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A Failing School District and a Failing Statute: How *Breitenfeld v. School District of Clayton* and the Unaccredited District Tuition Statute Nearly Destroyed a Struggling School District and Disrupted the Education of Its Students

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**A FAILING SCHOOL DISTRICT AND A FAILING STATUTE:
HOW *BREITENFELD v. SCHOOL DISTRICT OF CLAYTON* AND THE
UNACCREDITED DISTRICT TUITION STATUTE NEARLY
DESTROYED A STRUGGLING SCHOOL DISTRICT AND
DISRUPTED THE EDUCATION OF ITS STUDENTS**

INTRODUCTION

On June 11, 2013, the Supreme Court of Missouri issued its opinion in *Breitenfeld v. School District of Clayton*, which changed Normandy School District's immediate future and brought the issue of failing school districts back into the public eye amidst a sea of controversy.¹ After the *Breitenfeld* decision, the Unaccredited District Tuition Statute (UDTS) required all unaccredited school districts in Missouri to pay tuition and transportation costs for students who wished to transfer to an accredited school district.²

Two paths were created for students in the unaccredited Normandy School District at the beginning of the 2013–2014 academic year. Terry White, the former star quarterback of the Normandy High School football team, along with 474 other students who resided inside the Normandy School District's boundaries, boarded school buses as early as 6:00 AM to travel over twenty miles to a new school in an accredited school district in St. Charles County.³ Those students were greeted warmly by students in the county who had an open mind about welcoming these new students into their schools.⁴ Some of these transfer students, such as those at Castilo Elementary School, were given gift bags prepared by parents as welcoming gifts.⁵

1. *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816 (Mo. 2013). This decision also affected the unaccredited Riverview Gardens School District; however, this Note will focus on Normandy School District. On December 10, 2013, the Missouri Supreme Court issued its ruling in a very similar case involving the unaccredited Kansas City Public Schools and relied upon the *Breitenfeld* rationale in reaching the same conclusions. *Blue Springs R-VI Sch. Dist. v. Sch. Dist. of Kansas City*, 415 S.W.3d 110 (Mo. 2013).

2. MO. REV. STAT. § 167.131 (2000). All statutory references are to Missouri Revised Statutes (2000), unless otherwise specified.

3. Nate Latsch, *Normandy Transfer White Settles in at Francis Howell North*, ST. LOUIS POST-DISPATCH (Aug. 29, 2013, 2:50 PM), http://www.stltoday.com/sports/normandy-transfer-white-settles-in-at-francis-howell-north/article_675c79c5-7e56-53e1-84bd-7ea6dd6815b1.html.

4. Doug Moore, *Francis Howell Opens Its Doors to Normandy Transfers*, ST. LOUIS POST-DISPATCH, Aug. 9, 2013, at A1.

5. *Id.*

Other students, such as senior Makayla Smith, remained in the unaccredited Normandy School District with a determined attitude. Makayla said, “We want to make a fool out of what’s been said of our school.”⁶ Makayla, along with the other students who chose not to transfer, saw a large crowd of parents and alumni cheering as they arrived for the first day of the school year.⁷ The cheering was short-lived. In the following months, those students who remained at Normandy were part of a school district that laid off over 100 employees, closed an elementary school, and became financially crippled by staggering tuition and transportation costs.⁸ Those crippling costs resulted in the state taking control of the district’s finances and then eventually dissolving Normandy School District.⁹

Part I of this Note will examine the court’s analysis and holding in *Breitenfeld* as well as provide some background information on the Normandy School District. Part II of this Note will discuss how the *Breitenfeld* holding and the UDTS were implemented in relation to Normandy. This implementation resulted in Normandy School District being pushed into insolvency and created a very uncertain future for the school district, the students, and the community. The financial issues created by the *Breitenfeld* holding will be examined in Part III, and Part IV will discuss possible remedies to these issues.

I. BREITENFELD V. SCHOOL DISTRICT OF CLAYTON

A. Past Issues in Normandy School District and the Local Communities

In 2010, the provisionally accredited Normandy School District assumed additional struggling school students when it agreed to accept students from the neighboring Wellston School District.¹⁰ Wellston School District lost its accreditation in 2003, and in 2005, the state stripped the elected local board of its power.¹¹ The state installed a three-person administrative board to oversee the school district.¹² Wellston bordered Normandy School District, and

6. Elisa Crouch, *Community Rallies Around Normandy Schools*, ST. LOUIS POST-DISPATCH, Aug. 20, 2013, at A1 (internal quotation marks omitted).

