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**Comprehensive Analysis of the District Court Opinion in
Gannon v. State, issued June 26, 2015**

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On June 26, 2015, the Shawnee County District Court three-judge panel (Panel) issued its Memorandum Opinion and Order and Entry of Judgment on plaintiffs' motion to alter judgment regarding equity and plaintiffs' motion for declaratory judgment regarding the constitutionality of House Substitute for Senate Bill 7 (SB 7). This memorandum provides a comprehensive summary and analysis of the findings, conclusions, and orders of the Panel's opinion.¹

In its opinion, the Panel examined whether SB 7 provided constitutionally adequate funding reasonably calculated to have every student meet or exceed the *Rose* factors.² The Panel also examined whether the amendments made in SB 7 to capital outlay state aid and supplemental general state aid (local option budget equalization) were constitutionally equitable by providing reasonably equal access to substantially similar educational opportunity through similar tax effort. The Panel held that "2015 House Substitute for SB 7 violates [Article 6, § 6 of the Constitution of the State of Kansas], both in regard to its adequacy of funding and in its change of, and in its embedding of, inequities in the provision of capital outlay state aid and supplemental general state aid."³ The Panel then issued several orders including a temporary order, orders regarding the calculation of capital outlay state aid and supplemental general state aid, and an alternative order.

The Panel's opinion was the fourth significant decision in *Gannon* and the third significant opinion from the Panel. Prior to reviewing the Panel's findings and holding in this most recent opinion, this memorandum will provide a history of the *Gannon* litigation.

¹ See K.S.A. 72-64b03 (requiring the appointment of a three-judge panel to preside over any civil action in which there is an allegation of a violation of Article 6 of the Kansas Constitution).

² See *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989).

³ *Gannon v. State*, No. 2010CV1569, at 6 (Shawnee Co. Dist. Ct. June 26, 2015).

HISTORY OF THE CASE

In January 2010, the *Montoy* plaintiffs filed a motion with the Kansas Supreme Court (Court) requesting *Montoy* be reopened to determine if the State was in compliance with the Court's prior orders in that case. This was done in response to reductions in the amount of base state aid per pupil (BSAPP) appropriated for fiscal year 2010 and reductions in funding for capital outlay state aid and supplemental general state aid. The Court denied this motion, which led to the filing of *Gannon*.⁴

The new lawsuit was filed in November 2010 by various plaintiffs and contained several claims.⁵ Those claims included an allegation that the State violated Article 6, § 6(b)⁶ by failing to provide a suitable education to all Kansas students, that the failure to make capital outlay state aid payments created an inequitable and unconstitutional distribution of funds, that plaintiffs were denied equal protection under both the 14th Amendment to the U.S. Constitution and Sections 1 and 2 of the Kansas Bill of Rights, and that plaintiffs were denied substantive due process under Section 18 of the Kansas Bill of Rights.⁷

First District Court Panel Decision (Jan. 11, 2013)

The Panel rejected the plaintiffs' claims of equal protection and substantive due process violations.⁸ However, the Panel held that the State had violated Article 6, § 6(b) by inadequately funding the plaintiff school districts under the School District Finance and Quality Performance Act (SDFQPA).⁹ It also held that both the withholding of capital outlay state aid payments and the proration of supplemental general state aid payments created unconstitutional wealth-based disparities among school districts.¹⁰ As part of its order, the Panel imposed a number of injunctions against the State which were designed to require a BSAPP amount of \$4,492, and fully fund capital outlay state aid payments and supplemental general state aid payments.¹¹

All parties appealed the Panel's decision. The State appealed both the Panel's holdings as to the constitutionality of the State's duty to make suitable provision for finance of the educational interests of the state and the Panel's remedies. The plaintiffs appealed the Panel's

⁴ *Gannon v. State*, 298 Kan. 1107, 1115 (2014).

⁵ Currently, the plaintiffs consist of four school districts (U.S.D. No. 259, Wichita; U.S.D. No. 308, Hutchinson; U.S.D. No. 443, Dodge City; and U.S.D. No. 500, Kansas City).

⁶ Kan. Const. art. 6, § 6(b).

