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At-Risk  
Expenditure  
Law and the  
Importance of  
Instruction

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# Constitutional Mandate

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Article 6 §1 of the Kansas Constitution mandates that:

*"The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law."*

Article 6 §6 of the Kansas Constitution mandates that:

*"The legislature shall make suitable provision for finance of the educational interests of the state."*

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# Local Boards' Duty of Implementation

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- **The Kansas Supreme Court has interpreted the phrase “The legislature shall make suitable provision for finance of the educational interests of the state” in Art. 6, §6(b) of the Kansas Constitution as a requirement for adequate funding. After years of litigation, the Kansas Supreme Court has ruled that the current funding formula is adequate and sustainable. The Court held that the “structure” and “implementation” of the funding formula must be “reasonably calculated such that all students may achieve the goals set forth in KSA 72-3218(c).” (*Rose capacities*) The “structure” is a function the Legislature is responsible for, and that structure is embodied in this Article of the education statutes. The “implementation”, function, however, is uniquely the responsibility of local boards of education.**
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# The Legal Mandate Applies to ALL Students

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- The Constitutional provision for the establishment of public schools and the legal requirement that funding be “reasonably calculated such that all students may achieve the goals set forth in K.S.A. 72-3218(c) (*Rose capacities*), applies to ALL students.
  - K.S.A. 72-1163 is the needs assessment statute. It’s been the law for over 20 years that local boards SHALL conduct needs assessments of each attendance center in the district and the information obtained SHALL be used by the board when preparing the budget for the district.
  - Unfortunately, compliance with this law has been woefully lax, resulting in the need for the Legislature to re-enforce the law’s requirements in recent Sessions.
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# Importance of the Needs Assessment Law

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- Compliance with the needs assessment law is one of the most important functions of a local school board and one of the most important powers of a local board.
- Article 6 §5 of the Kansas Constitution mandates that:  
*“Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by local elected boards.”*

Local public schools can't be “maintained, developed and operated” by local school boards unless the requirements of the law are taken seriously.

While local boards can and do delegate a good deal of administrative duties to a superintendent or district staff, local boards must assume the primary role of ensuring compliance with this law, because the local school boards are ultimately legally responsible for the results.

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# New Needs Assessment Amendments

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- The Legislature has added teeth to the needs assessment law by requiring that the minutes of the school board meeting reflect that not only did the local board have the needs assessments results but that the board evaluated the assessments and indicated “how the board used such assessments in the approval of the school budget.”
  - In addition, the law now requires that every school year the local board must review the state assessment results and document (A) the barriers that must be overcome to have ALL students achieve proficiency above Level 2 for grade level academic expectations; (B) any budget actions including possible reallocation of resources that should be taken to address and remove such barriers; and (C) the amount of time the board estimates it will take for ALL students to achieve proficiency above Level 2 if such budget actions are taken.
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# New Needs Assessment Amendments

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- The statute now mandates that the school district budget approved by the board *“shall allocate sufficient moneys in a manner reasonably calculated such that all students may achieve the goals set forth in K.S.A. 72-3218(c).*
  - A review of needs assessments and board minutes since these legislative amendments still reflects a misreading or intentional disregard for the statute’s requirements. For example, there are still references to lack of funding as a barrier and there is clear evidence that local boards are seen as only having the function of approving the USD official state assessment review, without having actually conducted the needs assessments.
  - Kansas public schools are fully funded. The problem is proper allocation of resources. That is the responsibility of the local boards.
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# The Importance of Funding Instruction

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- The KSDE Accounting Handbook for USD's highlights the importance of INSTRUCTION:

*"Although all other functions are important, this function acts as the most important part of the education program, the very foundation on which everything else is built. If this function fails to perform at the needed level, the whole educational program is doomed to failure regardless of how well the other functions perform."*

This powerful statement, coupled with the needs assessment mandate, is the strongest argument that can be made for a budgeting process built from the classroom up, not the administration building down. Yet, that is not what we are seeing with district budgets.

