

Report of the Special Committee on Education to the 2022 Kansas Legislature

CHAIRPERSON: Representative Kristey Williams

VICE-CHAIRPERSON: Senator Molly Baumgardner

RANKING MINORITY MEMBER: Representative Valdenia Winn

OTHER MEMBERS: Senators Renee Erickson, Michael Fagg, Alicia Straub, and Dinah Sykes; and Representatives Kyle Hoffman, Jo Ella Hoye, Steve Huebert, and Adam Thomas

STUDY TOPIC

The *Kansas Constitution* states that the “Legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools.” The Kansas Supreme Court, in *Gannon IV*, charged the Legislature to fund schools at an adequate level that ensured all Kansas public school students met academic standards. The Committee will examine the issue of academic achievement in K-12 education by reviewing the following topics:

- Funding increases approved under the *Gannon* decisions;
- Legislation related to longitudinal reporting from 2015 to 2021;
- Kansas State Department of Education rules and regulations updates in 2021 related to achievement;
- The State Board of Education’s legislation priorities for the 2022 session;
- The Kansas State Department of Education’s priorities from its 50-stop Success Tour;
- Achievement expectations and funding for at-risk students; and
- Constitutional roles of the Legislature, State Board of Education, and local school boards.

Special Committee on Education

REPORT

Conclusions and Recommendations

The Special Committee on Education discussion focused on determining one goal that the Legislature and the State Board of Education could cooperate on to improve student achievement and how that goal could be measured. The Committee recommended the Legislature and the State Board of Education collaborate to ensure all Kansas children are able to read at grade level by the end of grade 3.

Proposed Legislation: None.

BACKGROUND

In 2021, the Legislative Coordinating Council (LCC) appointed the Special Committee on Education (Committee), composed of 11 members. The Committee was directed by the LCC to review school finance expenditures under *Gannon*; student achievement data since 2015; the particular needs of at-risk students; recent changes to the accreditation regulations; K-12 education priorities from the State Board of Education (State Board) and the Kansas State Department of Education (KSDE); and the constitutional role of the Legislature in K-12 education.

COMMITTEE ACTIVITIES

The LCC approved two meeting days for the Committee in 2021. The Committee met twice in 2021, on November 30 and December 1. Both meetings were held via in-person and virtual formats. The Committee heard testimony on several topics focused on improving student achievement.

November 30, 2021, Meeting

The Education Article: Constitutional Authority of the Legislature and State Board

Legislative Powers and Obligations

An Assistant Revisor of Statutes reviewed Article 6 of the *Kansas Constitution*, known as the

Education Article. He stated that similar language requiring the Legislature provide for “intellectual, educational, vocational and scientific improvement” has been a part of the *Kansas Constitution* since nearly the beginning of statehood and that it has been interpreted to require that education cannot be static or regressive.

Further, he said the Legislature must provide for the State Board, which it has done through various statutes. The revisor noted that a main obligation of the Legislature is providing suitable school finance. He stated that in its first decision under *Gannon v. State (Gannon I)*, the Kansas Supreme Court (Court) interpreted Article 6, Section 1 to require the Legislature to provide an adequate and equitable school funding system. [Note: *Gannon* refers to a series of cases titled *Gannon v. State* in which plaintiffs challenged the Kansas school finance formula for elementary and secondary education. These cases are generally referred to individually by case order, *i.e.*, *Gannon I* is the first Court opinion and *Gannon IV* is the fourth Court opinion.]

Under the equity test, the Court would consider whether the system provides reasonable equal access. The revisor stated challenges to this requirement arise mostly through the equity provisions of school finance, such as the supplemental state aid. To comply with the adequacy component, the provisions must allow for all Kansas students to meet or exceed the *Rose* capacities, which are the minimum goals of the

education system. [Note: More information on the *Rose* capacities is provided below.] The Court would review both the implementation and structure of the school finance system. In *Gannon IV*, the Court found that the block grants of the Classroom Learning Assuring Student Success (CLASS) Act of 2015 failed the structure portion of the adequacy test. For implementation, the Court would review inputs and outputs. In *Gannon IV*, the Court considered inputs of state reductions of funding in 2009 that reduced programs, activities, and classes, and outputs that public schools were failing to provide necessary skills. Further, the revisor noted the Court focused on the decline of state assessment scores in those years and the significant achievement gaps between subgroups. The Court found similar gaps in other standardized test results such as ACT and National Assessment of Educational Progress (NAEP) scores, and graduation rates.

The revisor reported that in 2017 in *Gannon IV*, the Court found the CLASS Act was not reasonably calculated to meet the *Rose* capacities and therefore failed the adequacy component. He then outlined the steps the Legislature took to amend the school finance provisions, including funding the safe harbor provisions provided by Court decisions in *Montoy v. State*. He reported that the Court required a few additional adjustments, but the Legislature is currently in the sixth year of the *Montoy* plan, which was the last school funding plan deemed constitutional. He then noted the Court continues to maintain jurisdiction.

State Board and Local Board Authority

The revisor then reviewed the powers and duties of the State Board and local boards of education. The authority of these entities is derived from Article 6 of the *Kansas Constitution*. The revisor stated this requires a balancing of legislative authority with the authority of these other constitutionally derived entities. He reported the Court has held that the State Board's power of general supervision is self-executing, which means that additional legislation is not required. He stated the Court has held the scope of general supervision as being related to equalizing and promoting quality of education through accreditation and certification of teachers and schools. He stated Attorney General opinions have noted that graduation requirements and minimum curriculum

standards may also be included in the State Board's self-executing authority.

The revisor then noted that the constitutional authority of local boards has been held by the Court to not be self-executing. However, he stated, this does not mean that the local boards are wholly under the authority of the Legislature. He reported the Court has held that the duties of the Legislature and local boards must be read together and harmonized. He further noted the Legislature cannot pass legislation that would interfere with the constitutional duties of local boards.

Legal Challenges

Since 1966, there have been challenges to legislatively enacted provisions. The revisor stated the Office of the Revisor of Statutes is not aware of any successful challenges to legislation under Section 2 or Section 5 of Article 6. He then reviewed a few cases relating to the intersection of legislative authority and the constitutional authority of the State Board. The first case involved the State Board promulgating a regulation requiring all local boards to create student conduct policies, which the Court found the State Board could require. The second case involved legislation on collective bargaining procedures, which the Court commented on finding that it was not within the self-executing authority of the State Board. In the third and final case, the State Board suspended a teacher certificate relying on a statute rather than a regulation. The Court held that the reliance on the statute was not unconstitutional because it did not reduce the State Board's authority.

In response to questions from Committee members, he explained the *Montoy* funding scheme, branches of government, separation of powers, and what the Court considers harmonious.

Examining the Relationship Between School Finance and Student Achievement

Kansas Legislative Research Department

A Kansas Legislative Research Department (KLRD) Fiscal Analyst presented 10-year reviews of school finance expenditures for the State and student achievement data from 2015 to 2021, including state assessment scores, graduation rates, ACT scores, and NAEP scores. She noted total expenditures data from KSDE, including state aid,

local revenue, and federal aid from the 2011-2012 school year to the 2020-2021 school year. She then reviewed the major categories of state aid from FY 2015 to FY 2024, with total changes. The analyst noted that some changes would reflect new funds, such as the Mineral Production Fund, which began being included in the school finance formula in 2017. She then stated that, of the major categories of state aid, the State Foundation Aid and Supplemental State Aid are generally referred to as the *Gannon* increases. The analyst reported that the State Foundation Aid includes the Base Aid for Student Excellence (BASE) set in statute.

The analyst then reviewed the state assessment data for all students and all grades, graduation rates, and ACT scores for 2015 to 2021. She noted no 2020 data were included because the assessment did not occur due to the COVID-19 pandemic. The analyst then noted the performance level descriptors and minimum cut scores (performance thresholds) for the four assessment levels. The cut scores are different for math and English language arts (ELA). The analyst stated students are considered career- and college-ready or proficient if they score in either level 3 or level 4. The terms “career- and college-ready” and “proficient” are defined differently by the federal government and KSDE. She then reviewed the NAEP scores for 2015, 2017, and 2019 for math and reading. She also noted the descriptions of the different levels and cut scores for the NAEP information. She noted the state assessment data for Kansas students in grades 3 and 4 for 2015 to 2021.

The analyst reviewed total expenditures and assessment data for Unified School District (USD) 259 Wichita. She noted that the grade 3 math chart differs from the statewide charts because it follows a single cohort of students. She stated that, rather than compare one grade 3 class to another, it follows a grade 3 student into grade 4 then grade 5, and so forth. She noted that these student cohort groups, including all students, free- and reduced-price lunch students, African American students, Hispanic students, and paid lunch students, could be followed only to 2019 and grade 7. The students would have been in grade 8 in calendar year 2020 when no state assessment took place, and students in grade 9 do not have state assessment data. The analyst noted the cut scores were provided.