⁷ *Gannon*, 298 Kan. at 1116-1117.

⁸ *Id.* at 1117-1118.

⁹ *Id.*

¹⁰ *Id.* at 1116.

¹¹ *Id.* at 1118.

reliance on the BSAPP amount of \$4,492, arguing that cost studies indicated the BSAPP amount should be greater than \$4,492. At the request of the State, two days of mediation were conducted in April 2013, but those efforts were unsuccessful.¹² In October 2013, the Kansas Supreme Court heard oral arguments from both sides.

Kansas Supreme Court Decision (Mar. 7, 2014)

On March 7, 2014, the Court reaffirmed that Article 6, § 6(b) contains both an adequacy component and an equity component with respect to determining whether the Legislature has met its constitutional obligation to "make suitable provision for finance of the educational interests of the state."¹³ First, the Court stated that the adequacy component test is satisfied "when the public education financing system provided by the Legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose* and presently codified in K.S.A. 2013 Supp. 72-1127."¹⁴ The Court then remanded the case back to the Panel with directions to apply the newly established adequacy test to the facts of the case.

Second, the Court also established a new test for determining whether the Legislature's provision for school finance is equitable: "School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort."¹⁵ The Court applied the newly established equity test to the existing funding levels for both capital outlay state aid and supplemental general state aid, and found both were unconstitutional under the test. Based on these findings, the Court directed the Panel to enforce its equity rulings and provided guidance as to how to carry out such enforcement.

In response to the Court's decision, the Legislature passed Senate Substitute for House Bill No. 2506 (HB 2506), which became law on May 1, 2014. First, the bill codified the *Rose* standards at K.S.A. 2014 Supp. 72-1127, which provides the educational capacities each child should attain from the subjects and areas of instruction designed by the Kansas State Board of Education.¹⁶ Second, the bill appropriated an additional \$109.3 million for supplemental general state aid and transferred \$25.2 million from the state general fund to the capital outlay fund.¹⁷

¹² *Id.*

¹³ *Id.* at 1163; *see also*, Kan. Const. art. 6, §6(b).

¹⁴ *Id.* at 1170.

¹⁵ *Id.* at 1175.

¹⁶ *See* K.S.A. 2014 Supp. 72-1127(c) (Subjects and areas of instruction shall be designed by the state board of education to achieve the goal established by the legislature of providing each and every child with at least the following capacities: (1) Sufficient oral and written communication skills to enable students to function in a

At a hearing on June 11, 2014, the Panel was provided estimates from the Kansas Department of Education (KSDE) about the additional appropriations in HB 2506. Based on such estimations, the Panel determined that HB 2506 fully funded capital outlay state aid and supplemental general state aid and complied with the Court's equity judgment.¹⁸ The Panel did not dismiss the equity issue despite stating that no further action was necessary at that time.¹⁹

Second District Court Panel Decision (Dec. 30, 2014)

On December 30, 2014, the Panel issued its second significant *Gannon* opinion. The Panel affirmed its prior equity ruling and held that the State "substantially complied" with the obligations to fund capital outlay state aid and supplemental general state aid.²⁰ The key decision by the Panel was that funding levels were constitutionally inadequate because "the Kansas public education financing system provided by the Legislature for grades K-12 – through structure and implementation – is *not* presently reasonably calculated to have all Kansas public education students meet or exceed the *Rose factors*."²¹

In concluding that funding levels were constitutionally inadequate, the Panel made several findings. The Panel found that the *Rose* factors have been implicitly known and recognized by the Kansas judiciary and that the cost studies the Panel based its opinion upon were conducted with knowledge and consideration of the *Rose* factors.²² The Panel determined that, by adjusting the cost studies' figures for inflation, the current BSAPP amount of \$3,852 is constitutionally inadequate.²³ The Panel found that gaps in student performance were likely to continue due to inadequate funding.²⁴ The Panel also determined that federal funding, KPERS, capital outlay funding, bond and interest funding, and local option budget (LOB) funding cannot be included in any measure of adequacy of the school finance formula as it was currently

complex and rapidly changing civilization; (2) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (3) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (4) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (5) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (6) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (7) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.)