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# The Consequence of Not Funding Instruction

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- K.S.A. 72-5191, passed in 2005 during the *Montoy* school finance litigation, sets forth a state public policy goal that at least 65% of money appropriated, or otherwise provided schools, be expended in the classroom or for instruction. That statute remains in effect.
  - “Instruction” is defined as *“the activities dealing directly with the interaction between teachers and students and may be provided in a school classroom, in another location such as a home or hospital, and in other learning situations such as those involving co-curricular activities. Instruction may also be provided through the internet, television, radio, computer, multimedia telephone, correspondence that is delivered inside or outside the classroom and other teacher-student settings or through other approved media. Instruction also includes the activities of aides or classroom assistants of any type, including, but not limited to, clerks, graders and teaching machines which assist in the educational process.”*
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# The Consequence of Not Funding Instruction

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- Notwithstanding the broad definition of “instruction”, financial reporting that the Legislature has mandated has demonstrated that even in the face of years and years of underperformance, school districts are not coming even close to meeting the statutory state policy goal of 65% funding to the classroom or for instruction. In fact, the actual percent of funding for instruction hovers around just 50%.
  - Since 2005, there hasn’t been one year where the 65% goal was close to being met. The cumulative loss of funds to the classroom and instruction by not meeting the goal established by the Legislature and the Governor in 2005 has been over \$12.2B! Keep in mind that this is money the Legislature appropriated for schools that was intended to be used for instruction but was spent elsewhere based on district budgets approved by local school boards. If student performance is to improve, and improve it must, it is up to local school boards to make that happen. That’s an average of over \$600M per year the policy has been in place!
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# At-Risk Students

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- While the *Montoy and Gannon* school finance cases sought additional funding for schools, the Kansas Supreme Court stressed the need to target the alarming number of students who were being left behind academically – those who are identified as “at-risk” of failing to achieve the benefits of educational improvement in the Kansas public school system.
  - Now that schools have been fully funded for over 15 years (the last cut coming in 2009 during a recession), student outcomes have reflected that this population of at-risk students has not benefitted. Student performance outcomes have been stagnant despite substantial increases in funding, proving that it’s not how much is spent, but rather, HOW funds are spent, that is important.
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# At-Risk Funding Audits

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- In 2018-19 the State provided \$413M in dedicated funding for districts to deliver services to students at-risk of academic failure. The Kansas Division of Legislative Post Audit conducted an audit of a number of districts that collectively received \$125M in at-risk funds to determine how funds were being used. LPA found that most funds were being used for teachers and programs for all students and didn't appear to specifically address at-risk students as required by law. In addition, most of the at-risk programs and practices reviewed lacked strong research that they were effective. LPA found that KSDE had not approved strong at-risk programs or provided good guidance to the districts. Most programs were not evidence-based. Most of the at-risk practices approved by the SBOE did not target at-risk students.
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# At-Risk Funding Audits, cont.

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- A follow-up LPA audit released in July, 2023 reported that state law required that districts spend money from their at-risk funds only on programs approved by the SBOE. LPA was told by KSDE that SBOE had delegated the task of approving at-risk programs to the Department. NONE of the programs reviewed by LPA met the statutory criteria necessary to be included on the approved list. Most had little to no evidence of effectiveness. Most did not appear to meet the purpose of providing above and beyond opportunities to at-risk students. LPA found that the Department did not follow its own process and the SBOE did not provide any oversight of the Department. Like the earlier audit, LPA found districts were still not spending at-risk funds appropriately. Nearly 30% of the funds did not comply with the law. LPA found that over the past 6 years all 3 at-risk cohort groups they evaluated performed worse over time. Graduation rates and ACT scores were lower as well.
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# At-Risk Student Accountability Plan

- Frustrated by the 2 consecutive Legislative Post Audit reports criticizing districts for not following the law regarding use and expenditure of at-risk funds, the Legislature has doubled-down on the law's requirements.
  - The 2024 Legislature created a 10- district pilot program in school year 2024-2025, with all schools coming on-line in 2026-2027, that requires local boards to annually submit to the SBOE an at-risk student accountability plan to attain at-risk student proficiency and to ensure the provisions of programs and services that are above and beyond regular education services.
  - The purpose of these plans is to:
    - show that the district is using evidence-based instruction as defined in the at-risk statute
    - measure longitudinal academic improvement
    - establish quantitative student academic goals for these students
    - ensure at-risk funds are expended in accordance with law
    - continue the process of identifying cohort groups of at-risk students and providing evidence-based instruction above and beyond that of regular education students until the district meets the SBOE goal of 75% of all students achieving proficiency at level 3 or 4 on ELA and math assessments.
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# At-Risk Accountability Plan (cont.)

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- Each district must identify no less than 2 cohort groups to track, one grade 3 and another in any grade K-8. One must consist of free lunch students and one must be made up of at-risk students or one of the subset groups identified for state assessment purposes.
  - Each district is to establish a 4-year quantitative academic improvement goal for ELA and math for each cohort group and repeat the process every 4 years. In order to provide accurate longitudinal tracking, the district must not revise its goal for that period.
  - The district must identify and implement 2-4 targeted supports or interventions contained on the SBOE's list of approved at-risk educational programs to provide evidence-based instruction that is above and beyond regular education services and evaluate whether they have a positive impact. These may be replaced if the district finds any to be ineffective.
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# At-Risk Accountability Plan (cont.)