7. *Id.*

8. Margaret Gillerman & Elisa Crouch, *Normandy School Board Votes Against Paying Bill for Transfers*, ST. LOUIS POST-DISPATCH, Oct. 25, 2013, at A1.

9. MO. DEP’T ELEMENTARY & SECONDARY EDUC., RESOLUTION OF THE STATE BOARD OF EDUCATION (May 20, 2014), available at <http://dese.mo.gov/sites/default/files/State%20Board%20of%20Education%20-%20Normandy%20Governance.pdf>.

10. David Hunn, *School’s Over for Wellston District*, ST. LOUIS POST-DISPATCH, Dec. 18, 2009, at A1.

11. *Id.*

12. *Id.*

Normandy High School was actually inside Wellston's boundaries.¹³ Eventually, the state disbanded Wellston School District and merged its students with Normandy School District.¹⁴ When Normandy absorbed Wellston's 550 students, only 12% of Wellston's students passed the state's communication arts tests, and barely 5% passed the state's math tests.¹⁵ Normandy's approximately 4500 students did a little better; 24% passed state English tests and 15% passed the math test.¹⁶ The news media reported the basics of the situation; however, there was no significant public outcry toward disbanding Wellston and transferring its students to Normandy.¹⁷

Normandy continued to struggle amidst the increasingly tough standards of state accreditation. On January 1, 2013, the Missouri Board of Education reclassified Normandy School District as unaccredited, citing years of underperformance.¹⁸ Normandy hired a new superintendent who was eager to institute change.¹⁹ However, the Missouri Supreme Court case of *Breitenfeld v. School District of Clayton*, along with its interpretation of the UDTs, would significantly impact not only Normandy School District, but also every other school district in the St. Louis area. The *Breitenfeld* decision and the Department of Elementary and Secondary Education's (DESE) subsequent implementation of the *Breitenfeld* holding would bring intense public and media attention to the issue of fixing unaccredited school districts.

B. The Unaccredited District Tuition Statute: Making a Struggling District Accountable to Do the Near Impossible

The UDTs provides that "a school district that loses accreditation with the state board of education must pay tuition and transportation costs for any resident pupil who attends an accredited school in another district in the same

13. David Hunn et al., *State Schools Chief Moving to Dissolve Wellston District*, ST. LOUIS POST-DISPATCH, Dec. 8, 2009, at A1.

14. Hunn, *supra* note 10.

15. Hunn et al., *supra* note 13.

16. *Id.* For current data, see *Missouri Comprehensive Data System*, MO. DEP'T ELEMENTARY & SECONDARY EDUC., <http://mcds.dese.mo.gov/quickfacts/SitePages/DistrictInfo.aspx> (search school district via "Missouri School District" pull-down menu; then select desired option under Performance Data) (last visited Jan. 17, 2015).

17. Hunn, *supra* note 10.

18. *State Board Approves Emergency Action for Normandy School District*, MO. DEP'T ELEMENTARY & SECONDARY EDUC. (Feb. 18, 2014), <http://dese.mo.gov/communications/news-releases/state-board-approves-emergency-action-normandy-school-district>.

19. *District Names Dr. Ty McNichols Superintendent of Schools*, NORMANDY MIDDLE SCH., <http://normandy.mo.ncm.schoolinsites.com/?ac=1&PageName=LatestNews&Section=DistrictNews&ItemID=49747&ISrc=District&Itype=News&IFrom=D&SID=395> (last visited Jan. 18, 2015). See also Valerie Schremp Hahn, *Superintendent Makes Pitch to Parents for Normandy's Schools*, ST. LOUIS POST-DISPATCH, July 18, 2013, at A4 (discussing Dr. McNichols' efforts to discuss with parents his planned changes and improvements to Normandy School District).

or adjoining county.”²⁰ Additionally, this section establishes the tuition rate that the unaccredited school district must pay to the accredited school district when a student elects to transfer under this statute.²¹ This tuition rate varies depending on the amount the accredited school district pays to educate its students.