She reported the Kansas Assessment Program (KAP) did not design the data to be reviewed in this cohort manner; rather, the data were designed to compare one grade 3 class to another grade 3 class. She also stated a drop in scores does not reflect knowledge loss.

The analyst also reviewed the grade 4 scores for math, grade 4 scores for ELA, and math and ELA assessment scores for grades 3 and 4 by class, or year-over-year, which she reported was how the KAP designed the scores to be reviewed. The analyst stated similar information was provided for USD 308 Hutchinson, USD 443 Dodge City, and USD 500 Kansas City. She noted the same subgroups might not be included in each because there may have been no students from that subgroup taking the test that year and due to a lack of student enrollment data in some categories.

In responding to questions, the analyst clarified that the cohort data is following a specific group of students as they age, while the year-over-year data compares a single class of students to another class of students and does not include the exact same students. The analyst also responded to questions about the districts included in the assessment review, the variety of state assessments across the states and how cut scores were determined, funding shifts since 2009, and instruction-specific expenditures.

Kansas State Department of Education

The KSDE Deputy Commissioner of Fiscal and Administrative Services reported on changes to the BASE, general fund, and local option budget (LOB) since the state moved out of the block grants in the CLASS Act. He noted that all funding starts with the BASE and that the BASE was \$4,006 in the first year after the block grants. He stated the current year BASE is \$4,706 and that, per *Gannon*, it will increase to \$4,846 in the next year. The BASE was \$4,400 for 2009.

The Deputy Commissioner of Fiscal and Administrative Services noted school districts have used the increases to hire additional staff, including nearly 1,200 teachers, 392 counselors and social workers, and 112 administrators. He stated special education state aid has been increasing, but that costs are increasing faster. Due to the increased costs, the State would need to add \$105.0 million

in FY 2022 to meet the statutorily required 92.0 percent of excess costs for special education. Without this increase, school districts will transfer general fund dollars to make up that difference because they are required to provide special education services. He also noted that school districts have begun drawing down Elementary and Secondary School Emergency Relief (ESSER) Fund II dollars, including funding for COVID-19 pandemic learning loss.

The KSDE Deputy Commissioner for Learning Services reported that the 2021 assessment data should not be compared to data for prior years due to the COVID-19 pandemic: student enrollment decreased by 15,000, students were learning remotely, truancy doubled, and there were fluctuations in teaching staff. He noted the organization that develops the ACT has stated 2021 was the largest disturbance to learning in 50 years. He reported KSDE is focusing on how to obligate funds, especially ESSER moneys, to return to prior assessments, which were leveling out with subgroups closing gaps. He also noted that the ACT score drop was partially due to the Legislature expanding who could take the ACT. He stated the graduation rate was continuing to increase.

Both deputy commissioners responded to questions on how the general fund and LOB drive assessment scores, gifted student funding and programming, special education services, the higher requirements of Kansas assessments compared to those of other states, subgroup assessment scores gaps, Title I funding, and shifting proficiency scores.

Kansas Policy Institute

A representative of Kansas Policy Institute (KPI) stated the decline in state assessment scores cannot be wholly attributed to the COVID-19 pandemic. He noted there have been decreases for all students statewide in both math and ELA from 2016 to 2019. He stated there is a slide downward in high school student scores, with 47.0 below grade level in math and 45.0 percent below in ELA, which means students are graduating high school despite being below grade level. He noted that Montana, Nebraska, and North Dakota all reported increased ACT scores in 2021 over 2020, but Kansas scores declined. He stated other declines include that one-quarter of students were

below grade level in 2016 and one-third of students are now below grade level. He mentioned that shift is common across the nation, perhaps indicating that the student has not understood the basic skills and therefore cannot keep up as academics become more challenging. He reported many districts across the state have more students below grade level than are college- and career-ready. The KPI representative noted that the Court in *Gannon* had concerns with the number of students below grade level, but that more students are now below grade level despite increases in funding. He stated that some across the state argue that students in level 2 are college- and career-ready, but that is not true based on KSDE's definition and how the information is reported to the federal government. He then noted student achievement should be compared to funding.

The KPI representative stated the percentage of funding directed to instruction has decreased, even as total school funding increases. Reading proficiency in the NAEP scores has gone down even though the State is spending about \$5,000 per student above inflation. He noted that in a 50-state comparison he created, with adjustments for cost of living, Kansas was 13th in per pupil spending based on 2019 Census data and the state aid per student was 6th, but the State's NAEP composite score was 27th. He then compared eight states with the same NAEP composite score despite different per pupil funding and stated that he believes it is not the amount spent, but how it is spent. He stated Florida increased its scores without adding additional funding, while Kansas scores went down. He stated that no one has ever responded to his question on how long it would take to get students to grade level. The KPI representative responded to questions on postsecondary pathways and remediation.

Understanding the Needs of At-risk Students

Assistant Revisor on Recent Legislative Changes

The Assistant Revisor reviewed education funding for at-risk students and requirements for at-risk expenditures. The Kansas School Equity and Enhancement Act (KSEEA) provides for funding of additional programs and services for at-risk students. KSEEA sets at-risk funding using the proxy of free-lunch students and provides funding through the at-risk and high-density at-risk weightings. He noted that in HB 2134, enacted in 2021, the Legislature provided that the purpose of

these weightings is to provide those students who are identified as at-risk with evidence-based instructional services in addition to their regular instructional services. The at-risk weighting is a formula: enrollment multiplied by BASE multiplied by that weighting. The high-density at-risk weighting is based upon whether the school district has, or individual buildings of a district have, 35.0 percent or more free-lunch students. The cap on high-density at-risk weighting for those school districts or buildings with more than 50.0 percent of free-lunch students is 0.105. The revisor noted the Legislature has provided for a statutory expiration date for the high-density at-risk weighting, which is currently extended through July 1, 2024.

The revisor stated the expenditures are to provide additional opportunities for students identified as at risk. Under current law, students are identified as at risk based on academic need criteria, not free-lunch status. He reported that in HB 2134, the 2021 Legislature codified the 10 criteria from the State Board for students eligible for at-risk services and added the 11th criterion of students who have dyslexia or characteristics of dyslexia. To track these expenditures, he noted state law requires an at-risk fund in each school district and all expenditures for these services to be paid from this fund. School districts are required to transfer funding to the at-risk fund, and under the prior year's bill, and current law, the Legislature required that all funding from the two weightings be transferred to the at-risk fund. Per a 2018 amendment, school districts must transfer a proportional amount of the LOB raised due to the at-risk weighting to the at-risk fund.

He stated that the Legislature, first under KSEEA and then through further amendments, requires the at-risk fund may only be used for at-risk and provisional at-risk programs, the personnel for those programs, supports to provide training to those personnel, and contracted services providing those programs. Expenditures can be used only for those programs and services approved by the State Board and state law requires that the State Board publish this list on its website. He mentioned that HB 2134 authorizes use of at-risk funds for provisional evidence-based programs that are producing or likely to produce measurable success. However, he said, if a school district does make expenditures for a provisional program, it

can do so only for two years and must submit the program to the State Board. If the State Board finds it is an evidence-based practice, the State Board must place the program on its list. He noted that under HB 2134, school districts must repay any funds used not in accordance with these requirements and the State Board must notify the education committees of the Legislature of any school districts that do so. HB 2134 also provided examples of what at-risk programs may include, such as after-school, before-school, and class-within-a-class programs. He stated school districts must create reports on at-risk services, numbers of students, types of programs and services provided, and how the services were chosen.

The revisor reviewed a statutory change in HB 2134 requiring school districts to track the longitudinal performance of students continuously receiving at-risk services, including assessment scores, graduation rates, progress monitoring, and other test results. He also noted HB 2134 requires a performance audit by the Legislative Division of Post Audit in calendar year 2023 to evaluate how school districts are expending at-risk funds and whether the spending is in accordance with state law. He responded to questions on recommendations from cost studies on at-risk weightings.

KLRD Analyst on School Finance Formula

The KLRD Fiscal Analyst briefly reviewed the at-risk weighting and its history. She noted the weighting has changed from 0.05 in 1992 to the current weighting of 0.484. She then reviewed the BASE Aid, at-risk and high-density at-risk full-time equivalent (FTE) numbers of students, and at-risk and high-density at-risk funding from 2015 to 2022 and noted the 2022 information was pulled from the preliminary 2022 Legal Max documents produced by KSDE. The analyst also said the formula for calculating the at-risk weighting is the number of students multiplied by 0.484 and that there are multiple ways to calculate the high-density at-risk weighting. In response to a Committee question on the 20-year change of the at-risk weighing, she noted a chart in a KLRD memorandum provides that information.

