

## How 'Game Changer' Kansas Schools Deal Was Reached

Posted: June 28, 2016 at 3:16 pm EDT by John Celock | *Updated: June 28, 2016 at 3:37 pm EDT*

**Link to PDF of signed agreement:** [Kansas School Agreement](#)

**Link to PDF of final agreement filed with State Supreme Court:** [KS School Agreement With Court](#)

By John Celock

Amid last minute discussions, potential defections and frantic legal research, the “game changer” that brought a near unanimous vote last week in the Kansas Legislature on a school finance deal came in a simple conversation last Thursday afternoon, June 23.

Following a meeting of the House Appropriations Committee on Thursday – the first day of a special session called to solve the school finance court case that threatened to shutter state schools on July 1 – a lobbyist for Schools for Fair Funding, a lead plaintiff in the case, offered legislative budget leaders a deal. Change the funding agreement to not fund \$13 million of the fix from a half percent cut to operating aid to school districts statewide, and the plaintiffs would sign an agreement with the state saying they would support the bill in front of lawmakers and telling the state Supreme Court that the fix was acceptable.

The proposal – which was agreed to by House Appropriations Committee Chairman Ron Ryckman Jr. (R-Olathe) and Senate Ways and Means Committee Chairman Ty Masterson (R-Andover) – led to negotiations Thursday night and Friday on how to find the \$13 million to fund the final deal. Legislative leaders were interested in getting the fix in place in order to avoid a lengthy floor debate and the potential the Supreme Court would rule a bill unconstitutional. Such a ruling could potentially close schools and bring lawmakers back to Topeka for another special session in a few months.

Masterson said the deal – called a stipulation of agreement – was what brought the Senate on board with the final deal. The final plan passed the Senate with only one dissenting vote.

“It was bigger for the House than the Senate,” Masterson told *The Celock Report*. “It gave us a guarantee that that phase of the lawsuit was over and we did not have to go back to the battlefield.”

The final agreement came after a series of meetings and phone calls all week. Last Monday, June 20, lawmakers, Department of Education officials and the superintendents of the state's largest school districts participated in a marathon three hour meeting trying to come up with a solution that would be agreed to by all parties. While Kansas City and Wichita were seeking more funding under the deal, part of the court order, the leaders of the other districts – Shawnee Mission, Blue Valley and Olathe in suburban Johnson County – were hoping to avoid deep cuts. The plan that emerged from the meeting – and agreed to by the five

superintendents – had the \$38 million coming from several sources, including the half percent cut.

Lawmakers wanted a plan that had sign off from the superintendents and plaintiffs in an attempt to head off another showdown in the Court. A lawmaker close to the negotiations told *The Celock Report* that the Legislature needed to get the superintendents to agree to the half percent cut in order for it to pass. At the same time the lawmaker said a key piece for the state was to reach an agreement with the plaintiffs that would head off another special session.

The half percent became a sticking point for some lawmakers, including Democrats and moderate Republicans, who raised legal questions and questioned whether or not the Supreme Court would sign off on the final deal. The questions centered over language in Supreme Court decisions that said that lawmakers could not transfer money from one pot in the school budget to another to satisfy the equity decision. The attorneys for the plaintiff were also planning to challenge that plan.

“We don’t think that it would have passed the court’s equity test since it would be moving money from one pot to another among the schools,” Alan Rupe, a lead attorney for the plaintiffs, told *The Celock Report*. “So it had to come from somewhere else.

Rupe indicated that the plaintiff’s attorneys wanted to make sure the funds did not come from other education sources. He noted that the goal for the attorneys was to fund equity under the court order and not have schools face additional financial hurdles. He said the matter of where lawmakers found the money was a legislative issue.

“We were not concerned with where it came from as long as it does not come from the schools that needed help,” Rupe said.

John Robb, the general counsel for Schools for Fair Funding, told *The Celock Report* that a stipulation agreement had been a part of the group’s “game plan” going into the special session. He said that they wanted to find a way to address the court ruling and avoid a potential showdown over whether the school’s would be open.

Robb differed from the legislative perspective, however, saying that lawmakers were the first to propose a deal. Those on the legislative side, though, say that while lawmakers never hid a desire for a deal, the first mention of a “stipulation agreement” came from the plaintiffs. An attorney retained by the Legislature had remained in contact with the plaintiff’s attorneys as the legislative process played out.

Robb agreed with Rupe that addressing the equity part of the court ruling was the key thing for the plaintiffs. He noted that the half percent proposal would have hurt adequacy in order to address equity. Adequacy is another component of the school finance litigation in the state, one that is still pending before the Supreme Court.

