Core standards, which will result in increased costs as school districts are required to adopt and conform to new standards as well as develop and administer new assessment tests.

60. The resources provided to schools are linked to student achievement according to the Legislative Division of Post Audit ("LPA"), a research arm of the Legislature. LPA has "found a strong association between the amounts districts spend and the outcomes they achieve."

61. Defendant has clearly reduced school funding without regard to the actual costs of providing an adequate education, which have increased and continue to increase. [*See* Exhibit 1: Notice of Claims, at 11].

62. The State Board and 2010 Commission (the agency created by the Legislature to study and advise the Legislature on matters of school finance) have requested and recommended that the BSAPP be increased to address the increasing costs. [*See* Exhibit 1: Notice of Claims, at 13; *see also* Exhibit 3: Kansas State Board of Education Meeting Minutes, July 13, 2010, pg. 3].

63. Defendant has clearly reduced school funding through the actions outlined in Paragraph 51 against the advice of the State Board and the 2010 Commission (which it created).

64. Defendant has reduced the BSAPP without regard to the equity of the legislative enactments and budget allotments.

65. Ignoring the fact that the current school finance formula does not adequately fund schools, Defendant has additionally failed to appropriate a sufficient amount of money to adequately fund the current school finance formula. The under-appropriation for the 2010-11 year totals $415,130,648. This inadequate appropriation has caused:

    a. The BSAPP to be adjusted downward to fit the amount of money appropriated, rather than appropriating a sufficient amount of money to fund the known costs of operating the schools. For 2010-11, this component is $314,400,000 underfunded.

    b. Local Option Budget Equalization Aid (Supplemental General State Aid) to fall short of the statutorily required reimbursement amount. Poor districts have had their equalization aid payments reduced and are currently only receiving 92% of the equalization to which they are entitled. This cut does not affect the wealthiest 18.8% of the districts in the state. For 2010-11, this component is $37,787,001 underfunded.

c. Special Education funding to fall short of the statutorily required reimbursement rate of 92%. Special education funding has been under appropriated such that only 86.2% of costs are being funded. For 2010-11, this component is $25,000,000 underfunded.

d. The Mentor teacher program to be underfunded. For 2010-11, this component is $2,050,000 underfunded.

e. Statutorily required Professional Development to be underfunded. For 2010-11, this component is $8,500,000 underfunded.

f. The school lunch program to be underfunded. For 2010-11, this component is $1,043,647 underfunded.

g. The Capital Outlay Equalization Aid to be eliminated. This underfunding affects only 163 poor districts. It does not affect 130 wealthy districts or districts that do not make a capital outlay levy. [*See* Exhibit 6: Letter Dale Dennis to Kent Olson, dated September 22, 2010]. For 2010-11, this component is $21,989,096 underfunded.

h. Reimbursements for National Board Certification to be underfunded. For 2010-11, this component is approximately $350,000 underfunded.

66. Cutting the BSAPP to fit the amount appropriated inequitably distributes the cuts among school districts. The formula's pupil weighting system recognizes that some pupils cost more than other pupils to educate. More costly children are assigned additional weights in the formula to compensate for their higher costs. The total weighted enrollment of a district is multiplied by the base to arrive at the General Fund of the district (and the General Fund is then again multiplied by a percentage to arrive a district's allowable Local Option Budget.) When the BSAPP is cut, those districts with the most high-cost children take a higher per actual pupil cut than those districts with the least costliest children.

67. Defendant's cost cutting scheme inequitably cuts more funding from the poorest school districts and cuts more funding from those districts with the most high-cost children. The scheme impermissibly discriminates based upon district wealth and impermissibly moves the state away from a cost-based funding formula.

68. Defendant has given tax cuts, reduced revenue, and consciously determined not to take actions to raise more money to fund education to constitutional standards. [*See* Exhibit 1: Notice of Claims, at 12, Exhibit B, Exhibit C].

69. The current school funding scheme does not provide a suitable education for general education pupils, at-risk pupils, special education pupils, bilingual pupils, and pupils from less wealthy districts. [*See* Exhibit 1: Notice of Claims, at 15].