¹⁷ L. 2014, ch. 93 §§ 6, 7, and 47; K.S.A. 2014 Supp. 72-8814.

¹⁸ *Gannon v. State*, No. 2010CV1569, at 24-26 (Shawnee Co. Dist. Ct. June 26, 2015).

¹⁹ *Id.*

²⁰ *Gannon v. State*, No. 2010CV1569, at 7 (Shawnee Co. Dist. Ct. Dec 30, 2014).

²¹ *Id.* at 114-115.

²² *Id.* at 11-14.

²³ *Id.* at 56.

²⁴ *Id.* at 20.

structured.²⁵ Regarding the LOB funding mechanism, the Panel stated that LOB funding cannot be included in any measure of adequacy due to the fact that it is solely discretionary at the local level.²⁶

The Panel's opinion did not contain any direct orders to either party, but did provide suggestions as to how adequate funding could be achieved. Initially, the Panel suggested that a BSAPP amount of \$4,654 coupled with increases in certain weightings could be constitutional, provided the LOB funding scheme was adjusted to include both a minimum local tax levy and a fail-safe funding mechanism.²⁷ Alternatively, the Panel proposed a BSAPP amount of \$4,890 could be an adequate level of funding if the LOB were to remain strictly discretionary.²⁸ Finally, the Panel retained jurisdiction to review the Legislature's subsequent actions at a later time.

Subsequent Motions and Legislative Actions

Two post-trial motions were filed shortly after the Panel's December 30, 2014, decision. On January 23, 2015, the State of Kansas filed a motion to alter and amend the Panel's December 30, 2014, opinion arguing the Panel did not clearly identify which facts the Panel used to support its opinion. On January 27, 2015, plaintiffs filed a motion to alter the previous judgment regarding equity claiming that the State was no longer in substantial compliance and that additional expenditures in FY 2015 were necessary to fully fund equalization aid. Subsequent briefings and responses were then submitted to the Panel upon these two motions.

On January 28, 2015, the State appealed the case to the Kansas Supreme Court. On February 27, 2015, the State filed a motion with the Supreme Court to stay any further Panel proceedings until disposition of the State's appeal. On March 3, 2015, plaintiffs filed a response to the State's motion arguing that the Court should deny the State's motion and instead remand the State's appeal to the Panel for resolution of all pending post-trial motions with the Panel. On March 5, 2015, the Kansas Supreme Court denied the State's motion to stay further Panel proceedings and remanded the case to the Panel for resolution of all post-trial motions.²⁹

On March 11, 2015, the Panel issued an opinion and order upon the State's motion to alter and amend the Panel's judgment in which the Panel granted in part the State's motion and withdrew a paragraph from its December 30, 2014, opinion that the Panel deemed to be the

²⁵ *Id.* at 62-77.

²⁶ *Id.* at 76-77.

²⁷ *Id.* at 103.

²⁸ *Id.* at 105.

²⁹ *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. Mar. 5, 2015).

source of the State's motion.³⁰ On March 13, 2015, the Panel issued an order setting a hearing date for May 7, 2015, upon plaintiffs' motion to alter judgment regarding equity.³¹ On March 16, 2015, the State appealed the matter to the Kansas Supreme Court. Plaintiffs subsequently responded on March 19, arguing that the case should remain before the Panel until the remaining post-trial motions were resolved.

On March 16, 2015, the Legislature passed SB 7, which was signed by the governor and became law on April 2, 2015. The bill created the Classroom Learning Assuring Student Success Act (CLASS). The first three sections of SB 7 appropriated funds to the KSDE for FY 2015, FY 2016, and FY 2017 in the form of block grants for school districts. The block grants are calculated to include: (1) General state aid, as amended by SB 7; (2) supplemental general state aid, as amended by SB 7; (3) capital outlay state aid, as amended by SB 7; (4) virtual school state aid, as amended by SB 7; (5) certain tax proceeds; and (6) KPERS employer obligations. The supplemental general state aid formula was amended so that districts receiving local option budget equalization state aid are divided into quintiles with the poorest receiving the most aid and successively wealthier quintiles receiving less. The capital outlay state aid formula was amended so the state aid percentages start at 75% for the poorest district and decrease by 1% for each \$1,000 incremental increase in assessed valuation per pupil (AVPP). The bill also establishes the extraordinary need fund to be administered by the State Finance Council. Finally, the bill repeals the SDFQPA.