Robb said that once a plan could be developed that would not hurt adequacy and would be able to meet the court’s standard on equity, the plaintiffs wanted to move ahead with a stipulation since this would allow them to move past this phase of the case and to the next part.

Robb says he understands why lawmakers were interested in reaching a deal that included the stipulation agreement.

"I understand why for legislative leaders, a stipulation was important," Robb said. "They did not want to finish a special session and have the court throw it out and cause a closure and not have a second special session."

Democrats started floating their own plan, while moderate Republicans started floating a plan of their own.

Amid the competing plans, legislative leaders started getting calls from superintendents, jittery over the deal negotiated Monday and saying they might end up opposing the deal. A joint hearing of the House Appropriations Committee and Senate Ways and Means Committee Thursday morning brought support from superintendents. Shawnee Mission Schools Superintendent Jim Hinson, though, couched his support of the deal on looking for a way to avoid a school closure.

"My testimony is not necessarily based on what is best for the long-term solution for a new school finance formula, but rather a compromise that ensures there is no gap in the services for our students and our communities that rightly expect us to deliver those services," Hinson told the joint meeting. "The spirit of compromise is always offered to demonstrate continued interest to get all of us, all of us to the decision and discussion of a long-term solution. The resolution of this crisis must bring compromise; and with compromise, generally no one's happy. But in this situation, no one's going to be happy. But success is measured upon having a great start this coming school year, not necessarily that everybody is happy."

Masterson said he and other legislative leaders thought they could get their plan through after the hearing but it would be rough. Following the plaintiff's proposal on Thursday afternoon, legislative leaders were working on two competing planes behind the scenes. On one plane, they were looking for ways to find the \$13 million, on the other a team of attorneys was drafting arguments on why the plan was constitutional and beginning to set the stage for another Supreme Court showdown. A lawmaker familiar with the process said that legislative leaders were expecting a series of no votes and a cascade of statements of vote that would likely oppose the bill on constitutional grounds in a goal to set up legislative intent that would allow the Supreme Court to toss the plan.

The negotiations started to center on the proceeds the state will receive from sale of the Kansas Bioscience Authority, a proposal first brought by House Education Committee Chairman Ron Highland (R-Wamego) during the Appropriations Committee meeting. Some of the negotiations centered around the entire proceeds of the sale – which could be \$25 million coming from the plan – with the final deal looking at anything proceeds from the sale over \$25 million, up to \$8 million of that, going for the schools deal. The remaining \$5 million will come from motor vehicles fee slated to be transferred to the state highway fund. If the KBA funds fall short of the \$8 million, the difference will come from the state's extraordinary aid fund for schools.

The moderate Republican plan – named by some the "Rooker Plan" after Rep. Melissa Rooker (R-Fairway), the public face of the proposal – started dominating public discussion, while Ryckman, Masterson and other leaders negotiated behind the scenes. Rooker, who

over the weekend was being described by some as the leader of the effort to solve the issue, on Tuesday was quick to say that the plan was not hers alone, saying that it was a group effort. She also moved away from the terminology that it was the "Rooker Plan", instead describing it *The Celock Report* as the "Safe Harbor Plan," using language from a Supreme Court decision.

Rooker called the stipulation agreement "crucial" and said that it helped bring on more lawmakers and avoided another court showdown.

"I thought that was the piece that brought the Senate on board. That was a terrific move," Rooker told *The Celock Report*. "For all the drama on who gets credit for what. I don't want to take credit for that. That was leadership going to attorneys and the Senate moved from their position."

Rooker said that she and other moderate Republicans did not want the half percent cut that was negotiated in Monday's meeting, saying that it "made everyone a loser." She said that while the superintendents were on board with the plan negotiated on Monday, it was primarily to avoid a shutdown.

Rooker said that the superintendents were starting to pull away from the deal Wednesday night but were also afraid of what could happen if a deal fell through. She said the fear was of education policy items being added, including school vouchers.

"They only signed off on that because it was a last resort. They were deathly afraid of a lot of the kinds of policy bills that we have been successful in defeating in the last few years," Rooker said. "All of that kind of stuff that would siphon money away from schools. They had a gun to their heads and were asked to capitulate and they did. The last thing they wanted was a showdown where the schools were closed.

Rooker pointed towards Hinson's testimony as an example of the superintendents going along to avoid a showdown.

The so-called "Rooker Plan" or "Safe Harbor Plan" contained several funding sources that were in the original bill proposed by Ryckman and Masterson after the Monday meeting. This included changes to start aid for virtual education, funding a Pre-K pilot program with TANF dollars and funds from the tobacco master settlement. Rooker said that the similarities came from the fact that the state has limited pools of money to dip in to. She also noted that the legislative budget analyst working with her had presented limited options to her and other lawmakers seeking to develop school finance plans.

