

The NASBE Interview

Jim Porter is chairman of the Kansas State Board of Education, and Jim McNiece is member and immediate past chairman of the Kansas State Board of Education. NASBE President and CEO Kris Amundson interviewed them by phone in July, the week after the Kansas Supreme Court handed down its sixth and most recent ruling on Gannon v. the State of Kansas, dealing with the plaintiffs' claim that the state's education budget was not adequate and equitable.

For the third time in two years, the Kansas Supreme Court ruled that the state's spending on public schools is inadequate. How has the Kansas State Board of Education been a part of this conversation about school funding?

Jim McNiece: We are different from other states in that we have a lot more authority as it relates to the Constitution. Article 6, Section 1 of the Kansas Constitution basically divides our powers and establishes a system for public schools. The legislature is supposed to come up with the money, and the state board is [responsible] for general supervision of the public schools. You can't do one without the other. We come up with the idea; they're supposed to come up with financing.

We have "self-executing powers" as a result of our Constitution. When that was put in there in the late 1960s, it was almost immediately challenged by the legislature. I don't exactly remember who challenged it, but in the early 1970s, and then again later on in the early '80s I think, the Kansas Supreme Court said no, the Constitution gives the state board these powers to act independently of the legislature. We have our duties; they have theirs.

But again, you can't do it without standards, and you can't do it without money. We've been fighting the courts for years. In fact, the change in the Constitution goes back to the very beginning. In 1966, we changed from over 2,000 school districts to a little over 300. The state board before then was appointed, and the commissioner

was elected. We reversed that, where the board then was given the independent opportunity to be elected in a partisan election. Their job was to hire a superintendent or commissioner. We worked independently of the legislature and the governor. That doesn't happen in many states. I think there are only six states that actually work the way we do.

We have jurisdiction, and they have jurisdiction. The governor does not have a lot of say in this, when it comes down to it. We've never sued the legislature or the state; it's come from local school districts. It started in the early '90s and continues on. I can't list every court date. But it comes down to adequacy and equity. Interestingly, the courts were given information in a Taylor study [a cost study performed by Dr. Lori Taylor of Texas A&M University], which is the one that the legislature wanted for themselves to say that they were giving enough money, and the Taylor study said no. But the court chose not to use that study. That study actually uses state board goals and vision [as expressed in the initiative] Kansans Can to come up with the amount of money [that would meet the equity and adequacy bar].

The state board has been asked by the legislature to recommend a base state aid per pupil amount. What process did you go through to determine whether it would be adequate?

Jim Porter: We are required every [two] years to present a budget for the

Department of Education in Kansas to the governor for his budget consideration. It is our responsibility to do that. We came up with a number that has been decided by the court and decided by several people in the discussion. When we had to make that recommendation a while ago, there was an active appellate court decision, and we used the calculations in it. Then we calculated inflation over that period.

We looked very seriously because we assumed that the court would at least look at our numbers. We felt that, for [the sake of] excellence in education, we had to come up with a number we believed actually was adequate, and we used as our basis two calculations: one was determined by the appellate court, and second, applied inflation numbers.

McNiece: We have to come up with not just [a recommendation for] general state aid but how much for special education, how much for parents and teachers, mentor training programs, professional development, and in the classrooms. There's—I don't know—19 or 20 [budget] lines. We voted on each individually and then came up with a total number. We chose deliberately—or I chose as the board chair—to put the numbers out there with explanation but to put the numbers out there that challenged the court and the legislature and the governor. We didn't back off and say, "Well, golly, we don't have a say in this." We had a say, and we said our piece. Money makes a difference.

What are the biggest obstacles to adequate and equitable funding in Kansas? How does your state board navigate what could be a pretty contentious, political conversation?

Porter: Because of decisions made by the administration about tax policy, they in fact did not have money. That has been corrected. So crying "poverty" is no longer an issue. I think that our revenue for last month was about \$307 million above estimates.

Now with the [economic] recovery, and based on decisions the last legislature made in tax policy, that's an obstacle that can no longer be used. However, there are people in the legislative branch that have bought into the issue and that are not friends of public education, and they are obstacles. One of the things that I believe is

extremely important is to try our best to build relationships not only with our friends and supporters but with those that are not so that we can work together.

Ninety percent of the kids in Kansas go to public school. Another 4 or 5 percent go to private schools that are accredited by us. Most of the kids in Kansas are influenced by the decisions made by the state board of education, and 90 percent of the kids in Kansas are funded through public education.

