

IN THE SUPREME COURT OF THE STATE OF KANSAS

CASE NO. 113,267

LUKE GANNON,
By his next friends and guardians, *et al.*,

Plaintiffs/Appellees,

County Appealed From: Shawnee

v.

District Court Case No.: 10-C-1569

STATE OF KANSAS, *et al.*

Defendants/Appellants.

RESPONSE TO STATE'S OCTOBER 4, 2016 RULE 6.09(b) LETTER

Kansas is not New York. The two states have different constitutions with different Education Articles. *Compare* N.Y. CONST. Art.XI, §1 (“The legislature shall provide for the maintenance and support of a system of free common schools...”) *with* KAN. CONST. Art.6. Each state has imposed different tests for determining constitutional compliance.

The adequacy component of Article 6 of the Kansas Constitution is met when the system is “reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*.” *Gannon v. State*, 298 Kan. 1107, 1170 (2014) (“Gannon I”). New York, on the other hand, must offer “the opportunity of a sound basic education.” *Campaign for Fiscal Equity v. State*, 86 N.Y.2d 307, 314-16(1995); Ex.A, p.6. A “sound basic education” does not incorporate the *Rose* factors, but merely requires “the opportunity for a meaningful high school education, one which prepares [children] to function productively as civic participants.” *Campaign for Fiscal Equity v. State*, 100 N.Y. 2d 893, 908 (2003).

There is no reason for this Court to look to the New York Constitution to determine whether the Legislature complied with the Kansas Constitution. *Gannon I*, at 1140-41. (“[W]e obviously look to the language of our own constitution...”). Under the Kansas Constitution, Plaintiffs had the burden to prove the State’s system did not pass constitutional muster. The Panel properly allocated that burden to Plaintiffs. At the time of trial, the Panel was aware “the assignment of [the] burden” was “to the Plaintiffs,” and the State “enjoyed a presumption of constitutionality.” R.Vol.14, p.1947. There is no evidence that the Panel disregarded that burden of proof in its later order. *In re Thompson*, 2010 Kan.App.Unpub. LEXIS 735, *8 (2010) (appellate court won’t assume trial judge disregarded established burden of proof “without some clear evidence to that effect”). This Court can conclude that the Panel – which knew the proper burden allocation – applied it properly. *Gannon v. State*, 303 Kan. 682, 711 (2016) (when district court aware of proper legal test, appellate court presumes proper test applied)). Plaintiffs met their burden; this Court should affirm the decision of the Panel.

Dated this 10th day of October, 2016.

Respectfully submitted,

/s/ Alan L. Rupe

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day October, 2016, I electronically served the foregoing

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