

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 • FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

June 22, 2016

To: Senate Committee on Judiciary
From: Lauren Douglass, Principal Research Analyst
Re: Remedies in School Finance Litigation

This memorandum looks at remedies courts in Kansas and in other states have ordered in school finance litigation.

For additional information on school finance litigation in Kansas, the Office of Revisor of Statutes prepared a thorough summary of the cases and subsequent legislation, which can be accessed at http://ksrevisor.org/rpts/School_Finance_History_Memo_%206-16-16.pdf. For a more comprehensive summary of school finance litigation in other states, the National Conference of State Legislatures maintains an online spreadsheet with citations to modern school finance cases and categories for the outcomes of those cases. See: <http://bit.ly/School-Finance-Litigation-Citations-NCSL>. The spreadsheet is premised on an American Law Report on the validity of public school funding systems, 110 A.L.R.5th 293 (originally published in 2003), and on law review articles.

Kansas Cases and Remedies

Knowles v. State Bd. of Ed., 547 P.2d 699 (Kan. 1976).

The district court declared the 1973 School District Equalization Act unconstitutional and set July 1, 1975, as the effective date for an injunction of the Act to give the Legislature time to correct the inequalities. After legislation amending the Act was adopted and became effective July 1, 1975, the district court dismissed the case, saying the unconstitutional law no longer existed and any determination concerning the constitutionality of the old law was moot and the constitutionality of the 1975 amendments was an entirely new matter and must be litigated in a new action. The Supreme Court vacated the order of dismissal and remanded for reconsideration in light of any intervening changes in the School District Equalization Act.

Unified School Dist. No. 229 v. State, 885 P.2d 1170 (Kan. 1994).

The Supreme Court found the School District Finance and Quality Performance Act (SDFQPA) to be within all asserted constitutional limitations.

Montoy v. State

Montoy I, 62 P.3d 228 (Kan. 2003). The Supreme Court found genuine issues of material fact were in dispute, reversed the judgment of the district court, and remanded for further proceedings.

Montoy II, 120 P.3d 306 (Kan. 2005) (republished with concurring opinion). The Supreme Court affirmed the district court's holding that the Legislature failed to meet its burden as imposed by Art. 6, § 6 of the *Kansas Constitution* to "make suitable provision for finance" of K-12 public schools. The Court stated the Legislature's action or inaction in the 2005 Session would dictate its final remedy; withheld its formal opinion until corrective legislation had been enacted or April 12, 2005, whichever occurred first; and stayed the case's mandate.

Montoy III, 112 P.3d 923 (Kan. 2005). On remand, the district court reviewed the results of the Augenblick & Meyers (A&M) cost study, considered changes to the SDFQPA, found the Legislature had failed to make suitable provision for finance, and stayed its order holding the SDFQPA unconstitutional until July 1, 2004, to provide an opportunity to remedy constitutional infirmities. After the 2004 Legislative Session, the district court reviewed legislative action, concluded it did not address deficiencies, enjoined the use of all statutes governing distribution of funds, and initiated an order of restraint prohibiting public entities from expending funds for public education under penalty of contempt.

The Supreme Court stayed the order; found the SDFQPA was unconstitutional; distinguished *Knowles*, referencing the district court's extensive review of amendments to the law and the A&M study; and highlighted the critical nature of determining reasonable and actual costs in considering an appropriate remedy, including both inputs and outputs. The Court ordered the Legislature to implement a minimum increase of \$285 million above the funding level for the 2004-05 school year no later than July 1, 2005, for the 2005-06 school year. This amount was roughly equivalent to one-third of \$853 million, an amount based on the A&M study adjusted for inflation. The Court stated implementation beyond the 2005-06 school year would be contingent upon the results of a Legislative Division of Post Audit (LPA) study and, if the LPA results were not available in a timely manner or were found to be invalid and legislation was enacted that did not consider actual costs, it would consider ordering the remaining two-thirds, \$568 million for school year 2006-07, among other remedies. The Court retained jurisdiction and stated it would take further action as was deemed advisable to ensure compliance.

