

**Comprehensive Analysis of Memorandum Opinion of the District Court in
Gannon v. State, issued December 30, 2014**

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In its opinion issued March 7, 2014, the Kansas Supreme Court (Court) ordered the Shawnee County District Court three-judge panel (Panel) to analyze whether the adequacy component of the Legislature’s school finance obligations under Article 6, §6(b) of the Constitution of the State of Kansas had been satisfied. As part of its opinion, the Court established a test for the adequacy component using the *Rose* standards.¹ On December 30, 2014, the Panel issued its Memorandum Opinion on whether the State has adequately provided for school finance under this new test. This memorandum provides a comprehensive summary and analysis of the findings and conclusions of the Panel’s opinion.

The Panel held that “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*.”² The Panel only issued a declaratory judgment on the adequacy of school finance. The Panel did not issue any orders with respect to either party. However, the District Court retained jurisdiction of the case and may take further action at a later date upon proper application by either party.

The Panel’s opinion was the third court decision in this case. Prior to reviewing the Panel’s findings and holding in this most recent opinion, this memorandum will provide the following history of this litigation.

HISTORY OF THE CASE

In January 2010, the *Montoy* plaintiffs filed a motion with the Kansas Supreme 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

¹ *Gannon v. State*, 298 Kan. 1107, 1199 (2014).

² *Gannon v. State*, No. 2010CV1569, at 114-115 (Shawnee Co. Dist. Ct. Dec. 30, 2014).

state aid and supplemental general state aid. The Court denied this motion, which led to the filing of *Gannon*.³

The new lawsuit was filed in November 2010 by various plaintiffs⁴ and contained several claims. Those claims included an allegation that the State violated Article 6, §6(b) 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.⁵

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

The three-judge district court panel⁶ rejected the plaintiffs' claims of equal protection and substantive due process violations.⁷ 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.⁸ 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.⁹ 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.¹⁰

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 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

³ *Gannon*, 298 Kan. at 1115.

⁴ The plaintiffs in *Gannon* 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) and 31 individuals identified as students who attend schools in those districts and their guardians.

⁵ *Gannon*, 298 Kan. at 1116-1117.

⁶ 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).

⁷ *Gannon*, 298 Kan. at 1117-1118.

⁸ *Id.*

⁹ With respect to the withholding of capital outlay state aid payments, the Panel certified a class of all unified school districts that would be entitled to receive capital outlay state aid payments under K.S.A. 72-8814 for fiscal years 2010, 2011, and 2012. "While 157 districts qualified as class members, 14 timely opted out before trial." *Gannon*, 298 Kan. at 1116.

¹⁰ *Id.* at 1118.

in April 2013, but those efforts were unsuccessful.¹¹ In October 2013, the Court heard oral arguments from both sides.

Decision of the Kansas Supreme Court (Mar. 7, 2014)

On March 7, 2014, the Kansas Supreme Court reaffirmed that Article 6 of the Constitution of the State of Kansas 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.”¹² 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 [v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989)]* and presently codified in K.S.A. 2013 Supp. 72-1127.”¹³ 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.”¹⁴ 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 both were found 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 Supreme Court’s decision, the Kansas Legislature passed Senate Substitute for House Bill No. 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 state board of education.¹⁵ 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.¹⁶

¹¹ *Id.*

¹² *Id.* at 1163; *see also*, Kan. Const. art. 6 §6(b).

¹³ *Gannon*, 298 Kan. at 1170 (citing *Rose*, 790 S.W.2d at 212).

¹⁴ *Id.* at 1175.

¹⁵ *See* K.S.A. 2014 Supp. 72-1127(c).

¹⁶ L. 2014, ch. 93 §§ 6, 7, and 47; K.S.A. 2014 Supp. 72-8814.

In June 2014, the Panel determined that Senate Substitute for HB 2506 fully funded capital outlay and supplemental general state aid. This was sufficient to meet the equity component test established by the Kansas Supreme Court. Despite stating that no further action was necessary at that time, the Panel did not dismiss the issue of equity.

On December 30, 2014, the Panel issued its opinion on remand from the Kansas Supreme Court. Noting its June 2014 ruling, the Panel affirmed both its prior dismissal of the individual plaintiffs and its prior finding that the State was in substantial compliance with respect to the equity claims.¹⁷ The key decision by the Panel was its holding that “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.”¹⁸

FINDINGS OF THE PANEL

In applying the Kansas Supreme Court’s test for adequacy, the Panel made several findings which it said supported its conclusion that current funding of the school finance formula is constitutionally inadequate. These findings were based on evidence presented at the trial held in June 2012, the Panel’s own findings from its prior opinion, and information provided by the State Department of Education at the request of the Panel.