McNiece: Two questions continue to come up, and these questions are not unique to Kansas—they are universal. Does money matter? Number one, if you spend more money, will you get better results? Number two, are we spending the dollars appropriately and efficiently? Are we spending them in the right place, and are we using them efficiently as public entities in terms of our responsibilities as citizens? Those two questions are huge. As to number one: We believe money matters, and so does the court, in terms of saying we need to do more for the kids who are not doing well, be they low income, be they kids of color, be they of handicapping conditions. Whatever the reason, we have a percentage of students who are not doing well, and it takes more money to help them. Then, are we spending money appropriately and efficiently? We were validated by the Taylor report. One of their findings was that Kansas was one of the most efficient states in the Union in spending money and that our system—from the state department through the districts—used the money efficiently and appropriately. That was huge.

[The Taylor study] was paid for by the legislature, and they wanted Dr. Taylor and WestEd to determine—and this is my terms—the lowest amount they can spend on education and meet the adequacy and equity standards. The startling fact is that they came out and said how efficient our school systems were. That has been the [framing of the] issue: that we waste money, and money doesn't matter anyway. Those two issues were directly refuted by this study.

The courts chose not to use the study, because the study was based on Kansans Can and the things that we want to do to make Kansas better. And the state, in their last decision, said they're not going to use the Taylor report.

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Porter: [The legislature] actually commissioned three reports over that period, and each of them has indicated that more money was needed. But I want to go back to the statement about efficiency [in the Taylor study], and this is a paraphrase: The report [authors] said they had never seen a state that was as efficient as Kansas.

McNiece: When it comes down to it, the court said, “There’s really no debate about money matters.” They chose to go to what is called the *Montoy v. Kansas* level of funding from a prior court case. I’ve asked [Commissioner of Education] Randy Watson and [Deputy Commissioner] Dale Dennis how much money that really means and if they have to adjust it for inflation. How much money is that, and how close is it to the amount of money we recommended two years ago?

What do you think it’s going to take to get to a place where the state supreme court is no longer the prime decider in school funding in Kansas?

Porter: I have a very simple answer for that: Adequately and equitably fund education. I believe if the legislature will follow the mandate given to them by the Supreme Court now, they would address the issues because it also has the cost of living increase built into it, and [if they do so] I believe we’re there. Now there are those that want to change the Constitution. Some people that do not support public education want to actually change the Constitution to change the terms [under which] the legislators are responsible for suitably funding education and allow the legislature to identify and define suitability. That does not have a lot of weight, but it comes up all the time.

McNiece: I’m going to answer your question in a little different way. One of the things that we’ve done through this contentious period is that we have come forth with a bold vision of what education should be in the states. We have talked more about that than school finance. We stayed in our backyard. We just keep talking about what it takes for the state to meet its vision for Kansans Can. I think that’s really important. Instead of fighting over dollars and cents, we have taken a position of leadership in terms of

school quality and educational outcomes and stuck with our moonshot. That’s changed a lot of legislators and had an impact on the last election. I just can’t help but think that not trying to get down in there and fight them about money but fight them about quality—or should I say, take the lead on quality—has been one of the determining factors of success in our state.

Porter: We have consistently said it was our responsibility to make a recommendation, the legislature’s responsibility to appropriate the funds, and the court’s responsibility to interpret the law. We did our job, and we have been very careful not to criticize—as the board or as individuals—anybody else. We stayed bona fide because we believe that’s the leadership position we should have taken. And it has paid off.

In Kansas, as you mentioned, state board members are elected. How do you think this would have played out if the board had been appointed?

McNiece: I can only speculate. The two factors that we have is that we’re elected officials, just as they are, and second, we have a specific constitutional responsibility that is indeed more than what other states have. We’re not beholden to the governor or the legislator in any way. It works well if we partner on stuff and talk and work together. But we don’t have to rely on each other for each other’s election.

Porter: Regardless of how you got there, it’s your responsibility as a member of the state board of education to advocate for public education. We’re in the unique position that we are not beholden to the governor, but I believe that regardless of how you got [on your state board], it is your responsibility to advocate for public education, and you need to have the fortitude to do it. I don’t know that it would make a difference to me how I got there, but I may be the anomaly. We all stay connected to our constituents. Most of us do a lot in our individual areas. And there is a great deal of support—as a matter of fact, overwhelming support—for the vision that the state board of education has developed. That helps us be even bolder in our support for the kids in Kansas.

What can other state boards learn from your experience?

Porter: Develop a vision that is bold—that takes the responsibility for moving each child into the middle of the 21st century. Keep that vision in mind for all your decision making.

