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MEMORANDUM

To: 2022 Special Committee on Education
From: Office of Revisor of Statutes
Date: November 10, 2022
Subject: Legislative History of K.S.A. 72-3422(a) – Statewide Excess Costs
Calculation and the 92% Funding Rate

K.S.A. 72-3422(a) requires the state board of education to calculate the statewide 'excess costs' for the provision of special education and related services and to use such amount to determine the amount of special education state aid due to school districts. The term 'excess costs' is not in the statute, but the term is generally known as the additional costs required to provide special education and related services that are over and above the costs to provide a general education.

To calculate statewide excess costs, K.S.A. 72-3422(a)(1) through (10) generally requires the state board of education to:

- Determine the total amount of expenditures of all school districts for the provision of special education and related services;
- Subtract the amount of regular education funding that districts receive for students who receive special education and related services;
- Subtract other dedicated sources of special education funding such as federal funding and Medicaid funding.

K.S.A. 72-3422(a)(11) then provides that school districts shall be entitled to receive special education state aid at a rate of 92% of the statewide excess costs. If the amount appropriated for special education state aid is insufficient to meet each school district's entitlement, state law provides that reductions shall be prorated among all districts.¹

¹ K.S.A. 72-3423.

K.S.A. 72-3422(a) was originally codified in 2005 during the *Montoy v. State* school finance litigation.² The legislature has not made any substantive revisions to the statewide excess costs calculation method since it was first enacted in 2005. Though, as the *Montoy* litigation progressed, the legislature revised the excess costs rate at which districts shall be entitled to receive special education state aid before providing for the 92% rate.

Montoy v. State – Special Education State Aid Rulings and Codification of K.S.A. 72-3422(a)

At the beginning of the *Montoy* school finance litigation, plaintiffs challenged the overall constitutionality of the school finance system and specifically challenged the constitutionality of the state's funding for special education and related services.³

In 2003, the district court held the state school finance system unconstitutional.⁴ On the issue of special education funding, the district court found that the state "further diminishes the availability" of general educational funds because the legislature only reimburses 85% of the special education excess costs which causes districts to transfer at least 15% of their general fund dollars to provide for special education.⁵

In *Montoy II*, the Kansas supreme court held that the district court's findings were supported by substantial competent evidence and upheld the district court's ruling that the state's school finance system was unconstitutional.⁶

During the 2005 regular session, in response to *Montoy II*, the legislature revised the school finance formula to add additional funding to the formula.⁷ As part of the revisions, the legislature placed the statewide excess costs calculation into K.S.A. 72-3422(a)(1) through (10) and provided for three years of phased-in special education state aid increases based on the following statewide excess costs rates:

- SY 2005-2006 = 85%.
- SY 2006-2007 = 88%.
- SY 2007-2008 and each school year thereafter = 91%.⁸

² L. 2005, ch. 152, § 10; 2005 HB 2247, § 10.

³ *Montoy v. State*, 275 Kan. 145, 147–50 (2003) (*Montoy I*).

⁴ *Montoy v. State*, No. 99-C-1738, 2003 WL 22902963, at 49 (Kan. Dist. Ct. Dec. 2, 2003).

⁵ *Id.*

⁶ *Montoy v. State*, 279 Kan. 817 (2005).

⁷ L. 2005, ch. 152, § 10; 2005 HB 2247, § 10.

⁸ L. 2005, ch. 152, § 10; 2005 HB 2247, § 10.

Prior to the codification of the excess costs calculation into state law, the legislature, the state department of education and other agencies had been using the same statewide excess costs calculation to evaluate and appropriate special education state aid. The following graphic from a 1999 special education funding audit by the legislative division of post audit summarizes the state's historical method to determine statewide excess costs and appropriate special education state aid:

The Legislature Decides How Much Money To appropriate for State Categorical Special Education Aid

In identifying the "excess" costs of special education Statewide, the Department of Education uses this formula:

Actual Statewide expenditures from year before
+ Adjustment for increase in teachers' salaries
= Estimated Statewide expenditures for special education
- Federal aid
- Medicaid
- Adjusted General Fund budget moneys
- Local option budget moneys
= Total "excess" costs of special education

Through the appropriations process, the Legislature decides on a Statewide basis how much of this "excess" cost to fund with State categorical aid to help school districts defray the cost of special education.