70. The actions of the Defendant have resulted in underlying, fundamental flaws in the school financing system which render it unconstitutional, including, but not limited to, the following: [*See* Exhibit 1: Notice of Claims, at 14 and Exhibit K].

    a. A BSAPP that is inadequate to fund the required level of education for all students;

    b. At-risk weightings that are inadequate to fund the required level of education for at-risk students;

    c. Local Option Budgets ("LOBs") that are no longer "local" and are required to be used for state mandated programs and requirements, but which are reliant upon the outcomes of local elections for adoption;

    d. LOBs which are not properly equalized to level the playing field between wealthy and poor districts;

    e. Wealth disparities between the districts;

f. Capital improvements funding (bond and interest) provisions that are not properly equalized to level the playing field between wealthy and poor districts;

g. Capital outlay provisions that are not equalized at all for two years and then are not properly equalized to adequately fund education;

h. Special education funding provisions that do not provide adequate funds to meet the required level of education for educating special education students and that pull funding away from general education students; and

i. A school finance scheme that does not adequately fund education, as shown by the state's own education cost studies.

71. Plaintiffs in this lawsuit have suffered and continue to suffer injury as a result of Defendant's violation of Article 6, §6 of the Kansas Constitution. [*See* Exhibit 1: Notice of Claims, at 16-18].

a. For the 2008-2009 school year, Kansas did not meet the AYP requirements of the NCLB, in which Kansas is required to participate. [*See* Exhibit 1: Notice of Claims, at Exhibit M].

i. While 9.6% of white students did not test at a level of proficiency in reading and 12.3% did not test at a level of proficiency in math, more than 30% of the following students did not test at a level of basic proficiency in the 2008-2009 school year:

1. Students with Disabilities (30.6% non-proficient in reading, 32.8% non-proficient in math);

2. English Language Learners (34.5% non-proficient in reading, 31.1% non-proficient in math); and

3. African-Americans (31.8% non-proficient in reading, 36.2% non-proficient in math).

b. For the 2007-2008 school year, Kansas did not meet the NCLB AYP requirements. [*See* Exhibit 1: Notice of Claims, at Exhibit N].

i. While 11% of white students did not test at a level of proficiency in reading and 13.6% did not test at a level of proficiency in math, more than 30% of the following students did not test at a level of basic proficiency in the 2007-2008 school year:

1. Students with Disabilities (33.4% non-proficient in reading, 35.1% non-proficient in math);
2. English Language Learners (36.5% non-proficient in reading, 31.7% non-proficient in math);
3. African-Americans (32.9% non-proficient in reading, 38.7% non-proficient in math); and
4. Hispanics (31% non-proficient in reading).

c. Kansas is failing to meet its own AYP requirements and federal standards under NCLB. In 2008-09, Plaintiff School Districts had 63 school buildings that failed to make AYP. Three of the four Plaintiff School Districts, as a whole, did not have the resources available as a district to make district-wide AYP in 2008-09. By 2009-10, this number had grown from 63 buildings to 79 buildings in the four Plaintiff School Districts. All four Plaintiff School Districts failed to attain AYP on a district-wide basis in 2009-10. On a statewide basis, 172 school buildings did not make AYP in 2008-09. By 2009-10 this statewide number had grown 48% in one year to 255

buildings. In 2008-09, there were 34 districts that did not meet AYP requirements. This number increased by 141% in one year to 82 districts lacking the resources to make AYP. By 2009-10, a full 28% of the districts in Kansas did not have adequate resources to make AYP and meet federal standards. [*See* Exhibit 7: Kansas State Department of Education Press Release, dated September 14, 2010].

d. Kansas schools do not have enough money to fund the education that state and federal laws require them to provide.

    i. Budget cuts have resulted in scaling back the following programs: before- and after- school programs, summer school, fine arts, and all-day kindergarten.

    ii. Budget cuts have resulted in shortened school days/years, reductions in professional development, delays in purchasing textbooks and school buses, increased pupil-teacher ratios, the closure of educational buildings.

e. Kansas does not provide adequate resources to meet federal burdens under the Equal Education Opportunity Act of 1974, which requires all school districts to "take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."

f. Plaintiffs have suffered adverse educational outcomes as a result of Defendant's actions, which include, but are not limited to: poor standardized test scores, high dropout and truancy rates, and victimization from violent crimes at school.