On March 26, 2015, plaintiffs filed a motion for declaratory judgment and injunctive relief asking the Panel to hold SB 7 unconstitutional. On April 2, 2015, plaintiffs filed a reply with the Kansas Supreme Court notifying the Court of its motion to declare SB 7 unconstitutional. Also, in such reply, plaintiffs asked the Court to remand the State's appeal on the issue of adequacy for the Panel's resolution of the entire case. On April 30, 2015, the Court issued an order giving the Panel jurisdiction to resolve all pending post-trial matters, including plaintiffs' motion to alter judgment regarding equity and plaintiffs' motion to declare SB 7 unconstitutional.³²

A hearing upon plaintiffs' motions was held before the Panel on May 7-8, 2015. On June 26, 2015, the Panel issued a Memorandum Opinion and Order and Entry of Judgment.

³⁰ *Gannon v. State*, No. 2010CV1569 (Shawnee Co. Dist. Ct. Mar. 11, 2015).

³¹ *Gannon v. State*, No. 2010CV1569 (Shawnee Co. Dist. Ct. Mar. 13, 2015).

³² *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. Apr. 30, 2015).

THIRD DISTRICT COURT PANEL OPINION (JUNE 26, 2015)

In its third significant opinion in the *Gannon* litigation, the Panel examined whether SB 7 provided constitutionally adequate funding reasonably calculated to have every student meet or exceed the *Rose* factors. The Panel also examined whether the amendments made in SB 7 to capital outlay state aid and supplemental general state aid were constitutionally equitable by providing reasonably equal access to substantially similar educational opportunity through similar tax effort. The Panel ultimately held that "2015 House Substitute for SB 7 violates Art. 6, § 6(b) of the Kansas Constitution, both in regard to its adequacy of funding and in its change of, and in its embedding of, inequities in the provision of capital outlay state aid and supplemental general state aid."³³

This memorandum will provide a comprehensive analysis and summary regarding: (1) The Panel's adequacy analysis of SB 7; (2) the Panel's equity analysis and orders regarding capital outlay state aid and supplemental general state aid (3) the Panel's issuance of a temporary restraining order; and (4) the Panel's issuance of an alternative order.

1. Panel's Adequacy Analysis of SB 7

In its analysis of SB 7, the Panel made several findings to support its conclusion that SB 7 does not provide constitutionally adequate funding. The Panel found that SB 7 does not provide funding for FY 2015 at the level the Panel previously established as constitutionally adequate in its December 30, 2014, opinion.³⁴ In addition, SB 7 essentially freezes such constitutionally inadequate FY 2015 funding levels for FY 2016 and FY 2017.³⁵

The Panel identified significant structural issues with SB 7 in its analysis of whether SB 7 provides constitutionally adequate K-12 funding. The Panel found that SB 7 fails to accommodate for changes in student enrollment and changes in student demographics. The Panel noted that SB 7's block grant funding is ultimately grounded in the provisions of the SDFQPA, which included weightings that provided more funds to school districts with students who were deemed more expensive to educate.³⁶ The Panel found that SB 7 fails to accommodate for such

³³ *Gannon v. State*, No. 2010CV1569, at 6 (Shawnee Co. Dist. Ct. June 26, 2015).

³⁴ *Id.* at 54.

³⁵ *Id.* at 10.