KSDE Information

The KSDE Deputy Commissioner of Fiscal and Administrative Services reviewed the

qualifications of students for which a district may spend at-risk funds, including academic, social-emotional needs, and, most recently, dyslexia characteristics. He stated that students receiving services are not necessarily the students calculated for the funding, which is based on free-lunch status. The Deputy Commissioner noted the at-risk weighting has been declining, and there is a greater decline in the past few years because the federal government has provided free lunch to all students, which means people do not need to fill out free-lunch applications. Without the application, students do not meet the criteria to be considered at-risk students.

He stated that school districts do spend more than is provided for in state aid. In response to Committee questions, both KSDE deputy commissioners explained how teacher salaries are funded using at-risk fund moneys, reviewed additional COVID-19-related funding, and expanded on how KSDE is changing to meet new requirements. Committee members also asked questions about the extent to which teachers are aware of at-risk students and at-risk services in private schools.

Understanding the Student Needs Assessment and its Impact on Student Achievement

Budget Process

The KLRD Fiscal Analyst briefly reviewed the school district budget process. She noted that school districts finalize their budgets in August following summer budget trainings from KSDE. These budgets are then provided to KSDE, with certain documents posted online.

The Rose Capacities and Recent Legislation

The Assistant Revisor provided an overview of the history of the student needs assessment. KSA 72-1163, beginning in the 2006-2007 school year, required each school board to conduct a needs assessment for each attendance center and use that information when preparing its budget. He noted HB 2134 revised this statute to require each school district to use the needs assessment to prepare a budget that allocates sufficient moneys so that all students in the district may meet the seven *Rose* capacities used by the Court in *Gannon* as part of the adequacy test. He stated the capacities were codified into law (KSA 72-3218) in 2014 after the

Gannon I decision, which is when they were set as the constitutional standard for adequacy. He said the capacities originate from the decision in a 1989 Kentucky school finance case, *Rose v. Council for Better Education*. He stated the Court recognized that similar goals were codified in 1992 and then later removed and again codified into law in 2005. The revisor noted that the Court considered this an attempt to adopt the *Rose* capacities. He addressed a Committee question on how the *Rose* capacities and Quality Performance Accreditation standards compare.

Kansas Association of School Boards

A representative of the Kansas Association of School Boards (KASB) reviewed what information the organization provides to its members on provisions of HB 2134 and any trainings. He stated that KASB does not usually do training on the budget because KSDE does, but that KASB has provided information on *Rose* capacities. The KASB representative stated school boards have always considered the needs assessment, along with other data, when creating their budgets. He said he believes school districts have gone through four different phases of budgeting in the past couple of decades, with school districts currently budgeting in the sixth year of increases under *Gannon* while also in a health crisis. He stated there has been improvement in student achievement when funding is increased, and a decline when funding declined, along with the COVID-19 pandemic. He also noted how school districts have broadly used funding since *Gannon* was implemented, with targeting of instruction or special education. In response to Committee questions, he noted KASB provides information on the student needs assessment but does not provide training on the mechanics of the budget. He also responded to Committee questions on the difference between his funding testimony and staff testimony, the State Board's tour and vision, skills needed for business, the impact of legislative changes, the backgrounds of KASB staff, and feedback KASB receives.

KPI

A KPI representative reviewed the authority of the Legislature and State Board in the realm of education, stating the Court determines the extent of authority for each on a case-by-case basis. He noted that over the years much has been said of

Article 6 and the Court’s interpretation of Article 6 to require adequacy to include structure and implementation. He stated the Legislature has never taken the role of allocation, but that the *Gannon* decision would allow the Legislature to do so. He said the way funds are used is more important than the total amount of funds.

He stated KPI has shown the history of increased funding and decreased student achievement scoring, making it critical to get to the allocation of funds. This, the KPI representative stated, gets to another part of Article 6—the constitutional duty of the local boards to control and maintain these schools. He stated that since at least 2006, state law has required the school boards to conduct needs assessments and use that information when preparing the budget. He stated that KPI believes this is not evidenced in school board budgets.

The KPI representative then commented on amendments to KSA 72-1163, noting the language added refers not to the use of the needs assessment when creating the budget, but its use when creating a budget focused on student improvement. He stated improvement is the constitutional expectation of Article 6 and that student academic performance is the expectation of the *Gannon* Court. He said KPI surveyed 25 large school districts and the majority of school board members did not know that the requirement exists or use it.

The KPI representative stated school boards need to act on the student needs assessment. He responded to Committee questions on the survey and whether the statute requires the documentation KPI was seeking.

Examining Skills for Student Success Post Graduation

Commissioner of Education

The Commissioner of Education (Commissioner) presented on the KSDE 50-stop success tour and the importance of soft skills as discussed on that tour. He stated the tour dated back to 2015, when he was hired and told to reach out to Kansans. There was a 20-city tour in 2015 asking what characteristics, attributes, and skills people thought a successful 24-year-old should have, and what Kansas public schools should do to form that person. He stated there was little

business input, so they reached out to the Kansas Chamber of Commerce for another seven locations and reached out to businesses for input. The skill set that both the Kansas public and business sectors said was needed included a combination of academic and non-academic skills. To determine whether this idea had changed, KSDE decided to do another tour in 2020, which was delayed by the COVID-19 pandemic until 2021. In this tour, KSDE asked if the competency wheel skills (a list of interpersonal and intrapersonal skills such as communication and task management) are still important and if Kansans wanted a personalized system with deeper engagement of parents and community and possible real-world situations. The Commissioner stated Kansas State University, the Regional Educational Laboratory in Colorado, and KSDE analysts are reviewing the data, but that there was overwhelming support for the skill sets and the generalization of how schools should go about doing that. He also noted there was an open-ended question about what schools needed for this system.

The Commissioner stated the 2015 tour ended with the State Board establishing a vision of leading the world in success. He stated that this included setting a high standard that a student could apply to their own pathway, such as a 95.0 percent graduation rate for the State (graduation has a high correlation with individuals becoming part of the middle class), and the success of each child to include academic skills, cognitive skills, employability skills, civic engagement, and technical skills so that the student can pursue their interests without remediation. He noted that the feedback received on the importance of soft skills, those that make a person a good employee, and hard skills, those needed for the job, made KSDE consider whether other data support these concerns with soft skills. He stated that KSDE reviewed a survey the U.S. Chamber of Commerce did on the missing skill sets of different education levels, and the top five across all levels include professionalism and work ethic, collaborating and working in teams, critical thinking and problem solving, and the ability to verbally communicate. He noted KSDE then considered whether the Kansas Chamber of Commerce had found any differences and that the recent survey noted 57.0 percent of respondents stated their greatest concern with their workforce was these employability skills.

Further, he stated, the organization that develops the ACT has also found that recent evidence shows academics alone do not prepare students for college. The Commissioner stated soft skills are important, so long as they are entwined with hard skills. In response to Committee questions, he noted there needs to be a balancing of the soft and hard skills, and that graduating seniors have not attended constitutionally funded schools. He also addressed Committee questions on the connection between school costs and inflation; the primary role of parents, rather than schools, in social-emotional learning; how test scores and graduation rates are connected; the involvement of parents with schools; the Individual Plans of Study process; and the discussion of early childhood education in the tour.

*Associated General Contractors of Kansas, Inc.
on Hard Skills*

A representative of the Associated General Contractors of Kansas, Inc. (AGC) presented on the importance of hard skills, also known as technical skills. He stated 2012 SB 155 was the best legislation for Kansas. He noted technical skills are important for employment. He stated that the National Center for Construction Education Research curriculum is used in teaching hard skills and is used in 125 high schools, technical colleges, and community colleges, primarily in rural Kansas. This curriculum introduces basic safety, construction math, use of power tools and hand tools, construction blueprint reading, and basic communication skills, which is a soft skill. He said those communication skills, along with basic employment skills, are important to having people on job sites.

The AGC representative noted the Legislature is lobbied by industries, and those industries need workers and will leave the state if they do not get qualified workers. He stated candidates who have technical skills are more employable and that businesses expect soft skills to be taught in public schools. He noted states are recognizing that not all students can or should go to college, leading to a resurgence in technical programs. He said a blend of soft skill and hard skill training will only enhance technical skills, positioning Kansas to solve the skilled workforce issues. He stated this curriculum gives the students structure, which students have said they want from their employer. The AGC representative responded to Committee

questions on possible surveys of job employment opportunities and teacher criteria leeway for these programs.

KSDE Rules and Regulations

KLRD Review

The KLRD Fiscal Analyst provided summaries of the recently adopted KSDE accreditation regulations and the changes from the prior regulations. These changes primarily reflect the shift from the Quality Performance Accreditation model to the Kansas Education System Accreditation model, including changes to terminology, data collected, outside visitation teams and trainings, accreditation status and appeals process, sanctions, notification of longitudinal data, waiver requirements, and written policies for mandated reporting of child abuse.