The Panel focused on six facets of adequacy: (1) Adequacy as a matter of precedent legal opinion; (2) adequacy as a matter of student performance; (3) adequacy as a matter of dollar funding; (4) adequacy of dollar funding in terms of some other K-12 expenditures or their funding source; (5) adequacy as a matter of dollar funding with the local option budget treated as a state funding resource; and (6) adequacy as a matter of expert opinion, expertise, or involvement. Each of these is addressed below.

1. Adequacy as a Matter of Precedent Legal Opinion

The Panel found that the *Rose* factors as standards for testing the adequacy of funding of the Kansas K-12 school system had been known and implicitly recognized by the Kansas judiciary at every stage of Kansas school finance litigation, beginning in some measure since 1994.¹⁹ The following are the *Rose* standards as currently codified in K.S.A. 2014 Supp. 72-1127(c):

¹⁷ *Gannon*, No. 2010CV1569, at 7.

¹⁸ *Id.* at 114-115.

¹⁹ *Id.* at 11.

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- (1) Sufficient oral and written communication skills to enable students to function in a 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.²⁰

The Panel stated it always intended to speak in this case implicitly in regard to the *Rose* factors and that the emphasis on cost analysis in its original opinion, dated January 11, 2013, (2013 Opinion) was due to two factors.²¹ First, the Panel found that both cost studies were ultimately premised upon the *Rose* factors.²² The Panel noted that the Legislative Post Audit Study of 2006 (LPA study) “was framed from the perspective of what it would cost to accomplish the goals set forth in K.S.A. (2005) 72-1127(c).”²³ Also, the Panel doubted that the authors of the Augenblick and Meyers study (A&M study) completed their study in ignorance of recognized educational objectives, such as the *Rose* factors.²⁴

Second, the Panel stated that the need arose to test the accuracy of the LPA study in this litigation because, in the *Montoy* series of cases,²⁵ the A&M study was the only evidence of costs properly before the Court.²⁶ The LPA study was performed between *Montoy III* and *Montoy IV*

²⁰ K.S.A. 72-1127(c).

²¹ *Gannon*, No. 2010CV1569, at 11-12.

²² *Id.* at 12.

²³ *Id.*

²⁴ *Id.*

²⁵ *Montoy v. State (Montoy I)*, 275 Kan. 145, 62 P.3d 228 (2003); *Montoy v. State (Montoy II)*, 278 Kan. 769, 120 P.3d 306 (2005); *Montoy v. State (Montoy III)*, 279 Kan. 817, 112 P.3d 923 (2005); and *Montoy v. State (Montoy IV)*, 282 Kan. 9, 138 P.3d 755 (2006).

²⁶ *Gannon*, No. 2010CV1569, at 13.

but was not actually part of the evidence in the record on appeal in *Montoy IV*.²⁷ *Montoy IV* ended when the Supreme Court held that its past findings had been substantially met by the legislative enactments to that date.²⁸ This left any test as to the accuracy of the LPA study to be done at a later time, if need be, which need arose in the present litigation.²⁹

As part of its 2013 Opinion the Panel tested the underlying analysis of the LPA study and retested the A&M study as to its findings.³⁰ Based on this analysis, the Panel found that the results of the LPA study “substantially authenticated and supported, in dollar terms, what was needed to meet the K.S.A. 72-1127(c) standards, the Kansas Supreme Court's judgments made in *Montoy III* and *Montoy IV*, and, with appropriate reconciliation of the costs factors producing both studies’ results, that the LPA study was relatively complimentary to the A&M study’s results.”³¹

The Panel proceeded to consider the history that prompted “legislative and executive retreat from that ‘substantial compliance’ found by the *Montoy IV* court.”³² It also considered evidence on the impact of the budget cuts on the K-12 educational system from the filing of *Montoy I* to the time of the Panel's issuance of its 2013 Opinion.³³

The Panel found that the history and the evidence “revealed that, yes, money makes a difference.”³⁴ First, the Panel examined student performances and achievements and found evidence of “considerable progress” beginning in 2005 after the *Montoy II* decision, and that this progress continued until the 2010-11 school year.³⁵ The Panel then noted that funding levels fell to pre-*Montoy* levels, and that “no evidence justified a conclusion that what was now less funding could somehow equate to equal or more in supporting the outcomes demanded by the K.S.A. 72-1127(c) standards and the study experts opinions.”³⁶

Accordingly, the Panel affirmed its prior conclusion that “the Kansas K-12 school financing formula [is] constitutionally inadequate in its present failure to implement the

²⁷ *Id.* at 14-15. (The LPA study was considered as evidence of legislative intent, but the parties were not permitted to examine the validity and accuracy of the study through the fact-finding processes of litigation. *Montoy v. State*, 282 Kan. 9, 138 P.3d 755, 763 (2006)).