³⁶ *Id.* at 14.

students.³⁷ Also, the Panel noted that SB 7 fails to account for ordinary enrollment changes in a school district's student population.³⁸

Next, the Panel found that SB 7's funding increases only came by way of KPERS employer contributions.³⁹ The Panel reiterated from its previous *Gannon* opinions that KPERS contributions "have either never been considered by experts or other competent professionals in evaluating the adequacy of K-12 school funding or, if so considered, such KPERS contributions were reflected as an add-on increase to the per pupil costs, not as an in-lieu of, or in substitute for, other needed funds."⁴⁰

The Panel also examined the newly created extraordinary need fund and found that the fund does not operate with "new money, but money subtracted from what would have otherwise been in the amount of USD funds appropriated in 'block' to the USDs' general funds before the subtraction."⁴¹ The Panel found the administration of such fund to be "oddly placed" with the State Finance Council instead of the Kansas State Board of Education and that it "appears to be more of a state budget control device rather than a true needs assessing failsafe for a USD that finds itself with deficient revenues to obtain its educational objectives."⁴²

The Panel pointed out that SB 7 purports to increase school districts' flexibility in the use of funds by allowing free transfer between funds at a school district's discretion.⁴³ However, the Panel stated that "fund transfer flexibility has been substantially available since 2011 (K.S.A. 72-6460)."⁴⁴ The Panel found that if funding levels are already inadequate to begin with, "fund flexibility is merely a question of which funds should be used first, not which funds can be used better."⁴⁵

2. Panel's Equity Analysis of SB 7

Previously, the Panel made a finding that the Legislature was in "substantial compliance" with the Kansas Supreme Court's judgment regarding equity.⁴⁶ Such finding was made at the June 11, 2014, hearing after the passage of HB 2506, which, according to estimates made by the KSDE in April of 2014, provided full funding for capital outlay state aid and supplemental

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 10.

⁴⁰ *Id.*

⁴¹ *Id.* at 12.

⁴² *Id.* at 13.

⁴³ *Id.* at 16.

⁴⁴ *Id.*

⁴⁵ *Id.* at 18.

⁴⁶ *Id.* at 26.

general state aid.⁴⁷ Such finding was confirmed by the Panel in the Panel's December 30, 2014, opinion.⁴⁸

Upon plaintiffs' subsequent motion to alter the judgment regarding equity, the Panel found that the KSDE estimations were ultimately insufficient in projecting that HB 2506 provided full FY 2015 equalization funding for capital outlay state aid and supplemental general state aid.⁴⁹ The Panel specified that such insufficiency in the projections arose because of a recent rise in property valuations, a recent increase in capital outlay tax levies, and that such projections were based on the preceding year's property valuations instead of the current year's property valuations, which had not yet been compiled.⁵⁰ The Panel then noted that SB 7 changed the formulas used to determine capital outlay state aid and supplemental general state aid and applied such formula changes to FY 2015.⁵¹

The Panel analyzed whether the formulaic changes created inequitable funding disparities between districts and whether such changes warranted a rejection of the Panel's prior determination that the Legislature substantially complied with the Supreme Court's judgment regarding equity. The Panel ultimately held that capital outlay state aid funding, as calculated under § 63 of SB 7, and supplemental general state aid funding, as calculated under § 38 of SB 7, fail to comply with the March 14, 2014, judgment of the Kansas Supreme Court and also fail to satisfy the equity requirement of Article 6, § 6(b).⁵²

Panel's Analysis and Order on Capital Outlay State Aid

The Panel found that § 63 of SB 7 altered the capital outlay state aid calculation formula and then applied such changes retroactively, which reduced the amounts otherwise due to school districts for FY 2015 under the prior formula.⁵³ Such reductions in capital outlay state aid payments "merely conformed the capital outlay state aid formula to the amount of money [the Legislature] wished to provide" as based on the original KSDE projections.⁵⁴ The Panel noted that SB 7 created a total loss of \$18,569,859 in capital outlay state aid for FY 2015 and that such reduction then goes on to become incorporated into the block grants for FY 2016 and FY 2017.⁵⁵

⁴⁷ *Id.* at 22-23.

⁴⁸ *Id.* at 26.

⁴⁹ *Id.* at 28.

⁵⁰ *Id.*

⁵¹ *Id.* at 18.

⁵² *Id.* at 7.

⁵³ *Id.*

⁵⁴ *Id.* at 35.

⁵⁵ *Id.* at 29.