State Board of Education Chairperson

The Chairperson of the State Board presented on the regulation changes and collaboration between the Legislature and the State Board. He stated that there are many ways the Legislature and State Board can work together. The Chairperson said the State Board is ready and willing to partner with the Legislature to ensure the success of every Kansas student, but that the goals must be created together, not from one entity or the other. He mentioned his role on the Legislative Task Force on Dyslexia and the recommendations that came from that task force.

On the rules and regulation changes, he stated that accreditation should consider academic skills, employability skills, and civic engagement and that Kansas, at the time, was the only state considering postsecondary success in accreditation. He noted graduation rates can be measured, but measuring whether graduation has prepared a student for postsecondary success is harder. He stated the current Kansas Education Systems Accreditation (KESA) process is an expansion of accountability and considers multiple measures with the focus on ensuring students leave schools with the skills to be successful. He responded to questions on what accreditation should signify to the average stakeholder, what it means to be in good standing, what is included in the accreditation process, and why the State Board believes some of the previous regulations were redundant.

Developmental Education

Legislative Division of Post Audit

A Post Auditor provided an overview of the upcoming limited-scope legislative post audit on the need for developmental education courses in Kansas. This would include surveys of stakeholders on their views of developmental education courses, which some students are required to take.

The auditor said the audit will be ready during the 2022 Session. The first survey is focused on the 284 school districts that offer these courses and asks why the courses are necessary if the goal is to have students college-ready. It will go to approximately 300 individuals. The second survey is at the collegiate level and focuses on what factors drive these students into needing developmental education courses. It will go to approximately 11,000 individuals. In response to Committee questions, he stated he would provide information on the survey construction.

Kansas State Board of Regents

The President of the Kansas State Board of Regents (KBOR) stated that, traditionally, developmental education, or remedial courses, may be for credit but not credit towards the degree. Previously, a test was used to place the student, but he noted that this has changed to consider multiple measures, such as high school grade point average and a test. This use of multiple measures can lead to fewer students in remedial courses. For example, he noted, a student may not do well on the test but works hard in class to keep their grade up. He stated that KBOR also considered sequences for developmental education. He reported that once a student gets into a developmental pathway, the likelihood of getting out declines. Success increases if the student enrolls in the class and receives supplemental tutoring, he stated.

He mentioned that schools are recognizing that students may need a few additional lessons, rather than the entire sequence. He encouraged the Legislature to look at a report from the Future of Higher Education Council that recommended math and English credited courses be taught alongside developmental education because the success rates are higher.

The President of KBOR stated college readiness has declined and that what concerns him is the decline in those attending an institution for a baccalaureate degree, a certificate, or a technical degree. He said he believes this is important because people earn more money with such a degree than with just a high school diploma. He said higher wages are correlated with better health outcomes, generational wealth, and a lower rate of incarceration. He noted it is not just that Kansas is economically better with a population that achieves a post-high school credential, but the costs of social impacts that come with lower education are carried by the State. He then stated that the cost of developmental education is almost \$10.0 million, based on average rates, with the majority going to community colleges. However, he noted, there has never been a study on the cost, and the \$10.0 million likely does not encompass the full cost. He briefly mentioned concurrent enrollment and HB 2134 allowing school districts to pay for concurrent enrollment, also called dual credit. He responded to Committee questions on the difference between college-going rate and college-readiness, the usefulness of ACT data, and the lack of economic efficiencies in concurrent enrollment.

Impact of the COVID-19 Pandemic

KLRD Presentation on Learning Loss Related to the COVID-19 Pandemic

The KLRD Fiscal Analyst reviewed learning loss and three studies that attempt to understand the impact of the COVID-19 pandemic on student learning loss. She explained that learning loss is reflective of the instruction time needed for a student to be at the expected level, rather than actual loss of knowledge. The analyst noted that the ACT study showed a decrease in scores for nearly every subject translating to one to three months of learning loss, with math scores dropping more significantly, which follows other assessment data. The ACT study stated that younger students appeared more affected than older students and that the gap between white and minority students stayed the same.

The analyst reported on a McKinsey study using Curriculum Associates iReady Assessment data to determine COVID-19 pandemic learning loss. This national study considered 1.6 million elementary students, but overweighted those schools providing in-person learning at the time of

the assessment. The analyst stated McKinsey found students were five months behind in math and four months behind in reading, which was at the lower end of McKinsey staff original predictions, without the discrepancy between ages. She noted the McKinsey study also found that students began the year behind in math and stayed behind, but students began the year on track in reading but fell behind with a slower learning pace. The McKinsey study also noted variety across location, grade level, and race and reviewed non-academic impacts on student mental health.

The analyst also reviewed an NWEA study, which, using MAP Growth data, found that students made gains but not at expected levels, particularly in math. Like the McKinsey study, the NWEA study found that students started the year behind in math and continued falling behind, but began the year on track in reading. The analyst reported that, per KSDE, Kansas State Assessment data showed a drop in the number of students in levels 3 and 4 (students who show an effective or excellent ability to use skills and knowledge needed for career readiness) from 2019 to 2021 and there was an increase of chronic absenteeism. The analyst briefly noted there are requirements under the federal American Rescue Plan Act that certain percentages of funding be expended on learning loss by both school districts (20.0 percent) and the State (5.0 percent), as well as a requirement the State expend 1.0 percent of its ESSER Fund moneys for both after school and summer school.

Representative Thomas for the Commissioner's Task Force

Representative Thomas, as a member of the Commissioner's ESSER Task Force, presented on ESSER funds. He noted there are 15 allowable uses according to federal regulations, including summer school. He stated federal funds continue to be drawn down, but that some school districts have no more federal funds but continue to accrue costs. He stated this is because the federal funds are more for reimbursement and are focused toward more impoverished school districts. Representative Thomas stated some districts have focused on funding summer school while others focused on computers; personal protective equipment; or heating, ventilation, and air conditioning systems. He said the expenditures must be related to COVID-19 pandemic response, so expenditures for

“technology” generally might not be acceptable, but “technology for Zoom meetings” would be acceptable. He said there will be a federal audit, and improperly expended funds must be repaid. In response to Committee questions on the transparency of the application process and after-school expenditures, he stated that all this information is published on the KSDE website.

December 1, 2021

Improving Student Achievement and Outcomes

School Districts

The Committee heard testimony from representatives of USD 259 Wichita, USD 409 Atchison, and USD 500 Kansas City related to improving student achievement.

The representative of USD 259 said state assessment data do not sufficiently reflect the complexity of school districts and the education system, particularly for those districts with high poverty. He noted poverty makes addressing student achievement more complex, and there is no uniform solution. He responded to Committee member questions on topics including universal screeners (assessments given to all students), practice assessments, increased school funding, strategy to get students to achieve the *Rose* capacities, graduation rates versus other measures, hiring qualified staff and future educator programs, measuring student achievement in ways other than state assessments, what the response of the Legislature should be to declining state assessment scores, use of ESSER funds, and what could be incorporated into the accreditation process.

The representative of USD 409 presented on the assessments the school district uses to track student growth, including iReady screeners, state interim assessments, ACT scores, Kansas assessment scores, graduation rates, and postsecondary data.

She noted the school district added a school capability assessment to increase learning at a faster rate. The school district also participates in the Literacy Network of Kansas (LiNK) grant, which supports teacher training for literacy and reading. The representative of USD 409 also mentioned that special education plays a role in achievement, with the percentage of special

education students in USD 409 nearly double the state average, and services nearly always exceeding the state funding.

She noted that using multiple measures reflects student growth better than a single score. She reviewed the use of ESSER funds for summer school, filling teacher positions, and other costs, but stated that she is concerned with what will happen when this funding ends. She addressed Committee member questions on the at-risk student population and funding, federal ESSER funds, the diversity of the district both ethnically and socioeconomically, the possible use of universal screeners for measuring growth, summer slide, and the interaction with private schools.

The representative of USD 500 presented on the diversity and special needs of the USD 500 student population, particularly noting the high level of poverty in the community and the high COVID-19 infection rate. She stated there are proficiency rate increases across the schools in the district for both ELA and math. She mentioned that there are pockets of high achievement in USD 500, although improvement is needed in the school district. She stated USD 500 focuses on meeting the needs of the students and their parents through trauma-informed learning, social-emotional learning, and parent engagement. She presented data on the school district's graduating class diploma-plus data, including number of college credit hours, internships, and industry certificates, and outlined changes in the elementary schools with the goal of 100.0 percent of students graduating with a diploma plus. She stated ESSER Fund moneys are going to four broad areas: social-emotional wellbeing, academic acceleration, real-world experience, and infrastructure.

The representative also reported that the district had partnered with the University of Kansas to complete an academic scan to create a transparent plan leading to all students graduating with a diploma plus endorsement. She responded to Committee member questions on topics including the school district's recruitment and retention strategy, at-risk students and funding, measuring student growth, use of ESSER funds, factors impacting student achievement, the diploma plus program, and expanding the Jobs for America's Graduates-Kansas (JAG-K) program.