²⁸ *Id.* at 14

²⁹ *Id.* at 14-15.

³⁰ *Id.*

³¹ *Id.* at 16.

³² *Id.* at 17.

³³ *Id.*

³⁴ *Id.* at 18.

³⁵ *Id.*

³⁶ *Id.* at 19 (citing *Gannon v. State*, No. 2010CV1569, at 183-185 (Shawnee Co. Dist. Ct. Jan. 11, 2013)).

necessary funding to sustain a constitutionally adequate education as a matter of current fact as well as the precedent facts that supported the *Montoy* decisions.”³⁷

2. *Adequacy as a Matter of Student Performance*

The Panel found that when students were categorized into subgroups by race or ethnicity, English speaking ability, or family economic circumstance, there were “substantial gaps” in student performance on student achievement tests and [these gaps] were most likely to “continue unabated without adequate funding.”³⁸ The Panel stated that the continuance of such achievement gaps was an “affront” to the *Rose* factors as a whole, and in particular, to factors (i), (vi) and (vii).³⁹ Further, the Panel found that such achievement gaps still existed, both statewide and at the plaintiff school districts, based on statistics provided by the 2010 to 2013 State Department of Education “Report Cards.”⁴⁰ The Panel noted that many of the known and successful educational approaches to close these achievement gaps were significantly restricted or abandoned due to the reduced funding, and there was no evidence that the funding for these programs has ever been restored.⁴¹

Next, the Panel stated that the *Rose* factors, specifically factors (iv) and (v), show that education is also a means of “learning how to interact with each other, be competitive without being hostile or devastated, and appreciating the arts, music, sports and both self and the world.”⁴² The Panel then found that programs such as teacher mentoring, parents as teachers, and professional development of educators, are related to these factors, and such programs were the first to fall “by the wayside in local school board’s attempts to salvage the ‘three Rs’” and remain underfunded.⁴³ Moreover, the Panel found that most independent funding sources for such programs had been eliminated or reduced which required schools to fund such programs from BSAPP dollars.⁴⁴

The Panel noted that certain programs related to technical education or dual credit courses “do not appear structured or funded such that they necessarily cannibalize other programs or student needs because many have drawn in resources outside the K-12 school

³⁷ *Id.*

³⁸ *Id.* at 20 (citing *Gannon v. State*, No. 2010CV1569, at 183-185 (Shawnee Co. Dist. Ct. Jan. 11, 2013)).

³⁹ *Id.* at 20-21. (See K.S.A. 72-1127(c)(1) for *Rose* factor (i); K.S.A. 72-1127(c)(6) for *Rose* factor (vi); and K.S.A. 72-1127(c)(7) for *Rose* factor (vii)).

⁴⁰ *Id.* at 32.

⁴¹ *Id.* at 38-39.

⁴² *Id.* at 40.

⁴³ *Id.* at 41-42.

⁴⁴ *Id.* at 41. (See K.S.A. 72-1127(c)(4) for *Rose* factor (iv); and K.S.A. 72-1127(c)(5) for *Rose* factor (v)).

system for assistance.”⁴⁵ However, the Panel found that while these programs enhance the K-12 school system they are not universal in need or accessibility.⁴⁶ As such, these programs do not of themselves “cure the K-12 system’s deficiencies in providing the underlying breadth of resources that would support some reasonable assurance that each student, so inclined, is able to obtain this third party assisted benefit in aid of ‘(i)’, ‘(vii)’, and, particularly, [‘(vi)’] of the ‘*Rose* factors’.”⁴⁷

Overall, the Panel’s findings with respect to student achievement lead the Panel to conclude that the evidence presented at trial demonstrates that student achievement is not at a level where the *Rose* factors are satisfied for all students. Furthermore, this condition is due to the lack of adequate funding for those educational programs that are most likely to assist students in obtaining the *Rose* capacities listed in K.S.A. 72-1127(c).⁴⁸