McNiece: Two things I'd add: We have worked very hard as a board—Jim especially and others—to have open-minded communication and build relationships, and that has served us well. But we've also been realistic in our expectations. By the way, the relationship isn't just with the legislature, it's with groups that sometimes we don't always agree with: It's the teacher's union, the school boards association, the administrators, the local boards. Having a really good commissioner of education helps, too. He's smart, he's personable, and he's got a vision of where he wants to take us. He is trusted by the legislature and the governor, and that makes a big difference. I think we're trusted overall by both, but it's a different kind of trust. We're not over here saying we know the answer. We're saying we've got part of the answer, and you've got part of the answer, and we've got to work together.

Porter: A real advantage that we have is not only being elected, but we choose the commissioner. We have a vision that requires us—in this case, that's not a problem at all—to work together toward a common vision. In some cases, if the board is appointed by somebody else and the chief is elected, they could be diametrically opposed philosophically and have a difficult working relationship. Our arrangement is very important to us properly working together. It doesn't mean we agree all the time on some issues. We did not join hands and sing Kumbaya. Another thing I think is important is that even though we have some philosophical differences, we like each other.

McNiece: I'm going to throw a little kick-in for NASBE here: Most of our board members have gone through New Member Orientation, and that helps them be better board members. We adhere to "take a vote, make a decision, don't hold a grudge." Move onto the next. You win some, some you don't. Getting along is important. We certainly have differences on our board, but we don't let those differences get in the way of doing the right thing and being good board members.

Porter: That's something we sometimes forget. The training that we got, the resources we have available—both in person and in substance and data—they help us in these instances. Every state has to figure this out for themselves, within their constitutions and their political realities.

We have more challenges awaiting us, but the House will be all elected this year, the governor will be new, other leaders will be new. There are no Supreme Court justices up for approval, but there is a push immediately by a leadership faction to bring a constitutional amendment that would basically disqualify the courts from making any kind of ruling about finance. But you can't win a game by changing officials. ■

cont'd from page 22...Teachers Salaries: A Critical Equity Issue

⁴NCES, table 211.60, "Estimated Average Annual Salary of Teachers in Public Elementary and Secondary Schools, by State: Selected Years, 1969–70 through 2015–16."

⁵Using data from NCES, table 213.10, "Staff Employed in Public Elementary and Secondary School Systems, by Type of Assignment: Selected Years, 1949–50 through Fall 2015"; NCES, table 208.20, "Public and Private Elementary and Secondary Teachers, Enrollment, Pupil/Teacher Ratios, and New Teacher Hires: Selected Years, Fall 1955 through Fall 2025"; and NCES, table 211.50.

⁶Sylvia A. Allegretto and Lawrence Mishel, "The Teacher Pay Gap Is Wider Than Ever," report (Washington, DC: Economic Policy Institute, August 9, 2016). A note from the report on their methodology reads, "Regression-adjusted estimates include controls for age (quartic), education, race/ethnicity, geographical region, marital status, and gender for the pooled sample. Data are for workers age 18–64 with positive wages (excluding self-employed workers). Non-imputed data are not available for 1994 and 1995; data points for these years have been extrapolated and are represented by dotted lines."

⁷Ibid.

⁸U.S. Department of Education, Office of Postsecondary Education, "Teacher Shortage Areas Nationwide Listing, 1990–1991 through 2017–18" (2017).

⁹Lee Hale, "Behind the Shortage of Special Education Teachers: Long Hours, Crushing Paperwork," National Public Radio, November 9, 2015.

¹⁰NCES, table 211.50.

¹¹Amy K. Glasmeier and the Massachusetts Institute of Technology, "MIT Living Wage Calculator," MIT, 2018, <http://livingwage.mit.edu/>.

¹²For a full description of our methodology, see Miles et al., "Low Teacher Salaries 101."

¹³Ulrich Boser and Chelsea Straus, "Mid- and Late-Career Teachers Struggle with Paltry Incomes" (Washington, DC: Center for American Progress, July 23, 2014).

¹⁴Using data from NCES, table 211.60; Glasmeier and MIT, "Living Wage Calculator"; U.S. Department of Education, "Teacher Shortage Areas"; "A Coming Crisis in Teaching? Teacher Supply, Demand, and Shortages in the U.S." (Palo Alto, CA: Learning Policy Institute, 2016). We consider typically easy-to-staff fields to be elementary education, early childhood, the arts, English language arts, and social studies/humanities.