JAG-K Written Testimony

The President and Chief Executive Officer of JAG-K submitted written testimony on the JAG-K program's history, evidence-based model, and outcomes. JAG-K serves approximately 4,000 students in 79 programs in 63 schools in 43 USDs. JAG-K has different programs, including multi-year programs, that are provided to eligible students as an elective class in school. JAG-K students must master 37 of 87 core competencies, invest at least 10 hours in community service, and spend at least 8 hours on academic remediation. Per the testimony, Drexel University's Center for Labor Markets and Policy reported several findings on the differences between the JAG population and the general population regarding post-high school employment outcomes. These findings included that JAG graduates realize significant gains in weekly earnings, higher hourly wages, and better non-wage compensation.

Contributing Factors Influencing Student Achievement

Determining Whether Concepts of Critical Race Theory are Being Taught

State Board of Education member. A member of the State Board stated that critical race theory (CRT), a framework of analysis on racism in legal institutions primarily taught in graduate and law school, is not in any assessments or curriculum standards of the State Board. She stated parent complaints should be listened to, welcomed, and dealt with at the local level. She provided the foundational structures from KESA, noting that student achievement is the number one goal. She furthered noted that student achievement is reflected in the KESA accreditation, but that accreditation does not include state assessments because that is not the only measure. She stated the *Gannon* Court did not use state assessments, instead referring to the *Rose* capacities, which the Legislature codified. She also reviewed recent implementations of Legislative Task Force on Dyslexia recommendations.

The State Board member presented on the rubrics for academics and DEI (diversity, equity, and inclusion) and the interplay between the *Rose* standards and those rubrics. She concluded that discussions of racism are not CRT and that parent concerns with instruction should be handled at the local level. She stated the Legislature could pass

legislation so all students could get free college credits, further the recommendations of the Dyslexia Task Force to the Legislature, expand computer science courses beyond 170-some districts, and waive the Kansas Public Employees Retirement System assessment and waiting periods until teacher positions can be filled. She addressed Committee member questions on topics including financial literacy, teacher due process rights, the shift to class-based history assessments, collaboration suggestions, mental health programs, and the importance of social emotional learning. In response to additional questions, she stated she believes there is systemic racism in education and again stated CRT, a graduate level course, is not taught in K-12, based on conversations with superintendents.

Representative Penn. Representative Penn presented on the history of CRT and its origins in other theories. He elaborated on the four presuppositions of CRT, including that racism is normal, convergence theory, anti-liberalism, and that storytelling is how knowledge is forwarded. He said that he believes intersectionality, which regards multiple layers of oppression, arises from CRT. He stated that DEI and SEL (social emotional learning) are the channels for introducing CRT and that the focus on these concepts leads to a lack of focus on student achievement and instruction that matters. He stated CRT also introduces negative behavioral and emotional challenges to vulnerable children, which is seen at USD 402 Augusta and in USD 259 Wichita. He stated it is settled law, under *Brown v. Board of Education*, that state-sponsored racism is not allowed in schools. He stated CRT is pushed onto teachers as they are hired and trained. He stated that while CRT may not be a direct course of curricula, USD 259's equity, diversity, and accountability material includes a culturally responsive scorecard, culturally relevant resources, a document stating teachers should better emphasize the importance of Black power in the Civil Rights movement, a document arguing that high school teachers should use the Black Lives Matter movement to question how resistance movements are treated in history, and a document titled "It's Never Too Young to Learn About Race." Committee members asked questions on what CRT advocates argue should be done to address their concerns and how to acknowledge and learn from the challenging parts of history.

Parent testimony. The Committee heard testimony from three parents. The first parent conferee testified that she found her children's school focused more on social activism than academics. She stated that schools have moved to the belief that children must feel safe and welcome before they learn, which puts academics second. She criticized Deep Equity (a training model with the stated goal of implementing culturally responsive practices) and its inclusion of teacher-led discussions on sensitive topics, including bullying, sexuality, and race in elementary school.

She stated the school gave her child a social-emotional survey despite notification the parents did not want the child to be included and then attempted interventions without parental knowledge. She stated the social-emotional growth of her child is her role, not the school's.

The second parent conferee provided documents, which she stated prove CRT is in schools and teacher trainings, including a Shawnee Mission contract for Deep Equity and the Yes! Program for professional development for teachers; Lawrence school district documents on anti-racist conversations with families; portions of the Deep Equity training that she said highlight racist, sexist, and religious oppression; and excerpts from various books. She stated that videos in diversity club assemblies at USD 229 Blue Valley included questioning whether Christians respect the beliefs of others and whether Republicans try to empathize with Democrats, which she stated caused students to leave the classroom.

The third parent conferee criticized Deep Equity and DEI. He said Deep Equity has a focus on race and gender, which hinders social-emotional learning. He said the concept of implicit biases had a negative effect on the self-esteem of students. He said schools should instead teach concepts that build work ethic and strength of character. He concluded by stating that the ending of multi-tier system of supports (MTSS) and labeling all behavioral issues as special education issues means that students who do not need additional assistance are neglected and students who need assistance do not get the same level of focus. This, he stated, has led to a decrease in academic scores.

KPI testimony. The Committee received written testimony from KPI. This testimony stated KPI found several examples of CRT in USDs under DEI. The testimony stated that while certain concepts about race, gender, and sexuality may not be part of the official curricula, it is in training materials, libraries, DEI, and classroom situations. The testimony outlined different books and videos available in school libraries or taught in schools, as well as classroom activities such as “culture toss” (an activity in which students list their personal values and cultural identities), and the testimony noted these elements are evidence of CRT in the classroom.

Improving Parent Partnerships

The Committee heard testimony on improving parent partnerships in Kansas. A representative of KASB responded to questions on KASB dues to the National School Boards Association (NSBA); his understanding that the KASB Board has opted to stay in the NSBA to make changes from within the organization; and trainings and activities the KASB does to encourage parental engagement.

A parent conferee stated that school libraries needed stricter guidelines on books and stated she had found books that would fit the statutory definition of obscene, violate student conduct guidelines, suggest pedophilia, “call whiteness the work of the Devil,” and involve the abduction and rape of a young girl. She stated that the reliance on third-party vendors for the laudable goal of a diverse book collection has led to what she described as degraded and divisive resources for students and the alienation of parents. She stated continuation of this will result in less student success and students leaving schools.

Mental Health

Parent conferees. The Committee heard testimony from two parent conferees on student mental health. The first parent conferee reported on several student suicides in the past year, but noted that there is no tracking on a local, county, state, or national level. She stated little data supports SEL as improving student achievement. She mentioned several topics that students are asked about in assignments to promote activism, including policing in America, racism, and Black Lives Matter. The conferee stated instead of seeing an increase in student achievement, the state is seeing

a decline in student mental health. In response to a question on the role of schools in mental health, the conferee stated schools are not responsible for mental health, that schools should be wary of what ideology is pushed in classrooms, and that schools should instead focus on academics.

The second parent conferee commented on the focus and use of SEL surveys in schools. She reviewed data collection surveys, stating that some included leading questions, violate student privacy by asking personal questions, and place dangerous suggestions in the minds of students. She noted this survey is anonymous, but if a student responds yes to a question on suicide, she would hope it would be followed up on. The conferee then presented on the Kansas Communities That Care (KCTC) survey distributed to students, including its history and origin, and stated it asks questions on alcohol and drugs she believes are inappropriate. In response to a Committee question, the Assistant Revisor noted the statute on surveys requires written permission from parents.

KSDE representative. The KSDE Deputy Commissioner of Fiscal and Administrative Services stated KSDE does not collect any of the SEL data at the state level, rather the data stays at the local level where it can best be used. He noted that the SEL surveys are optional for districts. In response to questions from Committee members, he stated his understanding is that the survey data does not come to KSDE, but it may go beyond the school districts. The Deputy Commissioner agreed to provide further information to answer additional Committee questions.

The Deputy Commissioner then reviewed the Mental Health Intervention Team Pilot Program (Program), which is in its fourth year. The Program has expanded from 9 districts in its first year to 55 districts currently. The Program is funded by the Legislature and the funding is split 75.0 percent to cover the liaison’s salary and 25.0 percent to cover community mental health center (CMHC) costs. The purpose is to eliminate barriers for student access to mental health services. There is a memorandum of understanding, and services may be provided at the school or CMHC. He stated he has heard that suicides were prevented due to the relationships in this program. School districts in particular focus on foster children. Some school districts are working with other service providers

that are not CMHCs. He noted that in the data provided by KSDE, the number of students in improvement areas might not be out of the total number of students served, as not all students have the same areas of improvement. The Deputy Commissioner, in response to a question, stated staffing issues persist for school districts and CMHCs.