Montoy IV, 138 P.3d 755 (Kan. 2006). The Supreme Court found the Legislature had substantially complied with its previous orders concerning both adequacy and equity and commented on the Legislature's appropriation of \$755.6 million more in funding for the 2008-09 school year than had been provided in 2004-05, as well as its consideration of actual costs. The Court declined to remand the case to the district court to allow plaintiffs to amend their pleadings and concluded the litigation. In reaching this conclusion, the Court cited an Ohio case stating: "A review of sixteen other state Supreme Court decisions that have declared their systems for funding public education unconstitutional reveals that a majority of those decisions remanded the case to a trial court. However, it is those states that have had the most difficulty producing a final plan that met the Supreme Court's opinion of constitutionality." *Id.* at 765 (quoting *DeRolph v. State*, 678 N.E.2d 886, 888 (Ohio 1997)). Additionally, the Court stated that as the Legislature enacted a three-year plan, it could take some time before the full financial impact of the legislation is known, "a factor which would be important in any consideration of whether it provides constitutionally suitable funding." *Id.* at 766.

Cases and Remedies in Other States

In the Arkansas case of *Lake View Sch. Dist. No. 25 of Phillips Cty., Arkansas v. Huckabee*, 210 S.W.3d 28 (Ark. 2005), the Supreme Court released jurisdiction in a 2004 opinion; then in 2005 it recalled the case, having stated in the 2004 opinion that “this court will exercise the power and authority of the judiciary at any time to assure that the students of our State will not fall short of the goal set forth by this court,” and appointed masters to make findings of fact. The masters were charged with examining and evaluating legislative and executive action taken to comply with the court’s order and its constitutional mandate and reporting their findings to the court.

In *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), the Kentucky Supreme Court held Kentucky’s entire system of common schools was unconstitutional, including statutes creating, implementing, and financing the system; the creation of local school districts, school boards, and the Kentucky Department of Education; school construction and maintenance; and teacher certification. The court instructed the General Assembly that the system must be efficient and set binding criteria, but stated the General Assembly had sole responsibility for providing the system of common schools.

Other states have been involved in ongoing litigation similar to that in Kansas, including Arizona, New Jersey, Ohio, Washington, and Wyoming, with differing outcomes.

Arizona

In *Roosevelt Elementary Sch. Dist. No. 66 v. State*, 74 P.3d 258, 259-63 (Ariz. Ct. App. 2003), the Arizona Court of Appeals summarized ongoing litigation of school finance in Arizona as part of a consolidated case challenging capital financing. In 1994, the Arizona Supreme Court concluded the State’s property-tax-based public-school-financing statutory scheme had resulted in such significant financial disparities among school districts as to violate Arizona’s constitutional guarantee of the maintenance of a general and uniform public school system. After legislative action to amend the plan, in 1997 the Supreme Court held the amendments did not adhere to its mandate. The Supreme Court approved the Legislature’s next effort to the extent it ensured all districts, through state funding, could comply with minimum standards, but disapproved provisions allowing any district to “opt out” of state funding and pay for its capital needs solely through local financing because the provision contravened a system of general and uniform public-school financing. The Court found the opt-out section was not severable and declared the legislation was unconstitutional.

Subsequent amendments were challenged when, rather than applying a newly created “building renewal formula,” the Legislature increased appropriations for building projects by 10 percent in 1998-99, paying out roughly \$25 million less than the formula would have required. The district court upheld this appropriation, funding was as prescribed for 2000-01 and, in 2001-02, the statutory formula was used to make a payment of \$61.4 million. Before a similar payment could be made in 2002, the Legislature transferred approximately \$70 million of funds designated for this purpose to the State’s general fund so only \$672,093 was distributed. The district court found school districts had produced “uncontroverted evidence” the State’s failure to follow the formula had an impact on the districts’ ability to meet academic standards and therefore was unconstitutional, but it also found the reduction in funding was such a “major devastation” it was unconstitutional in and of itself and required no proof of its impact.