Harold Caskey, a longtime Democratic state senator, wrote this piece of legislation in 1993 with the intention that it would be a “stick” for school districts on the verge of failure.²² In 1993, this “stick” was likely meant to force the struggling St. Louis City Public Schools District to improve.²³ Caskey stated the statute “forces the local districts to try to work their problems out before the extreme measures set in.”²⁴ Wayne Goode, another senator at the time, said, “[The statute] was a wake-up call to clean up your situation and get it fixed.”²⁵ However, Caskey never envisioned that the statute would be put to actual use.²⁶

The UDTs were first put to actual use in 2003 when Wellston School District lost its accreditation.²⁷ About 100 students transferred to different schools in St. Louis County, and Wellston paid more than \$1 million in annual tuition costs.²⁸ The district had difficulty paying its tuition costs and faced insolvency.²⁹ Eventually, Wellston’s status temporarily changed to “interim” accreditation to stop the transfers.³⁰ In a newsletter, former Missouri Education Commissioner Kent King wrote, “Another option would have been for us to allow the Wellston School District to collapse and then assign its remnants to surrounding districts That would have ended the need for state intervention, but it would have only transferred Wellston’s problems to other school districts.”³¹ However, that is exactly what eventually happened to

20. MO. REV. STAT. § 167.131 (2000).

21. *Id.*

22. Elisa Crouch, *Confusion, Fear Grow Over Future of Transfers*, ST. LOUIS POST-DISPATCH, Aug. 4, 2013, at A1.

23. *Id.*

24. *Id.* (internal quotation marks omitted).

25. *Id.*

26. *Id.*

27. Crouch, *supra* note 22; *see also School District Will Lose Accreditation, Officials Say*, ST. LOUIS POST-DISPATCH, Apr. 17, 2003, at B2. *See also Carolyn Bower, Wellston Schools Should Lose Accreditation, Officials Report*, ST. LOUIS POST-DISPATCH, Apr. 8, 2003, at B2 (reporting on the reasons for the state education officials’ recommendation that the Board of Education revoke Wellston’s accreditation).

28. Crouch, *supra* note 22; *see also Carolyn Bower, Parents Inquire About Transfers for Pupils*, ST. LOUIS POST-DISPATCH, May 5, 2003, at B1 (discussing the option of transferring out of Wellston School District due to the unaccredited classification of the district).

29. Crouch, *supra* note 22.

30. *Id.* (internal quotation marks omitted).

31. *Id.* (internal quotation marks omitted).

Wellston; the state disbanded Wellston and assigned its students to the neighboring Normandy School District.³²

C. Procedural Posture and the Turner Decision

To understand the present situation, it is important to look back at how this litigation evolved. *Breitenfeld v. School District of Clayton* originally started as *Turner v. School District of Clayton*.³³ In *Turner*, the plaintiffs were parents of students who lived within the boundaries of the City of St. Louis Transitional School District.³⁴ Prior to the Transitional School District losing accreditation, the parents entered into personal tuition agreements with Clayton School District to have their children attend Clayton schools.³⁵ Once the City of St. Louis Transitional School District lost its accreditation, the parents requested that Clayton charge the Transitional School District for their children's tuition pursuant to the UDTs.³⁶ The School District of Clayton declined that request, and the parents subsequently filed suit.³⁷ On appeal, the court held that the UDTs was applicable and required an accredited school district to accept a student from an unaccredited school district as long as the accredited school district was in the same or adjoining county.³⁸

The *Turner* court followed the express language of the statute and did not consider policy implications in its analysis.³⁹ Specifically, the court noted that “[t]he policy considerations and mandates regarding public schools and public school funding are particularly well-suited for the state legislature and not the courts.”⁴⁰ Furthermore, the court noted that it would not “question the wisdom, social desirability, or economic policy underlying a statute as these matters are for the legislature’s determination.”⁴¹

The school districts unsuccessfully tried to argue that the UDTs was preempted by provisions contained in Senate Bill 781 (SB 781), passed in 1998.⁴² The provisions of SB 781 included section 162.1060, which created the

32. *Id.*; Hunn, *supra* note 10.

33. *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 819 (Mo. 2013); *see also Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 670 (Mo. 2010).

34. *Turner*, 318 S.W.3d at 663. The special administrative board of the transitional school district governed the St. Louis Public School District once the public school district lost accreditation in 2007. *Id.* at 662 n.2.

35. *Id.* at 663.

36. *Id.*

37. *Id.*

38. *Id.* at 669.

39. *Turner*, 318 S.W.3d at 666.

40. *Id.* at 666 n.5.