Impact of Masks on Student Achievement

A graduate student from Wichita State University reviewed several studies, including her own, on the impact of masks on listeners with normal hearing. She noted that masks impact consonant sounds, particularly f, s, and th sounds, which can already be challenging for people with hearing loss. She stated that surgical masks attenuate sound the least, clear or plastic masks distort sound the most, and face shields actually reflect sound behind the speaker.

She mentioned a study that included a speaker six feet away from a normal hearing adult listener with the speaker looking away in a classroom wearing different masks and with or without a remote speaker. She noted the error rate compared to the base of no mask and no microphone. The error rate when a face shield and microphone were used was nearly identical to the baseline, and the highest error rate was when a clear mask and remote microphone were used. She noted the authors mentioned some challenges for students might include hearing levels, distance from the speaker, and introduction of new vocabulary.

The graduate student then reviewed her study, which included a recording of her speaking with no mask and six commonly used masks. This recording was listened to by 15 adults with normal hearing in a sound booth at a normal conversation level. She noted that no words were missed with the surgical mask and the worst option, a clear mask, allowed 97.0 percent of words to be heard. She stated the three lowest scores were when plastic coverings were used.

She mentioned participants noted that they were working harder to listen in some cases and guessed on some words. She responded to Committee questions on the populations studied and whether the studies have been peer reviewed.

Remote Learning and Quarantine

Assistant Revisor Testimony on Definitions

An Assistant Revisor submitted testimony distinguishing remote learning and virtual school and outlining the changes to remote learning in 2021 HB 2134. The Assistant Revisor noted the primary difference between remote and virtual learning is that virtual school provides asynchronous instruction. The 2021 Legislature provided for the regulation of remote learning in HB 2134: school districts may not provide more than 40 hours of school term remote learning, with 2 exceptions (KSA 2021 Supp. 72-5180). The first exception is for a particular student with extraordinary circumstances as approved by the board of education of that student's school district. The second exception is for a school district as authorized by the State Board due to a disaster as defined in KSA 2021 Supp. 72-5180. If a school district provides remote learning in excess of the 40 hours without meeting an exception, the student receiving remote learning is deemed remotely enrolled and funded at a flat \$5,000 under the school finance formula, with no weightings.

KSDE: Impact on School Districts

The Deputy Commissioner of Fiscal and Administrative Services provided written testimony on the impact of HB 2134. He also noted the definitions outlined in HB 2134. He further stated that part-time remote learning students may be funded for the portion of time they are in a traditional learning environment. He also stated that quarantines have been interpreted to be extraordinary circumstances under the exception for individual students outlined in HB 2134. School districts are required to report this information to the State Board and will do so through a secure online application to protect student privacy.

Recent Shifts in Educational Delivery Methods

The KLRD Fiscal Analyst provided enrollment data for the past five years, including FTE enrollment, virtual school enrollment, and special education FTE. She then presented on home schooling in Kansas and recent nationwide trends. She provided the home school requirements and noted that there is a difference between home schools, which are considered non-accredited private schools in Kansas, and accredited non-

public schools. She then reviewed recent trends in home schooling, noting that the COVID-19 pandemic appears to have led to an increase in home schooling, whereas home schooling had seemed to stagnate in 2016 at around 3.3 percent of all students. The analyst then provided background on new “pandemic pods” as a type of home school and stated that approximately 5.0 percent of EdChoice survey respondents use these small groups as school. She responded to questions on home school funding in Kansas. The analyst also provided information on school choice legislation and virtual schools.

Virtual Schools

Insight School of Kansas.

The Insight School Head of School presented on the two full-time virtual schools she serves, which are part of the Spring Hill USD 230. She provided student demographic information, including that the population is roughly 50.0 percent students who qualify for free- or reduced-price lunch, around 20.0 percent are identified as needing a special program, and includes both foster care students and students who meet certain definitions of homeless under the McKinney-Vento Homeless Assistance Act. Further, she noted that about 50.0 percent of the students are new at the school year. She provided reasons for parents sending their students to virtual schools. The Head of School provided information on the school model, noting that school includes live session with live attendance expected, although sessions are recorded for the students to review. She also spoke on the role of live coaches, who assist students. The representative noted the COVID-19 pandemic did not substantially disrupt the school model, but students did experience disruptions outside of school, and she reported there was a significant increase in enrollment.

She reported the biggest challenge is funding, which has been stagnant for several years and does not include weighting. The Head of School stated the graduation rate has been a challenge because students attending the school have gaps in education, come with fewer credits, or are part of a transient population, but she reported improvement of about 34.0 percent since 2017. She responded to

questions on graduation rates, state funding and federal funding, how the virtual schools address the same issues as brick-and-mortar schools, and how students are factored into the virtual school data and funding.

KSDE

The KSDE Deputy Commissioner of Fiscal and Administrative Services noted that enrollment has increased in the past year. In response to a question, he stated that ESSER funds were distributed based on Title I so the money goes to the school district and the district can choose how to spend it based on COVID-19 factors. He stated he does not believe anyone made a case for virtual schools or whether that funding could be provided to virtual schools. In response to questions on funding, he stated any students in the virtual school are not counted in the school district weightings and that most likely a student who moves from a school district to a virtual school is being double-counted due to the structure of school finance.

CONCLUSIONS AND RECOMMENDATIONS

At its December 1 meeting, the Committee discussed what one goal the Legislature and State Board could work towards together to ensure the success of all students. Several topics were discussed, including the liability issue arising from private partnerships with students interning at businesses; changes to school finance to allow for school choice and the option to have funding follow a student; listening to parent complaints regarding their child’s education; greater participation in the Mental Health Intervention Team Pilot Program; updating bullying policies with the State Board; and changing virtual school funding.

Committee members agreed by consensus to recommend to the 2022 Legislature a goal of considering what elements are needed to ensure all students are reading at grade level by the end of grade 3. The Committee noted this may involve reviewing different measures for each student and determining what issues prevent the student successfully reading at grade level by the end of grade 3.

Minority Report – 2021 Special Committee on Education

Introduction

Below we have outlined specific concerns about some of the major conclusions advanced by the majority membership of the Committee.

There are certainly challenges in our K-12 education system and like all human endeavors there will always be flaws and areas for improvement. The minority members of this Committee stand ready to help address those challenges. Ultimately, what we heard from the majority membership were not good faith efforts to address these challenges but more of the same: red herrings such as Critical Race Theory, a continued lack of understanding of constitutional requirements, and veiled attempts to defund our education system yet again.

The disconnect between the majority and minority members of this committee should not come as a surprise. At no point were members of the minority party asked or encouraged to suggest agenda items or even invite conferees to the two-day meeting. Topics and conferees were selected by the Chair and a small group of confidants. It appears this was done to restrict the topics and the dialogue. On several occasions conferees were asked questions that they could not or were not prepared to answer, politely suggested someone else from the agency be asked to answer the question, and were denied that opportunity. It was more important to get the answer from the majority's pre-selected conferees than receive a response informed by the present-day challenges in providing quality educational opportunities faced by Kansas students, their families, educators, and board of education members.

Finally, we would like to applaud the efforts of the education community – from the State Board of Education to the school districts, administrators, and teachers. COVID has had an immeasurable impact on our education system and has been difficult for everyone involved. Nearly 500,000 students face learning challenges in a second consecutive school year hindered by a worldwide pandemic. We can certainly debate the impact of decisions made to keep students, families and staff safe; what is not debatable is that the pandemic is unprecedented and that there is no individual nor manual available that can guarantee safety while providing the best educational instruction. The minority understands the best path forward requires the legislature to collaborate with the state school board, teachers, students, parents and the entire education community to identify solutions together.

Governance

Article 6 of the Kansas Constitution directs the Legislature to provide for “intellectual, educational, vocational and scientific improvement through a system of public schools and other institutions.” The constitution also provides for a State Board of Education to have

“general supervision” of public schools (and a State Board of Regents to oversee postsecondary education); says public schools are to be “maintained, developed and operated” by locally elected school boards; and directs the Legislature to provide “suitable provision for finance” of educational interests, as well as its general authority to make laws for the state. The specific meaning of each of those provisions has been debated and interpreted by the courts since the article was adopted in 1966.

The Kansas Supreme Court has held the constitution gives the State Board certain “self-executing” powers which means that it can take action in some areas without Legislative authorization or interference, but the exact boundaries of those areas have not been clearly established. The Board has resisted Legislative efforts to add requirements for graduation, courses, and program standards, including a proposal last session to require students to pass a civics test and financial literacy course to graduate. These courses are great opportunities for students, but increasing mandated curriculum limits the choices available to students when making decisions on their course schedules.

Local school boards do not have self-executing authority, so boards are generally controlled by laws passed by the Legislature or regulations passed by the State Board. However, the courts have said the constitutional authority of boards means the Legislature does not possess complete authority over local school boards and that the constitutional duties and obligations of the Legislature and local boards “must be read together and harmonized so both entities may carry out their respective obligations”. In the past session, the Legislature has dealt with issues of school board authority over COVID responses and curriculum requirements, and next session could present issues concerning curriculum, programs, materials, and censorship.

