

Kansas: Supreme Court decision holds once again that education funding formula is unconstitutional



David M. Kall | Thursday, October 26, 2017

This spring, the Kansas Supreme Court ruled, for the fourth time, that lawmakers had failed to "make suitable provision for finance of the educational interests of the state." We had previously [explained](#) the opinion, known as *Gannon IV*. The court ordered the state to demonstrate, by June 30, 2017, that it had a constitutionally compliant remedy that "is reasonably calculated to have all Kansas public education students meet or exceed the standards" previously set forth.

Earlier this month, the court reached the same conclusion in the next iteration of the case, following lawmakers' remedial efforts contained in [Senate Bill 19](#), which the governor signed on June 15, 2017. Termed the Kansas School Equity and Enhancement Act, the bill provides \$1.991 billion in general state aid from the State General Fund for FY 2018, and \$2.047 billion in general state aid from the SGF for FY 2019. The legislation also sets forth definitions, weighting calculations, and other details for determining how districts are to be funded.

In this latest opinion in *Gannon et al. v. Kansas*, the court unanimously held that the state has not met its burden of establishing that school districts have reasonably equal access to substantially similar educational opportunities:

- After Senate Bill 19 expanded the authorized uses of the capital outlay fund.
- After Senate Bill 19 changed the Local Option Budget equalization calculation.

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- By imposing different procedures for certain districts to raise their maximum Local Option Budget.
- Through the at-risk funding procedures in Senate Bill 19.

This decision follows the 2015 legislation, Classroom Learning Assuring Student Success Act (CLASS), found to be “constitutionally inadequate in both structure and implementation” in *Gannon IV*. In *Gannon IV*, the court pointed to evidence showing that “not only was the State failing to provide approximately one-fourth of all its public school K-12 students with the basic skills of both reading and math, but that it was also leaving behind significant groups of harder-to-educate students.”

This time around, the court’s job was essentially the same, determining whether Senate Bill 19 satisfied the state constitution’s adequacy and equity requirements. Invoking the tests for adequacy and equity, the court asserted that “[e]ven though [Senate Bill] 19 arguably makes positive strides, the state’s public education financing system still has not been shown by the State to be reasonably calculated to have all Kansas public education students meet or exceed the standards. . . Additionally, that system, through its structure and implementation, is not providing school districts with reasonably equal access to substantially similar educational opportunity through similar tax effort.”

The court gave the state another nine months, until June 30, 2018, to enact legislation and demonstrate that its proposed remedy passes muster.

Pointing to the “regrettable history” of the school funding failures, the court lamented the fact that “in our view the Kansas K-12 public education system has been inadequately funded for far too long. Including today’s decision, by our count inadequacy has been judicially declared to exist from school years 2002-2003 through 2018-2019, with the possible exception of three years of ‘substantial compliance’ for ‘interim purposes.’”

Clearly tiring of this pattern, the court promised that after June 30, 2018, “we will not allow ourselves to be placed in the position of being complicit actors in the continuing deprivation of a constitutionally adequate and equitable education owed to hundreds of thousands of Kansas school children.”

What is not clear is what the court will do if it finds the school funding formula to be unconstitutional yet again. It conceded that it also must “perform [its] duty and review whether any new legislation is compliant with the people’s constitution for as many times as such laws are presented to us.”

In response to this latest decision, the Kansas City Star Editorial Board wrote an [editorial](#) that disparaged certain lawmakers’ “[s]tumping and snorting about school funding” as not only ineffective, but as “getting awfully old.” The board acknowledged the age-old standoffs over raising taxes to fund schools, even if ultimately, it presumes that “solving this difficult problem [will] almost certainly will involve raising taxes in 2018.”



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