A significant issue for the Panel was that wealthier school districts that do not receive capital outlay state aid are not disadvantaged while school districts that receive and rely upon capital outlay state aid are disadvantaged.⁵⁶ Only those districts that rely upon capital outlay state aid will have their entitlements reduced or even eliminated.⁵⁷

The Panel noted that capital outlay tax levy authority remains in place which allows for school districts to levy a capital outlay tax and use such revenues.⁵⁸ The Panel found that such levy authority does not disadvantage wealthier property tax school districts that do not receive any capital outlay state aid.⁵⁹ However, the Panel found that for those districts who receive capital outlay state aid, any higher levy subsequently authorized by the district will fail to be equalized if such a district increases its levy to make up for the reductions such district faces in SB 7.⁶⁰ Ultimately, the Panel found that the Legislature failed to comply with the Supreme Court's judgment regarding equity and that the changes made in § 63 also stand in violation of Art. 6, § 6(b).⁶¹

Consequently, the Panel issued specific orders in relation to capital outlay state aid. The Panel declared § 63 of SB 7 unconstitutional and struck the section.⁶² The Panel also struck as unconstitutional other statutory amendments which the Panel found were associated with §63 of SB 7, including: § 78 and § 79 of SB 7; § 54 of House Substitute for SB 4; § 8 of Senate Substitute for HB 2353; and § 20(c) of House Substitute for SB 112.⁶³ The ultimate effect of which is to "reinstate K.S.A. 72-8801 *et seq.* as these statutes existed prior to January 1, 2015."⁶⁴

The Panel ordered the Kansas State Board of Education, prior to July 1, 2015, to certify the entitlements of each school district for the remaining balance of capital outlay state aid due for FY 2015 pursuant to the Panel's reinstatement of K.S.A. 72-8801 *et seq.*⁶⁵ The Panel then ordered the Kansas Secretary of Administration and the Treasurer of the State of Kansas to honor such certifications and make the necessary transfers and payments.⁶⁶ The Panel then enjoined all executive officials from "issuing, following, or honoring any other directive, practice, or policy

⁵⁶ *Id.* at 32.

⁵⁷ *Id.* at 33.

⁵⁸ *Id.* at 32.

⁵⁹ *Id.*

⁶⁰ *Id.* at 34.

⁶¹ *Id.* at 35.

⁶² *Id.* at 65.

⁶³ *Id.* at 65-67.

⁶⁴ *Id.* at 67.

⁶⁵ *Id.* at 69.

⁶⁶ *Id.*

in regard to these *Orders* that would, whether directly or indirectly, act to hinder, delay, offset, compromise, dilute, or diminish the effect or timely accomplishment of these *Orders*."⁶⁷ The Panel's entry of judgment also operates to certify such sums due, so as to encumber the funds for FY 2015.⁶⁸

In explaining such orders, the Panel found that the Legislature would not have intended for the capital outlay statutes, as they existed prior to the passage of SB 7, to be repealed if such enactments were found to be unconstitutional.⁶⁹ The Panel found that its order allows for the continued operation of SB 7, but with the block grant funds for FY 2016 and FY 2017 to include capital outlay state aid as it existed prior to January 1, 2015.⁷⁰ In this regard, the Panel recognized the need for additional appropriations by the Legislature for FY 2016 and FY 2017 and relied on "each legislator's solemn oath of office and respect for our constitutional form of government to provide such authority."⁷¹

Panel's Analysis and Order on Supplemental General State Aid

The Panel found that SB 7 "reduces local option budget equalization funds that were to be due for FY 2015 and then freezes that FY 2015 state aid amount for FY 2016 and FY 2017."⁷² The supplemental general state aid amount is then incorporated into the block of funds distributed to school districts,⁷³ "regardless of, by example, increases or decreases in AVPP, or any increase in LOB authority."⁷⁴

The Panel noted that SB 7 granted school districts one-time authority, for those districts that had not previously done so, to increase their LOB percentage authority. Districts would be able to retain any revenue generated by the increased LOB percentage, but such revenues would not be included in supplemental general state aid calculations distributed to districts in the form of block grants.⁷⁵

As stated earlier, the estimated supplemental general state aid amount given by the KSDE on April 17, 2014, was short of the actual amount owed to school districts.⁷⁶ The Panel stated that a supplemental appropriation, without proration, would have fully funded supplemental

⁶⁷ *Id.* at 69-70.