The constitutional balance of powers allows each body, accountable directly to voters, to carry out responsibilities most appropriate to its station. The Legislature has general powers to legislate and the responsibility to provide suitable funding because only the state as a whole can provide adequate and equitable funding for the state’s educational interests. The State Board is elected with unique responsibilities for overseeing public education on behalf of the entire state. Local boards are created to respond to local needs and circumstances but are still accountable to the State Board for meeting statewide standards for all students.

School Funding and Student Achievement

Changes in School Funding

In several school finance cases reaching back to the 1970s, the Kansas Supreme Court has ruled that the Kansas Legislature must provide school funding (both direct state aid and local revenues) through a system that is both equitable and adequate. Equitable means all districts are able to raise similar funding through similar tax efforts, usually achieved by giving state equalization aid to districts with lower taxable wealth. Adequate means that the amount of funding provided to districts allows all students to achieve certain educational standards.

Over the two most recent cases (Montoy in the 2000s and Gannon in the 2010s), the Kansas Supreme Court found that school funding was not adequate because a significant percentage of Kansas students were not performing at what the state defined as minimum standards on state assessments; and these students were disproportionately in certain groups such as low-income, disabled, minority, etc. The court further found a link between funding and achievement, based primarily on test scores, and said the Legislature must have some “rational” educational basis or evidence for funding levels.

In the Montoy case, the Legislature directed the Legislative Post Audit Division to conduct a cost study of meeting “input” and “outcome” requirements based on the now-repealed federal “adequate yearly progress” requirements of the No Child Left Behind Act. Based on the study, the Legislature substantially increased both base state aid for every student and weightings for at-risk and bilingual education, and increased local option budget limits over a three-year period to be completed in 2009. The Kansas Supreme Court accepted that plan and dismissed the case.

Due to the recession of 2008-09, the plan was not fully implemented in 2009, but that year was the highest level of total and per pupil funding (in both current and inflation adjusted dollars) in state history. However, deeper funding cuts occurred over the next several years and school funding fell hundreds of millions of dollars below 2009 levels. The state also failed to fund equalization aid for local option budgets and capital outlay aid, widening property tax disparity among districts based on local property valuation.

Responding to a series of Gannon decisions, the Kansas Legislature first agreed to restore full funding to equalization programs and then agreed to increases in base state aid designed to restore base operating aid to the inflation-adjusted 2009 level over a six-year period, from 2018 to 2023. The court accepted this plan, called the “Montoy safe harbor” because it would restore “real” (inflation adjusted) funding to a level previously presumed to be constitutionally adequate. The Legislature has already appropriated funding for the final years of that plan.

As stated in committee, current graduating seniors in Kansas have never attended school while the K-12 budget was constitutionally funded. They started school in 2009.

Changes in Student Achievement Measures

The Special Committee received information from its Legislative Research Department and from the Kansas Policy Institute that the current version of Kansas state student assessments (given to all students grades 3-8 and grade 10) has been declining since it began in 2015, a decline that began before the COVID pandemic in 2020, which influenced scores in 2021. Declines in Kansas scores on the National Assessment of Educational Progress were also noted.

Likewise, the committee received information that Kansas ACT scores began declining in 2013, before an increase in student participation when the state made the test available at no cost

beginning in 2020 (higher participation usually results in lower results because less prepared and motivated students are taking the test).

Several points must be made.

Prior to the early 2010s, student outcomes on the previous state assessments, NAEP scores and ACT scores were increasing, at a time when “real” (over inflation) funding increases were occurring. The declines began after state funding reductions occurred in 2009-11 and funding failed to keep up with inflation through 2017. This resulted in the elimination of 2,000 school positions, fewer teachers, reduced support services, and falling behind funding in other states.

The Gannon school finance plan was developed by the Legislature specifically to acknowledge and restore inflation-adjusted funding to the 2009 level.

Gannon funding did not begin until the 2017-18 school year, and “pre-COVID” assessments in 2018 and 2019 reflected only the first two years of a six-year funding plan of roughly equal installments. Tests given in the Spring of 2019 occurred less than two years after Gannon funding began, following eight years of declining funding, adjusted for inflation.

Test scores and other measures did not immediately decline after funding was cut and should not be expected to increase immediately when funding is increased because educational benefits are cumulative and some investments, such as early education, are not reflected in test scores for several years.

Test scores are only part of the way to measure the “Rose Capacities” adopted by the Kansas Supreme Court and Legislature. Other measures, such as high school graduation rates and postsecondary achievement have been increasing up until COVID. Other areas, such as mental health services and school safety (both of which have been funded by the Legislature) are unlikely to have an immediate impact on tests scores but are critically important to students.

COVID has had a profound impact on student learning and social-emotional health in Kansas and all other states. It will take time to help students recover.

KESA Accreditation

The questions raised during committee hearings about changes to rules and regulations related to the Kansas Education Systems Accreditation (KESA) process were among some of the most egregious examples of a willful decision to avoid the facts. We feel compelled to correct the record.

First, the Kansas State Board of Education adopted the most rigorous standards and cut scores in the country, setting aspirational goals for having 75% academically at the highest academic standards in the country, a 95% statewide graduation rate, and 70% of students completing postsecondary education. This is all to be achieved by 2030. The State Board of Education

defines a successful Kansas high school graduate as having “the academic preparation, cognitive preparation, technical skills, employability skills and civic engagement to be successful in postsecondary education, in attainment of an industry recognized certification or in the workforce, without the need for remediation.” To achieve these goals, the State Board adopted the Kansans Can vision for public education, which includes five key goals: kindergarten readiness, social-emotional learning, individual plans of study, graduation rates, and postsecondary success. This vision is a direct response to the legislative adoption of the Rose Capacities and the Gannon court’s embrace of these standards. A visual representation of KESA is attached. (orange/blue chart).

Second, the question of whether our accreditation system is appropriately centering student achievement in the process disregards the steps in the process itself. KESA is designed as a five-year cycle of improvement. We are in the first five-year cycle, as the rules and regulations were not formally approved by the state until 2021 (coincidentally a five-year journey through the state’s vetting process). The question of whether school districts are appropriately achieving the levels of success expected is being asked before this first five-year cycle is complete. It should also be noted that the restoration of funding for our schools is also incomplete, and schools are dealing with the unprecedented challenges of the COVID pandemic.

The previous accreditation model was responsive to federal requirements under “No Child Left Behind” which had detailed annual performance metrics. Our new KESA accreditation model is responsive to current federal requirements under the “Every Student Succeeds Act” which removed those performance targets and replaced them with a requirement to show growth in student performance.

It is understood that requirements spelled out in state or federal statute must be complied with – this is the meaning of “in good standing.” This language is intentional – rather than repeat laws to which schools are already expected to be in compliance, the State Board just reminds/refers that not only must a district be in compliance with the law for the sake of that law but for the sake of their accreditation as well (so in some cases it is a double-hammer).

By leaving the language broad rather than identifying every single law, the State Board can hold districts accountable for any internal policy changes by the State Board and any legislative changes which may occur without having to re-write the regulations every time such a change occurs, given that laws are much faster to enact than regulations.

KESA relies heavily on data to document compliance. The definition of “accredited” means “the system is in good standing (compliance) with the State Board, and that they have provided conclusive evidence of growth in student performance. In addition, the system has provided conclusive evidence of an intentional, quality growth process.” The definition of “conditionally accredited” means “the system is in good standing (compliance) with the State Board, and either did not provide conclusive evidence of growth in student performance or was not able to provide conclusive evidence of an intentional, quality growth process.” The definition of “Not Accredited” means “one of two things, the system is not in good standing (compliance) with the

State Board, or the system did not provide conclusive evidence of growth in student performance; and the system was not able to provide conclusive evidence of an intentional, quality growth process.”

“Conclusive evidence” means data that is sufficient to the accreditation review council to justify its recommendation of accredited to the State Board. What does that evidence look like? We have attached a series of exhibits to illustrate the reporting templates that districts must use to provide the Accreditation Review Council sufficient data. We have also provided an example of the report received from the ARC by the State Board to further illustrate the central role student assessment metrics play in the process.

Far from ignoring student performance measures, the KESA process requires multiple forms of measurement beyond one set of test scores. Information used to evaluate school systems is quantifiable now more than ever. Systems already have their own data in real-time, and KSDE provides summaries of the data by way of annual accountability reports. Those reports are published via the KSDE website which is linked to by each education system’s website. Data made available to the public includes assessment scores, attendance rates, chronic absenteeism rates, and post-secondary success rates. Other factors include the district’s plans to improve student assessment scores, proof of foundational structures, and probably most importantly proof that schools offer students the opportunity to attain the Rose Capacities.