72. The current finance formula fails to make suitable finance provisions for financing the education of public school students, in violation of the Kansas Constitution, Article 6, §6. In

practice, the Defendant has underfunded the Plaintiff School Districts and has deprived the Individual Plaintiffs of a constitutionally adequate education.

Count Two: Class Action Regarding Suitability of Funding Under the Kansas Constitution

73. Plaintiff School Districts incorporate by reference the allegations contained in paragraphs 1-72 above as though fully set out herein.

DEFINITION OF THE CLASS

74. Plaintiff School Districts bring this Count individually and as representatives of the class defined as: All Kansas school districts who were entitled to capital outlay equalization payments pursuant to K.S.A. 72-8814(b) during the 2009-10 school year (the "Class").

CLASS ALLEGATIONS

75. The proposed Class is so numerous that joinder is impractical. Therefore, the disposition of this Count through a class action will be more efficient and will benefit the parties and the Court.

76. The questions of law and fact common to the Class are identical and predominate over questions affecting the individual Class members and include, but are not limited, to whether Defendant distributed the capital outlay equalization payment to the Class members as required by K.S.A. 72-8814(b) during the 2009-10 school year.

77. Plaintiff School Districts and the Class members have suffered similar harm as a result of Defendant's actions and the claims of the Plaintiff School Districts are typical of the claims of the class.

78. Plaintiff School Districts will fairly and adequately represent and protect the interests of the Class members because their interests do not conflict with the interests of the Class members they seek to represent.

79. Plaintiff School Districts have no claims antagonistic to those of the Class.

80. Plaintiff School Districts have retained counsel competent and experienced in complex class actions and school finance litigation.

81. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of this count by all Class members is impractical.

82. The claim asserted in this Count is certifiable under K.S.A. 60-223(b)(1) and/or 60-223(b)(3) because:

    a. Requiring each Class member to individually litigate this matter would be expensive and unduly burdensome on both the individual Class members and this Court.

    b. Individual litigation would increase the expense and delay to all parties and the Court system in resolving legal and factual issues that are common as a result of Defendant's actions.

    c. Individual litigation would present a potential for inconsistent or contradictory judgments with respect to individual Class members, thus establishing compatible standards of conduct for Defendant.

    d. The questions of law or fact common to the Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

CAUSE OF ACTION

83. The inequitable distribution of funds is a critical factor in determining whether a school finance formula can be deemed constitutional. *Montoy II*, 278 Kan. at 275; *Montoy v. State*

of Kansas, 282 Kan. 9, 10, 138 P.3d 75 (2006) (Montoy V). [*See* Exhibit 1: Notice of Claims, at 11].

84. In enacting the current school finance formula, the Defendant determined that, in order to suitably and equitably fund education, certain school districts would require equalization in the form of capital outlay equalization payments. *See* K.S.A. 72-8814. Thus, failure to make capital outlay equalization payments results in the inequitable distribution of funds.

85. K.S.A. 72-8814(b) states that school districts are entitled to receive payment from the school district capital outlay state aid fund.

86. Defendant, through the State Board of Education and director of accounts and reports, has a duty to certify the entitlements and transfer the money from the state general fund to the school district capital outlay state aid fund.

87. The State Board of Education has certified the funds as required by K.S.A. 72-8814(b). [*See* Exhibit 6: Letter Dale Dennis to Kent Olson, dated September 22, 2010].

88. The director of accounts and reports has failed to transfer the money from the state general fund to the school district capital outlay state aid fund for distribution to Class members as required by K.S.A. 72-8814(b).

89. Defendant has failed to make capital outlay equalizations payments pursuant to K.S.A. 72-8814(b) without regard to the equity of such action and without regard to the fact that the payments are mandated by law.

90. Defendant's failure to make the capital outlay equalization payments did not affect wealthier districts and resulted in a $22.3 million loss to poorer districts and those districts that do not make a capital outlay levy. [*See* Exhibit 1: Notice of Claims, at 13].

91. Defendant's failure to comply with its duties and certify capital outlay equalization aid payments pursuant to K.S.A. 72-8814 (b) has created an inequitable distribution of funds in violation of the Kansas Constitution. [*See* Exhibit 1: Notice of Claims, at 13].