3. Adequacy as a Matter of Dollar Funding

The Panel reaffirmed its prior analysis of the A&M study and the LPA study as set out in the 2013 Opinion.⁴⁹ The Panel noted that it adjusted the cost studies first to ensure expenditures were uniform so that the results of the studies could be compared when analyzing the adequacy of school finance. The studies were then further adjusted by the Panel to account for the effect of inflation.⁵⁰ Based on this analysis, the Panel found that despite a BSAPP increase to \$3,852 for FY2015, which amounts to a 1.9% increase in BSAPP since 2009, the rate of inflation over the same period of time was approximately 11% resulting in an effective net loss in purchasing power of 9.1% for school districts.⁵¹ Similarly, the increase in the artificial BSAPP for local option budget calculation purposes under K.S.A. 2014 Supp. 72-6433d was a 1.3% increase, rising from \$4,433 to \$4,490, but yielded a 9.7% decrease in purchasing power for school districts when accounting for inflation.⁵² The Panel concluded that this analysis demonstrates “that the State’s school funding system, as presently situated, remains constitutionally inadequate.”⁵³

⁴⁵ *Id.* at 45-46.

⁴⁶ *Id.* at 46.

⁴⁷ *Id.* at 46-47. (See K.S.A. 72-1127(c)(1) for *Rose* factor (i); K.S.A. 72-1127(c)(6) for *Rose* factor (vi); and K.S.A. 72-1127(c)(7) for *Rose* factor (vii)).

⁴⁸ See *Gannon*, No. 2010CV1569, at 20-48 (discussing adequacy in terms of student achievement statistics presented at trial).

⁴⁹ *Id.* at 48.

⁵⁰ *Id.* at 50-51.

⁵¹ *Id.* at 44.

⁵² *Id.* at 50.

⁵³ *Id.* at 51.

4. *Adequacy of Dollar Funding in Terms of Some Other K-12 Expenditures or their Funding Source*

In continued reliance on its analysis of the A&M study and the LPA study, the Panel further explained its exclusion of certain independent funding mechanisms from consideration in the adequacy inquiry. First, the Panel excluded special education funding because such funding is set off in the school finance formula. According to the Panel, the amount a school district receives in special education funding calculated as a weighting under the finance formula but then set off as a credit against the district's state financial aid as "local effort."⁵⁴ Also, because the special education fund is a special use, restricted fund at the district level, it is limited in its availability to the school district as a funding source for non-special education expenses.⁵⁵

Next, the Panel excluded federal funds for two reasons. First, to the extent allowed by federal law, federal funds are set off as a credit against state financial aid because they are deemed "local effort."⁵⁶ The Panel also stated that those federal funds which were not deemed "local effort" were limited in use, limited in duration, limited in breadth and limited to the identified category of students targeted.⁵⁷ The Panel found that a "blanket credit" for such funds could not be used in establishing a BSAPP because there was no statutory mechanism to account for the fact that such funds were not available to all school districts.⁵⁸

Finally, the panel found that independently derived state payments, such as KPERs contributions, capital outlay state aid, bond and interest state aid, and supplemental general state, cannot be considered in analysis of the adequacy of school finance.⁵⁹ According to the Panel, doing so would only have the effect of supplanting general state aid, which is "overwhelmingly shown as now inadequate[.]" with these independent sources of revenue and, therefore, they are irrelevant in the analysis.⁶⁰ The Panel concluded that "no payment or credit advanced, however realistic, necessary or required it may be overall in regard to the State's K-12 education system, should properly be seen as one to be included in any measure of the adequacy of the Kansas K-12 school finance formula *as currently structured*."⁶¹

⁵⁴ *Id.* at 55. The term "local effort" was replaced in law with term "school financing sources" in 2014 Senate Substitute for HB 2506. See L. 2014, ch. 93 § 37; K.S.A. 2014 Supp. 72-6410.

⁵⁵ *Id.*

⁵⁶ *Id.* at 56.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 62.

⁶⁰ *Id.* at 61-62.

⁶¹ *Id.* at 62.