A sticking point though to the moderate plan was a proposal to take \$6 million from a Job Creation Fund in the Department of Commerce to fund the schools. Rooker said that with the growing opposition to that part of the plan, her coalition was prepared to accept a change to have the funds come the extraordinary needs fund. The moderate plan did not touch the KBA but did propose the motor vehicle fee.

At the end of the day, however, the moderate plan pushed by Rooker and her allies, did not receive a vote or committee discussion. While Rooker said that House Appropriations Committee Vice Chairwoman Sharon Schwartz (R-Washington) was prepared to introduce

the bill during a committee meeting, Schwartz did not in the end. Rooker said that Schwartz said that a deal would likely come together. Schwartz could not be reached for comment.

The Appropriations Committee meeting did include open discussion on various school finance plans, including how to pay for it. This included the Highland proposal on the KBA funds.

Rooker said that she and her allies were prepared to go to the floor and offer the proposal as an amendment if needed. She believes this helped push a final deal.

"Because the bills were not introduced in committee, the only other avenue was to offer a floor amendment. That what made it successful," she said. "There was no procedural way around general orders this time. For the first time in a very long time, we had a major piece of legislation, that meant everyone had a voice."

Masterson said that he never saw a plan from Rooker. He said that he did see a moderate Republican plan which he said would not have passed the Senate.

"Every plan was pulling from similar pots," Masterson said. "No one had a plan that included a stipulation agreement from the plaintiff's attorneys."

While an agreement was reached in principle on Thursday night and Friday morning, more sticking points emerged. Senators would not vote on a final plan until they had a written commitment from the plaintiff's attorneys. The attorneys though would not give a final commitment to anything until they saw the final legislative language drafted by the state Reviser of Statutes.

When the final legislative language was drafted and signed off on by lawmakers, the attorneys finally agreed. A one-page agreement was signed Friday afternoon by the attorneys for the plaintiffs and Senate President Susan Wagle (R-Wichita) on behalf of the state.

The Friday agreement was followed Monday by a more detailed stipulation agreement signed by the plaintiff's attorneys and state Attorney General Derek Schmidt (R) after Gov. Sam Brownback (R) signed the final bill Monday.

The signed agreement was all that was needed to get lawmakers on board with the final plan. No floor amendments were offered and the final plan received only six dissenting votes in the House and one in the Senate. Sen. Michael O'Donnell (R-Wichita) told *The Celock Report* that the stipulation agreement – and having a signed document from the plaintiff's attorneys – was a "key part" in the final passage.

O'Donnell echoed many other lawmakers – including Masterson and Rooker – along with the plaintiff's attorneys, saying that the stipulation agreement was what was needed.

"I think that absolutely secured the almost unanimous support. I believe there was concern in the House and the Senate that if we passed HB 2001, the lawsuit would still ensue and the Supreme Court still might have issues with HB 2001," he said. "By getting the plaintiffs attorneys on board, it virtually guaranteed that the lawsuit would go away. It was bringing comfort that we could put the equity portion to bed."

Tagged alan rupe, john robb, kansas education, kansas politics, kansas schools, kansas supreme court, melissa rooker, michael o'donnell, ron ryckman jr., sam brownback, ty masterson |

[← Previous Post](#)

## Categories

[Uncategorized \(631\)](#)

## Archives

[June 2016 \(7\)](#)  
[May 2016 \(12\)](#)  
[April 2016 \(9\)](#)  
[March 2016 \(26\)](#)  
[February 2016 \(30\)](#)  
[January 2016 \(29\)](#)  
[December 2015 \(9\)](#)  
[November 2015 \(15\)](#)  
[October 2015 \(8\)](#)  
[September 2015 \(9\)](#)  
[August 2015 \(16\)](#)  
[July 2015 \(16\)](#)  
[June 2015 \(28\)](#)  
[May 2015 \(31\)](#)  
[April 2015 \(32\)](#)  
[March 2015 \(42\)](#)  
[February 2015 \(47\)](#)  
[January 2015 \(28\)](#)  
[December 2014 \(17\)](#)  
[November 2014 \(14\)](#)  
[October 2014 \(24\)](#)  
[September 2014 \(39\)](#)  
[August 2014 \(28\)](#)  
[July 2014 \(12\)](#)  
[June 2014 \(16\)](#)  
[May 2014 \(22\)](#)  
[April 2014 \(21\)](#)  
[March 2014 \(29\)](#)  
[February 2014 \(15\)](#)

---

Search