⁶⁸ *Id.* at 70.

⁶⁹ *Id.* at 67.

⁷⁰ *Id.* at 68.

⁷¹ *Id.*

⁷² *Id.* at 36.

⁷³ *Id.*

⁷⁴ *Id.* at 43.

⁷⁵ *Id.* at 37.

⁷⁶ *Id.* at 47.

general state aid and no additional action would have been warranted.⁷⁷ However, instead of prorating the supplemental general state aid entitlements due to eligible school districts, as had been done in the past, "the Legislature amended the formula to conform to the money they wished to provide."⁷⁸ Under the new SB 7 formula, the amount of supplemental general state aid provided was reduced to 92.7% of what would have otherwise been due and "backtracks funding to approximate the April 2014 estimates."⁷⁹

The Panel also found that the new formula's reductions are not applied equally, but rather more ratably structured. Though the reductions are progressively less the more property tax-poor a district is,⁸⁰ there is still inequity and "a constitutionally unacceptable wealth-based disparity" between districts that need supplemental general state aid and districts deemed without such need.⁸¹ Districts that rely on supplemental general state aid will require a greater tax levy just to stay even with those districts that are able to generate sufficient tax revenues with less tax levy.⁸² Further, "no process exists for a USD to levy a tax that would equitably allow it to recover from or remedy the legislatively-imposed retroactive shortfall in FY 2015,"⁸³ yet without such a tax increase, districts face the choice of either implementing budget cuts or "cannibalizing" funds intended for other purposes.⁸⁴

The Panel stated that "the condition created overall—and particularly its retroactive and carryover features—to represent a clear failure to accord 'school districts reasonably equal access to substantially similar educational opportunity through similar tax effort.'"⁸⁵ This disparity will carry forward through FY 2017, and will likely be exacerbated.⁸⁶ The "increasingly tax-wealthy districts will have their educational goals honored, preserved, and funded," but districts that need aid will bear the burden of increased and unsubsidized taxation.⁸⁷

The Panel found that though the inequity is less than has been seen in the past, it still "does not satisfy either Art. 6, § 6(b) nor the *Gannon* court's judgment in regard to funding

⁷⁷ *Id.* at 45.

⁷⁸ *Id.* at 47.

⁷⁹ *Id.*

⁸⁰ *Id.* at 48.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 49.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 50.

⁸⁷ *Id.*

supplemental general state aid."⁸⁸ "[T]here may be many areas where the money available per student may not, and need not, be equal,"⁸⁹ but "a disparity in educational opportunity should not be allowed to arise from the difference in property tax wealth between school districts."⁹⁰

The Panel stated that the supplemental general state aid formula adopted by SB 7 would have "effectively reduced the eligibility cap" to levels near those that existed pre-*Montoy*.⁹¹ Further, LOB resources, because of inadequately funded base state aid, are now used by districts to fund merely a constitutionally adequate education.⁹² "Hence to deprive property poor districts of LOB equalization aid...turns the struggle for adequacy in many of these districts into ones of just survival."⁹³

Consequently, the Panel declared the primary formulaic changes to supplemental general state aid found in § 38, paragraph (a)(6) of SB 7 null and void. This action effectively reinstates supplemental general state aid as it was prior to January 1, 2015.⁹⁴ The Panel then enjoined the Kansas State Board of Education to distribute any unpaid FY 2015 supplemental general state aid to any school district owed such aid. The Panel directed that payments be made from FY 2016 revenues available for supplemental general state aid and be credited to FY 2015, as soon as possible on or after July 1, 2015.⁹⁵ The Panel also ordered supplemental general state aid be fully funded as it would have been prior to January 1, 2015, for FY 2015, FY 2016, and FY 2017.