5. *Adequacy as a Matter of Dollar Funding with the Local Option Budget Treated as a State Funding Resource*

In addition to other funding sources that were excluded from its analysis, the Panel also excluded local option budget (LOB) funding from its determination as to the adequacy of school finance. The Panel noted that in the 2014 legislation the Legislature declared that, in order to satisfy the constitutional requirements under Article 6, it is the purpose and intention of the Legislature to provide for a K-12 financing system that is sufficiently flexible to consider and utilize financing methods from all available resources including “any provision which authorizes the levying of local taxes.”⁶² However, the Panel questioned whether the State could claim LOB funds, which are derived from local tax levies imposed solely at the discretion of the local school board, as part of the State’s contribution in meeting its constitutional obligation to adequately fund schools, particularly when such funds were necessarily applied by school districts in order to meet the *Rose* factors.⁶³

The Panel found that there was “no legislative mandate requiring a local option budget.”⁶⁴ As the formula is currently structured, LOB funding could satisfy the Supreme Court’s adequacy test, but whether such satisfaction actually occurs would be subject to the variances of local control since the level of LOB funding is solely within discretion of the local school board and the local electorate.⁶⁵ The Panel concluded that the Legislature’s constitutional obligation to “make suitable provision for finance” under Article 6, § 6(b) cannot be “discretionary nor haphazard” in its result, nor can such obligation be delegated to another entity having discretion as to implementation.⁶⁶

To rectify these infirmities, the Panel stated that the finance formula needs to provide a “fail-safe, such as a contingency reserve of funds.”⁶⁷ This type of funding mechanism would provide districts with a reliable source of funding from the State for when local voluntary tax revenues fell short of providing constitutionally adequate funding. In addition to a fail-safe funding stream, the Panel stated that the LOB funding scheme needs a floor, such as a percentage of state financial aid, that defines the State's right to compel the use of such funds as the State deems necessary to meet the State's obligation under Article 6, § 6(b).⁶⁸ The Panel concluded

⁶² *Id.* at 63. See L. 2014, ch. 93 § 28(c); K.S.A. 2014 Supp. 72-64c05(c).

⁶³ *Id.* at 69-70.

⁶⁴ *Id.* at 64.

⁶⁵ *Id.* at 76.

⁶⁶ *Id.* at 76-77.

⁶⁷ *Id.* at 74.

⁶⁸ *Id.* at 75.

that without the suggested changes to the LOB statutes noted above, the LOB funding mechanism remains too unreliable because of its discretionary nature to be utilized in analyzing the adequacy of school finance.

6. Adequacy as a Matter of Expert Opinion, Expertise, or Involvement

The Panel found it significant that the experts in the area of education, such as school district officials, teachers, school employees that dealt with students and officials from associations who dealt with K-12 schools and their funding needs “opined that school district needs in terms of funding were presently, and clearly, inadequate to the tasks of providing a constitutionally adequate education to Kansas’s K-12 students.”⁶⁹ The Panel found that no opinion faltered during cross-examination and no evidence, other than that previously rejected by the Panel, was offered to the contrary. Similarly, the Panel found it significant that the “experts whose studies propounded the costs to sustain a constitutionally adequate education similarly stood unimpeached as to either qualifications, expertise, or their conclusions reached.”⁷⁰ The Panel concluded that all such individuals at trial, either directly or implicitly, expressed that current funding was inadequate to assure a constitutionally adequate education.

CONCLUSIONS

The Panel held that “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*.”⁷¹ As noted by the Panel, the opinion was strictly a declaratory judgment as to the adequacy of the current provision for finance of the K-12 education system.⁷² The Panel’s conclusions did not contain any direct orders to either party. However, the Panel attempted to provide some guidance for moving forward.

First, while cautioning that the District Court was not ordering any specific BSAPP amount be enacted, the panel provided some suggestions as to how the current school finance formula may be amended to bring it into compliance with constitutional requirements. The Panel first suggested that a BSAPP amount of \$4,654 coupled with increases in certain weightings for those students that are more costly to educate could be constitutional, provided the LOB funding scheme was also adjusted to include both a minimum local tax levy and a fail-

⁶⁹ *Id.* at 91.

⁷⁰ *Id.*

⁷¹ *Id.* at 114-115.

⁷² *Id.* at 116.

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safe funding mechanism.⁷³ Alternatively, the Panel suggested a BSAPP amount of \$4,980 could be an adequate level of funding if the LOB remains strictly discretionary.⁷⁴

The Panel suggested a renewed effort at mediation between the parties.⁷⁵ Ultimately, the Panel retained jurisdiction to review the Legislature's subsequent actions at a later time. The Panel concluded that any action by the Legislature to adequately fund the K-12 education system must be given time so that the effects thereof can be measured. The Panel stated that it remains ready to take appropriate action upon proper application of either party.

⁷³ *Id.* at 103.

⁷⁴ *Id.* at 105.

⁷⁵ *Id.* at 116.