KESA represents a system of continuous improvement that aligns with the constitutional directive embedded in Article 6. By focusing on growth and improvement, the State Board is committed to ensuring every Kansas student has the access to high-quality educational opportunities. We affirm our support for this approach. A system designed to punish shortcomings by stripping accreditation status would leave our students to suffer the consequences. We would consider that approach to be a dereliction of our duties under the Kansas Constitution.

Critical Race Theory

Critical Race Theory is NOT in our K-12 curriculum.

It was NOT used to influence the state history, government, and social studies standards.

It is a research construct developed in some American law schools in the 1970s as a way of examining the impact of statutes, ordinances, and practices within various systems (the legal system, justice system, economic system, health care system, etc.) on the lives of persons of color. When looking at a practice applied within a system, it asks if that practice has a negative impact on certain groups. For example, did the practice of “redlining” have a negative impact on the lives of Black Americans? Did this practice contribute to housing inequity based on race?

Nothing within this construct assigns blame or guilt. To use the example of redlining – by examining the impact of redlining on the African American community we can see that the

practice led to segregated neighborhoods including relegating Black people to less desirable tracts. Instead of blaming white people for this situation, we can now acknowledge an historical wrong, address it, and thus move toward a more just and equitable society.

Any teaching of history, government, and social studies must consider the full story, including the atrocities - if we want to make a better world for all people. This demands an honest exploration of both the great things Americans have accomplished and our shared dreams but also a critical examination of those times when we have strayed from our belief that “all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.” Note that three women are writing this, and our belief extends freedom of equality to all individuals, not just men.

Kansas teachers of history, government, and social studies focus instruction on five Kansas-specific standards under the following mission statement:

“The Kansas standards for history, government, and social studies prepare students to be informed, thoughtful, engaged citizens as they enrich their communities, state, nation, world and themselves.”

These are the Kansas History, Government, and Social Studies Standards:

1. Choices have consequences
2. Individuals have rights and responsibilities
3. Societies are shaped by identities, beliefs, and practices of individuals and groups
4. Societies experience continuity and change over time
5. Relationships among people, places, ideas, and environments are dynamic

Each standard is further defined and benchmarks have been established for each. One can read the explanations and benchmarks on the KSDE website at the following link:

<https://www.ksde.org/LinkClick.aspx?fileticket=4TJXZgAyals%3d&tabid=472&portalid=0&mid=4744>

It is inappropriate to mix the honest teaching of racism in America with efforts to remove books from libraries or enact policies that marginalize women or LGBTQ Kansans. Yet this is exactly what happened during the interim committee meeting, and we fully expect to encounter proposals for disturbing legislation during the 2022 session.

The Kansas Legislature has no business drumming up hysteria over library books. Each local school district has procedures in place to review books and materials that are available to students in our public schools. These procedures allow for concerns to be brought forward and ensure that literature is not removed based on an individual concern. Librarians work hard to provide materials that meet community needs and standards. We have a duty to protect the

First Amendment rights of students. Library books are not curriculum. Once a book is in the library collection, there are appropriate procedures in place requiring a full committee to review the complaint. Books cannot be removed from circulation while under review.

Our students need access to works that explore the entirety of our society. If there are questionable issues in a work, then the procedures established in a school district must be followed. There is a clear attempt to harness anti-LGBTQIA+ and transphobic sentiments, and we must not let fear guide our decisions. Banning books isn't the answer. We believe that it's important for students to have the option to explore contemporary issues.

The Rose Capacities

The addition of the Rose Capacities to Kansas education law in 2016 was the clearest statement from the Legislature and the Executive Branch about how they wanted to see Kansas students to be educated. The Republican leadership strongly supported the Rose Capacities as the guidelines for what they wanted public school students to learn. More importantly, it clearly asserted what these Legislators wanted to pay for: ensure students learned the Rose Capacities, not in any hierarchy or ranked order, but all of them equally.

The Rose Capacities articulated those goals clearly. The Kansas Legislature adopted those Rose Capacities as education goals, which are much broader than mastery of academic subjects. In **KSA 72-3218**, the Legislature adopted the goal 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 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.”*

The impact of the Rose Capacities on the skills and abilities Kansas wanted its young people to learn began in the 2017-18 school year. At the same time, as recounted in other sections of this report, public school funding was stagnant in the “block grant” period while the State Supreme Court had just asserted that the inequity in student funding would only achieve the minimum

level adequacy with additional funding completed during the 2022-23 school year. This report also identifies the deep public school funding deficit from the 2008-09 school year.

The Rose Capacities in their totality became the focus of standards and curriculum changes at the Kansas State Board of Education, at individual school districts, and in school buildings across Kansas. The State Board of Education undertook repeated conversations with the Kansas business community to determine what they needed from the public school system. The education system redesign program embraced the Rose Capacities and Kansas consensus on the need for college and career ready students.

The Rose Capacities are an excellent set of standards to accomplish the mission the Legislature set forth in 2016 and they are reaping benefits as students in

- individual growth.
- social and emotional growth.
- civic awareness.
- graduation rates.
- college course work in high school.
- countless other measures show fulfillment.

The established measures of student achievement in some instances do not show progress, improvement, or achievement that can be improved and there is work to be done. Further, some critics seized upon measures of “proficiency” to prove failure when in reality there are many examples of students testing at a “non-proficient” test score level actually excelling in other skill areas that make them “college and career ready.”

However, the Legislature set the path and the funding in response to the Gannon decision that changed the measures, the goals, the outcomes, and the expectations for student achievement. The structured achievement testing based on cohort groups tested at various grade levels do not measure all indicators of satisfying the Rose Capacities. They do not measure individual improvement. They do not measure all the co-equal Rose Capacities fairly.

The fetish for manipulation of assessment scores or definitions of proficiency may score points in some circles, but it does not reveal failure or weakness in our overall ability to help prepare our young Kansans to be college and career ready. Many of the critics of perceived and false notions of “public school failure” share the proclivities of those who only wanted to fully fund K-12 public education if and only if the Rose Capacities were put into the Kansas law. Their criticism now ignores the entire public education system built around the principles of the Rose Capacities where real success is measured in so many more ways than in student assessments.

These issues have been exacerbated since March 2020 and COVID battles in classrooms, school boards, and in our society over the pandemic. In a school system that still has not achieved the minimum standard “safe harbor” of adequate funding, we take pride, despite stumbles and challenges, in the persistence of our efforts to support and fund our public education system

that continues to produce our next generations ready for college, the workforce, and to become engaged citizens.

Developmental or Remedial Coursework at the Post-secondary Level

There have been repeated calls for the elimination of developmental courses - often called “remedial courses” - in our community colleges and universities.

Kansas has not adopted a K-12 education system that guarantees every graduate will be successful in every course at the post-secondary level. This is reflected in the fact that we have multiple graduation requirements or curricula for high school students to follow.

While there is a graduation requirement for all students, Kansas also offers an alternative college preparatory program which is more rigorous. This assumes that students have different interests and intend to pursue different paths upon graduation from high school.

The Regents Universities have a qualified admissions program intended to ensure that incoming students are fully prepared for the rigors of university work. However, the institutions are permitted to admit up to 10% of a class that has not completed the high school college preparatory program. These students may have chosen one future path as high school students and then changed their mind, intending instead to pursue a four-year degree. They may have chosen lower-level mathematics classes in high school and, as a result, now need extra help in order to be successful in college algebra.

Our community colleges do not operate under a qualified admissions program. By admitting all applicants who have graduated from high school, it is not unexpected that some of them will not be fully prepared for advanced coursework. For these students, the extra help provided by developmental courses allows them to develop the capacity for success. Further, our community colleges and technical colleges are where individuals turn later in life when they have been laid off a job or decide they wish to pursue a different path. A 30-year-old returning to college may find their math skills to have diminished in the 12 years that elapsed from high school graduation.

Dr. Flanders of the Kansas Board of Regents rightfully asserted in his testimony that completion of a post-secondary program leads to significantly higher lifetime earnings and reductions in many social ills including a lack of health insurance, homelessness, and even incarceration.

The elimination of developmental courses in our post-secondary institutions will mean either far more failure - students dropping out and failing to complete a degree - or require changes to our K-12 system that do not allow flexibility for students and their families to pursue their own individual plans of study. We do not believe that such a system is in the best interests of Kansas or Kansas students and families.

We support the provision of development courses and other alternatives such as the assigning of special tutors for students hoping to earn a certificate or degree as part of our effort to move every person to their highest potential.

Conclusion

The minority members reiterate there are certainly challenges in our K-12 education system especially as we are recovering from a global pandemic and from over a decade of underfunded schools. We stand ready to find solutions that address those challenges and hope our colleagues from across the aisle will take up the olive branch and let us have truthful discussions and debate about remedies. This takes bringing all groups to the table – not just the ones that agree with our predetermined ideas.

Senator Dinah Sykes
Representative Jo Ella Hoyer
Representative Valdenia Winn