Count Three: Substantive Due Process

92. Plaintiffs incorporate by reference the allegations contained in paragraphs 1- 91 above as though fully set out herein.
93. Education is a fundamental right.
94. The current funding formula denies Plaintiffs and all students of all Kansas school districts access to an adequately funded education. There is no compelling state interest for the underfunding the current funding formula by lack of appropriation. There is no compelling state interest for setting the components of the formula at levels known by Defendant to be inadequate.
95. Even if a compelling state interest did exist, the legislative enactments and budget allotments are not narrowly tailored to meet any such interest.
96. Some components of the current funding formula lack any reasonable basis and bear no rational relationship to legitimate legislative objectives.

Count Four: Equal Protection

97. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-96 above as though fully set out herein.
98. Some components of the current funding formula combined with the under-appropriation of money to fund the formula deny Plaintiffs equal protection of the laws guaranteed by Section 1 – 2 of the Bill of Rights of the Kansas Constitution and the Fourteenth Amendment of the United States Constitution.

99. Some components of the current funding formula combined with the under-appropriation of money to fund the formula treat similarly situated students differently, depending on the number of students enrolled in the school district, relative wealth of the school district, and the political advantage of the school district.

100. There is no compelling state interest for certain components of the current funding scheme. Even if a compelling state interest did exist, the legislative enactments and lack of appropriations are not narrowly tailored to meet that interest. Furthermore, some components of the current funding formula combined with the under-appropriation of money to fund the formula lack any reasonable basis and bear no rational relationship to legitimate legislative objectives.

Count Five: Unconstitutionality of K.S.A. 72-64b03(d)

101. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-100 above as though fully set out herein.

102. The Legislature attempts to limit the powers of the judiciary in a manner which transgresses the separation of powers.

103. K.S.A. 72-64b03(d) restricts the judiciary's ability to determine and interpret the proper remedy for a violation of Article 6 of the Kansas Constitution and is therefore unconstitutional.

Count Six: Failure to Comply with Mandates of K.S.A. 72-64c03

104. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-104 above as though fully set out herein.

105. K.S.A. 72-64c03 requires education be given first priority in the budgeting process and shall be paid first from existing state revenues.

106. Defendant has failed to comply with K.S.A. 72-64c03 through various actions including those outlined in Paragraph 51.

Count Seven: Failure to Comply with Mandates of K.S.A. 72-64c04

107. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-107 above as though fully set out herein.

108. K.S.A. 72-64c04 requires the Legislature to increase state aid to schools by not less than a percentage equal to the percentage increase in the Consumer Price Index (urban) during the preceding fiscal year.

109. Defendant has failed to comply with K.S.A. 72-64c04, and in fact, has decreased the state aid to schools.

Relief Requested

WHEREFORE, Plaintiffs respectfully request the following relief:

a. A judgment and order declaring the some of the components of the current funding formula combined with the under-appropriation of money to fund the formula, are in violation of the Kansas Constitution;

b. A permanent injunction prohibiting Defendant from administering, enforcing, funding, or otherwise implementing the unconstitutional provisions of the current funding formula;

c. A permanent injunction requiring the Legislature to appropriate sufficient amounts of money to fund the school funding formula to the level required by Article 6 of the Kansas Constitution;

d. A judgment and order requiring the director of accounts and reports, state board of education, state treasurer, and treasurer of the school district to comply with all duties under K.S.A. 72-8814(b) in order to properly transfer and distribute the capital outlay

equalization payments from the state general fund to the capital outlay state aid fund pursuant to K.S.A. 72-8814(b) for the 2009-10 school year;

e. A judgment and order requiring Defendant to make the required payments under K.S.A. 72-8814 to the Class members;

f. A judgment and order declaring K.S.A. 72-64b03(d) to be in violation of the Kansas Constitution;

g. A judgment and order mandating compliance with K.S.A. 72-64c03;

h. A judgment and order mandating compliance with K.S.A. 72-64c04;

i. The reasonable attorneys' fees incurred in litigating this action;

j. The costs of this action; and

k. Such other relief as this Court deems just and equitable.

Dated this 2nd day of November, 2010.

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