



**Testimony before House K-12 Budget Committee
HB 2395 – School Finance plan
Mike O’Neal – in-person testimony as neutral
March 18, 2019**

Madam Chairman and members of the Committee

On behalf of the Kansas Policy Institute, I appear today to provide testimony as a neutral conferee. We cannot fully support the bill because of the level of funding included although we applaud the Committee for addressing both funding and policy concerns expressed by individuals and organizations on both sides of the fence.

Our concern over funding is that legislators appear to be guided not by what is prudent given current financial conditions and the needs of other entities for whom the Legislature is responsible for funding, but, rather, by a Court which has tended to move the goal posts over the course of the history of the current school finance litigation and which has overstepped its constitutional boundaries.

It was this same Court that said in its first Gannon decision, and repeated again in Gannon 5, that **“total spending is not the touchstone of adequacy”**. Nevertheless, it appears that we’re back to considering total spending, rather than focusing on the real crux of *Gannon*, i.e., assisting underperforming students reach the goals outlined in statute. We will keep repeating what is universally true and undeniable: it is not how much is spent but how it is spent that will ultimately move the needle for these students. That does not necessarily mean increases in current spending, but if additional spending is to be provided, it must be allocated in a manner reasonably calculated to achieve the outcomes the Legislature has identified and the Court has acknowledged. The Court has acknowledged that it is the subset of at risk students that drives the adequacy question and any proposed remedy.

Without addressing each and every section, we do applaud the Committee for including a number of policy provisions that are essential in addressing the crux of the current malaise in outcomes for students at risk of not achieving the goals set out in statute. As we have previously pointed out, the Court has assumed and acknowledged the power of the Legislature to allocate education funding resources and has coined a test of “adequacy” that states that the requirement is met “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. 72-1127.”

As you know the Legislature has control over the “structure”, but its only control over “implementation” has been to appropriate funds and hope the districts allocate those funds in a manner reasonably calculated to achieve the statutory goals. Achieving student outcomes is an essential and primary role of the schools.

The Legislature can either take control of allocating those funds, since the Court has made this the State’s (Legislature’s) legal responsibility, or it can do as this bill provides, i.e., require that the schools make allocation of sufficient resources to achieve outcomes the first priority and certify to the Legislature that they have done so. We fully support this provision. Given the importance of instruction, as articulated by KSDE itself, it is ludicrous that districts with the latitude to allocate their own resources are allowed to sue the State for more funds by arguing that they didn’t have enough money “left over” from spending on non-instructional items to fund the most important part of their budget. Instruction is where the budget must start, not finish. KSDE’s own Accounting Handbook contains this directive.

On the subject of targeting new dollars, we do appreciate the Committee’s effort to target more resources toward at-risk students. This could be done with current resources but is even more important if additional funding is contemplated. The increase in the at-risk weighting and emphasis on evidence-based programs in Sections 40, 41 and 44 are welcome additions.

The bill does attempt to address the issue of ever-increasing levels of unencumbered operating funds, the fact of which tends to suggest that those funds are considered unnecessary for current operations. We would suggest that this provision also target spending toward the subset of students identified in the litigation, i.e., those at risk of not reaching your statutory goals. Or, perhaps, these funds could be applied to reduce the districts’ LOB tax levy.

We also support the provision for performance accountability and longitudinal achievement reports, as long as the reports, in fact, provide you with the information you intended to obtain. Past experience tells us the Legislature needs to be as specific as possible in areas of required reporting. The Sec. 26 format for reporting should help.

Provisions in the bill to limit statutory base state aid per pupil amounts to the two upcoming years makes sense given that this Legislature should not purport to bind future legislators. No

one can predict the State’s financial picture in the out years, particularly given the amount of new spending we see contemplated in this legislative session alone.

The provisions addressing the issue of bullying in the schools, together with the HOPE Scholarship provisions assist in dealing with a unique and worthy subset of at-risk students. In addition, the amendments to the tax credit for low income students scholarship program will serve to provide the benefits of the program to qualifying students earlier in their school experience when the impact will be greater and even more beneficial.

Simply adding funding will not be fruitful in achieving better outcomes that have eluded us in spite of historic funding increases since *Montoy*. To end the senseless cycle of litigation, legislative policy must influence the proper allocation of resources. This bill is a step in the right direction insofar as policy is concerned. Ultimately, the level of funding is exclusively within your power. As the Court in *Gannon* has stated:

“Regardless of the source or amount of funding, total spending is not the touchstone for adequacy in education required by Art. 6 of the Kansas Constitution.”