In fiscal year 1997, the Legislature appropriated enough moneys to fund 80% of the Statewide "excess" cost of providing special education.

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In *Montoy III*, the Kansas supreme court evaluated whether the legislature's funding increases were enough to achieve constitutional compliance. The Kansas supreme court held that the Legislative response "falls short of providing constitutionally adequate funding for public education."¹⁰ Regarding special education, the Court noted that the legislature provided for phased-in funding increases to special education state aid and found that increase in the 2005-2006 school year would result in an additional \$17.7 million.¹¹ The Court then stated that such

⁹ *Reviewing Issues Related to Funding for Special Education*, Performance Audit Report by the Legislative Division of Post Audit, 6 (1999).

¹⁰ *Montoy v. State*, 279 Kan. 817, 832-33 (2005) (*Montoy III*).

¹¹ *Id.*

increase stands in contrast to the 2001 Augenblick & Myers study which recommended an increase of nearly \$102.9 million for special education state aid.¹²

In the 2005 special session, the legislature amended K.S.A. 72-3422(a) to increase the rate at which statewide excess costs shall be reimbursed:

- For SY 2005-2006 = 89.3%.
- For SY 2006-2007 and each school year thereafter = 92%.¹³

In the 2006 regular session, and after completion of the 2006 legislative division of post audit education cost study, the legislature maintained the 92% statewide excess costs reimbursement rate for the 2006-2007 school year and each school year thereafter.¹⁴

In *Montoy IV*, the Kansas supreme court approved of the legislature's overall increases to school funding and determined that the additional funding brought the school finance formula into constitutional compliance.¹⁵ The Court noted specifically that the increases to the special education excess cost reimbursement "increased from 85% at the time of *Montoy II* to 92%, and provides by 2008-09 an additional \$111.5 million in new funding."¹⁶

¹² *Id.*

¹³ L. 2005, ch. 2, § 17 (Special Session).

¹⁴ L. 2006, ch. 197, § 7.

¹⁵ *Montoy v. State*, 282 Kan. 9, 21–22 (2006) (*Montoy IV*).

¹⁶ *Id.* at 22.

Gannon v. State – Special Education State Aid Rulings

In the *Gannon v. State* school finance litigation, as part of plaintiffs arguments upon the constitutionality of the school finance system as a whole, plaintiffs argued that the legislature was not sufficiently funding special education state aid at the 92% rate provided in statute.¹⁷ In *Gannon V*, the Kansas supreme court held that the issue of underfunding special education state aid may be relevant to whether the total funding of the school finance system is adequate, but the school finance formula is not rendered structurally inadequate because the 92% entitlement is not reached.¹⁸

In *Gannon VI*, when reviewing the increases made to the school finance system, the Court noted that the legislature increased special education funding by \$44.4 million for the 2018-2019 school year and that it also provided for an additional \$7.5 million in each year until 2022-2023.¹⁹ The Court mentioned Plaintiff's argument that the increase only brought the funding to 83% of statewide excess costs but the Court did not further discuss the matter.

In *Gannon VII*, the Court noted that the legislature increased special education funding along with a multitude of other school finance increases.²⁰

¹⁷ *Gannon v. State*, 298 Kan. 1107, 1116 (2014) (*Gannon I*).

¹⁸ *Gannon v. State*, 306 Kan. 1170, 1184–85 (2017) (*Gannon V*).

¹⁹ *Gannon v. State*, 308 Kan. 372, 381, (2018) (*Gannon VI*).

²⁰ *Gannon v. State*, 309 Kan. 1185, 1189–90 (2019) (*Gannon VII*).