The Panel found this remedy "appropriate, both because it is constitutionally necessary and because it is the least disruptive and most compatible with" CLASS going forward.⁹⁶

3. Temporary Restraining Order

The Panel held that the flat funding of SB 7 "stands as a particularly contrarian and arbitrary decipher of adequate funding and most likely will result in situational – feast or famine – funding inequities between school districts" and that such funding mechanism "is so pernicious and its negative effects so immediate" that a temporary restraining order is necessary.⁹⁷ Such temporary restraining order requires "any distribution of general state aid to any unified school

⁸⁸ *Id.* at 50-51.

⁸⁹ *Id.* at 51-52.

⁹⁰ *Id.* at 52.

⁹¹ *Id.*

⁹² *Id.* at 53.

⁹³ *Id.*

⁹⁴ *Id.* at 75.

⁹⁵ *Id.* at 75-76.

⁹⁶ *Id.* at 76-77.

⁹⁷ *Id.* at 57.

district be based on the *weighted student count in the current school year in which a distribution is to be made* pursuant to § 6 and § 7 of [SB 7], not merely the total money available that is based on the weighted or unweighted student count in school year 2014-15."⁹⁸ The Panel also stated that such "temporary restraining order should be issued pending resolution of the appeal of our decisions."⁹⁹

4. Alternative Order

The Panel issued, but stayed, an alternative order. The Panel stated that the stay would be lifted if: Any of the remedies or orders the Panel issued fail to be implemented; any remedies or orders are not accommodated through other means; persons subject to the orders fail to act, comply or implement such orders; or a delay in final resolution of this case causes any such order to no longer accomplish its purpose "particularly in regard to the flat distribution of funds."¹⁰⁰ Such alternative order would: (1) Declare CLASS (§ 4-22 of SB 7) and certain other parts of SB 7 unconstitutional; (2) declare that any remaining appropriated funds in SB 7 be distributed pursuant to the SDFQPA; and (3) reinstate capital outlay state aid and supplemental general state aid as it existed prior to January 1, 2015.¹⁰¹

CONCLUSION

The Panel held that "2015 House Substitute for SB 7 violates Art. 6, § 6(b) of the Kansas Constitution, both in regard to its adequacy of funding and in its change of, and in its embedding of, inequities in the provision of capital outlay state aid and supplemental general state aid."¹⁰²

The Panel issued a temporary order requiring "any distribution of general state aid to any unified school district be based on the weighted student count in the current school year in which a distribution is to be made."¹⁰³

The Panel also issued certain orders regarding capital outlay state aid and supplemental general state aid that effectively reinstates and fully funds such aid as they were funded prior to January 1, 2015, for FY 2015, FY 2016, and FY 2017.¹⁰⁴ The Panel directed the Kansas State Board of Education to certify immediately and before July 1, 2015, any balance of capital outlay state aid due for FY 2015 and entitlements of each school district. The Panel enjoined the Kansas

⁹⁸ *Id.* at 57-58.

⁹⁹ *Id.* at 57.

¹⁰⁰ *Id.* at 79.

¹⁰¹ *Id.*

¹⁰² *Id.* at 6.

¹⁰³ *Id.* at 57-58.

¹⁰⁴ *Id.* at 65-67.

State Board of Education to distribute any unpaid FY 2015 supplemental general state aid to any school district owed such aid.¹⁰⁵

In addition, the Panel outlined and stayed an alternative order striking certain provisions of SB 7 and requiring distribution of funds pursuant to the SDFQPA, as it existed prior to January 1, 2015. Such stay would be lifted if any remedies or orders outlined fail in implementation or are not otherwise accommodated.¹⁰⁶

In response to the Panel's opinion, on June 29, 2015, the State of Kansas filed a motion to stay the operation and enforcement of the Panel's opinion and order. On June 30, 2015, the plaintiffs filed a response arguing against the State's motion to stay, the Secretary of Administration filed a motion to stay, and the State filed a reply in support of its motion to stay. Later, on June 30, 2015, **the Kansas Supreme Court granted the State's motion to stay** the operation and enforcement of the Panel's opinion and order.¹⁰⁷

¹⁰⁵ *Id.* at 75-76.

¹⁰⁶ *Id.* at 79-83.

¹⁰⁷ *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. June 30, 2015).