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- There are consequences for failure to achieve goals.
  - Commencing in 2030-2031, if a cohort group doesn't meet or exceed goals the SBOE is required to deem the district is not meeting at-risk improvement requirements and must post it on the SBOE website.
  - A cohort group not meeting goals will have an additional year to meet or exceed the goal.
  - If after that year the goal has yet to be met, at-risk and high-density at-risk funding is reduced.
  - There are greater funding consequences if both cohort groups fail to meet their goal during that period.
  - There are a number of reporting requirements included.
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# Amendments to the At-Risk Law

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- The 2024 Legislature also amended the current at-risk funding law to make it clear that at-risk funds may only be used on at-risk and provisional at-risk programs *“that are provided above and beyond regular educational services to students who are identified as at-risk.”*
  - COMMENT: Again, this change was necessitated by the 2 consecutive Legislative Post Audit reports noting that districts were not following the law when spending at-risk funds appropriated by the Legislature for the purpose of providing targeted services to this group of vulnerable students.
  - Language was added requiring the SBOE to identify, approve and provide a list of at-risk programs that provide best practices and evidence-based instruction. While a similar requirement was in the original law, LPA found that the list contained many programs that did not qualify. SBOE is currently working on an updated list but a preliminary list still shows programs that are suspect or inadequate.
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# Amendments to the At-Risk Law (cont.)

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- The SBOE is required to update the list as needed but prior reference to this being tied to the Board's 5-year accreditation system review process is repealed. Approved programs must be demonstrated to have shown improvement year to year.
  - The law makes it clear that NO expenditure shall be made from a district's at-risk fund for any program or service not found on the approved list unless it's for an approved provisional at-risk program.
  - "Above and beyond" is further defined to mean *"an at-risk educational program or evidence-based instruction or practice that is provided in excess of regular educational services and based on the needs of students identified as eligible to receive at-risk educational programs and services and may provide a collateral benefit to students who are not so identified without any additional cost."*
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# Amendments to the At-Risk Law (cont.)

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- “Evidence-based instruction” is further defined as *“an education delivery practice based on peer-reviewed research that consistently produces better student outcomes over a one-year period than would otherwise be achieved by the same students who are identified as eligible to receive at-risk educational programs and services.”*
  - COMMENT: The SBOE’s list (from KSDE input) included, in some cases, mere links to educational articles that were neither peer-reviewed nor evidence-based. The list did not provide any meaningful guidance to districts and their teachers on what programs were, in fact, effective. The SBOE’s current project of reviewing programs has reduced the list from around 270 to around 150, but the list needs to be much smaller and heavily influenced by evidence-based and peer-reviewed research. The districts are needing much better guidance from the SBOE or KSDE and neither appear to be inclined to provide much other than to provide a list. To date, only ONE person has been assigned the task of developing the list of approved programs and practices.
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# Consequences of Non-Compliance

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- While no school district in Kansas has ever lost its accreditation status, SBOE Regs require, as a condition of accreditation, that a district be in “good standing”.
  - K.A.R 91-31-31 defines “in good standing” to mean “in compliance with, or working with the state board to achieve compliance with, all applicable federal and state statutes and regulations.”
  - K.S.A. 72-5170 required the SBOE to adopt a school district accreditation system based on improvement in performance and is measurable.
  - The Legislature has noted that there has been very lax enforcement of state accreditation law. Look for enforcement measures to be proposed unless the SBOE’s new accreditation model that is in the works is acceptable.
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# Conclusion

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- As far back as 2005 during the school finance litigation, the Court identified the 25%-33% of students who were at-risk and in need of additional services. That % has grown despite the infusion of billions of new dollars.
  - David Dorsey, a former teacher writing for the Kansas Policy Institute, estimates that in 2015 there were 53,737 students reading below grade level. That number is now north of 82,000. This only accounts for students tested in Grades 3-8 and 10, so the actual number may be twice that high.
  - He notes that the likelihood that those students will be able to earn an industry certificate or some other post-secondary education is pretty low. Those kids won't be able to achieve their true potential, thanks to an education system that has failed to meet their needs. Those kids are more than numbers. They are flesh and blood, they have names, hopes and dreams, and are deserving of a public school system that provides the educational services they need to succeed. This is a call to action for all local school boards where these students reside, and they reside everywhere.
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