Again, using the formula, \$128 million was to be transferred; however, just after the district court's judgment, the Legislature directed the Treasurer to transfer only \$38.3 million and suspended use of the formula for 2002-03 and 2003-04, stating the money would be provided from other sources. The district court rejected the State's arguments and ordered the Legislature to restore \$90 million in funding for 2002-03 school year. The Arizona Court of Appeals found that, while the Legislature's decision to not fully fund capital projects may result in large future expenditures, this matter was one of legislative discretion, school districts had not shown they had current unmet needs related to academic achievement, and reversed and remanded the district court's ruling.

New Jersey

New Jersey is the only state known to have closed schools for this reason. In the case of *Robinson v. Cahill*, 351 A.2d 713 (1975), the New Jersey Supreme Court issued a deadline for legislative action similar to the deadline in *Gannon*, and schools closed for eight days. Currently, the State is in the process of complying with a 2011 judicial order to fully fund the School Funding Reform Act of 2008. The most recent order in *Abbott v. Burke* is the 21st reiteration of the ongoing line of cases first filed in 1981.

Ohio

In *DeRolph v. State*, 758 N.E.2d 1113, 1116 (Ohio 2001), the Ohio Supreme Court stated the complex legal, political, public-policy, and administrative issues of the case have presented "perhaps the most difficult challenge to the Ohio judiciary, including this court, in the ten years since the case was filed, and to the General Assembly and the executive branch, including two Governors." The Court referred the litigation to a settlement conference to be presided over by a master commissioner and, in so doing, the Court discussed its history of support for mediation, the adoption of a special rule authorizing the court to refer cases to a settlement conference, at which a master commissioner, who often serves as a mediator, presides, and Ohio's national reputation as a leader in promoting mediation and other forms of alternative dispute resolution with support for the practice among all three branches. The Court also emphasized the merits of mediation, noting national examples of "resolving education and other public-policy disputes of a complex nature-including disputes that have been mired in litigation for years." *Id.* at 1114. Specifically, the court discussed consolidated Minnesota cases in which, through court-encouraged mediation, the parties and other necessary educational entities agreed to establish a four-year program to give Minneapolis families more options for sending their students to public schools in suburban districts and to direct the State to implement a report card system for each school. *Id.* at 1115. The Court also discussed efforts in urban school districts in Baltimore County, Maryland; Dayton, Ohio; and Washington, D.C., to avoid litigation on issues related to values education and school-change programs and in Harpersville, New York, and Bolivar-Richburg, New York, to resolve controversies over sex education and consolidation of school districts. *Id.*

Washington

In ongoing litigation in Washington, the Supreme Court found the State in contempt of court but delayed sanctions until the close of the 2015 Legislative Session. On August 13, 2015, it issued an order imposing a fine of \$100,000 per day on the State for each day it is in violation of the court's order in *McCleary v. Washington*, 279 P.3d 227 (2012).

Wyoming

The Wyoming case *Campbell Cty. Sch. Dist. v. State*, 181 P.3d 43 (Wyo. 2008) chronicles the Wyoming Supreme Court's oversight of school finance in three different cases, beginning in 1971, saying: "Each time jurisdiction was retained, legislative action was finally forthcoming. . . . In this case, . . . we retained jurisdiction reluctantly and at the request of both parties, and went to great lengths to provide flexibility to the parties in hopes of a final resolution." The Court emphasized that, over the course of the litigation, the parties and courts had "steadfastly and in good faith" worked toward the goal of assuring each child the opportunity to receive a quality education regardless of where that child resides or the location of the school, and that challenging constitutional goal has been reached. With only a few adjustments remaining, the Court stated it was confident of the Legislature's good faith and genuine commitment to address the adjustments which remain and concluded there was no reason to retain continuing jurisdiction.

LD/ml