41. *Id.* at 668 (quoting *Winston v. Reorganized Sch. Dist. R-2*, 636 S.W.2d 324, 327 (Mo. 1982)) (internal quotation marks omitted).

42. *Id.* at 665, 667.

“urban voluntary school transfer program,”⁴³ and section 162.1100, which directs how the St. Louis Public School District is governed in the event it loses its state accreditation.⁴⁴ The court held that “[a]t most, SB 781 and § 167.131 are in tension with one another in that applying § 167.131 to the transitional school district makes the implementation of SB 781 more difficult” but that alone is “an insufficient basis for finding that the legislature intended to impliedly repeal the application of § 167.131 to the City of St. Louis.”⁴⁵

Clayton School District also unsuccessfully argued that the admission of students pursuant to the UDTS is discretionary even though the statute contains mandatory language.⁴⁶ The court held that:

[The] plain and ordinary meaning of the language in § 167.131.2 that “each pupil shall be free to attend the public school of his or her choice” gives a student the choice to attend an accredited school, so long as that school is in another district in the same or an adjoining county, and requires the chosen school accept the pupil.⁴⁷

Thus, section 167.131.2 “does not give an accredited school chosen by a student discretion to deny admission to that student.”⁴⁸

D. *From Turner to Breitenfeld*

After the *Turner* court remanded the case for further proceedings, only one plaintiff, Gina Breitenfeld, remained in the litigation, although the trial court allowed taxpayers from Clayton and a taxpayer from St. Louis Public School District to intervene to raise the argument that the UDTS violated the Hancock Amendment.⁴⁹ The Hancock Amendment is a “shield [to] protect taxpayers from government’s ability to increase the tax burden above that borne by the taxpayers on November 4, 1980” and is intended as a “tax and spending lid” for state government.⁵⁰ Article X, section 21 of the Missouri Constitution is violated if both: (1) the State requires a new or increased activity or service of

43. *Id.* at 666 (internal quotation marks omitted). The “urban voluntary school transfer program” was created to transfer students between the City of St. Louis and St. Louis County in an effort to promote the desegregation of the city’s schools. *Id.* “Under the 1999 federal desegregation order . . . eligible black students residing in the City of St. Louis are transferred to participating school districts in the county, while certain white students residing in predominately white school districts in the county are transferred to magnet schools in the city.” *Id.*

44. *Turner*, 318 S.W.3d at 667.

45. *Id.*

46. *Id.* at 668.

47. *Id.* at 669.

48. *Id.*

49. *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 821 (Mo. 2013).

50. *Id.* at 826 (internal quotation marks omitted). The court noted that the two portions of the Hancock Amendment that were relevant to the case were article X, sections 16 and 21 of the Missouri Constitution. *Id.*

political subdivisions, and (2) the political subdivision experiences increased costs in performing that activity or service.⁵¹ The first prong of the “unfunded mandate” test is established when the State requires local entities to initiate a new activity or increase the level of an existing activity.⁵² However, it is not satisfied when a statute imposes a requirement on governmental entities that requires continuance of an existing activity.⁵³ The second prong of the test is satisfied when local entities experience increased costs in performing the new mandated activity because the State failed to provide sufficient funding to cover the costs of compliance.⁵⁴

In evaluating the first prong, the *Breitenfeld* court determined that the mandated education requirements of the UDTs were not new or increased.⁵⁵ In agreeing with the plaintiffs, the court noted that there is nothing new about either school district providing a free public education, as the origins for free public education are in Missouri’s government charter.⁵⁶ Additionally, section 160.051.1 provided the statutory language to establish Missouri’s modern-day public school system.⁵⁷ Citing prior holdings, the court noted that it is a fundamental right of children to attend the public school in their district.⁵⁸ The court also explained that deference is given to district boundaries to promote fairness among the taxpayers.⁵⁹ However, while noting that prior courts held that liberal construction of education statutes are necessary to open, not close, the doors of the schools against the children of the state, the court distinguished the out-of-district situation by explaining that the education

51. *Id.*

52. *Id.* (internal quotation marks omitted).

53. *Id.*

54. *Breitenfeld*, 399 S.W.3d at 827.

55. *Id.* at 828.

56. *Id.* The court quoted the following from the Territorial Laws of Missouri, volume I, chapter IV, section 14 (approved June 4, 1812): “[K]nowledge, being necessary to good government and the happiness of mankind, schools and the means of public education shall be encouraged and provided for.” *Id.* at 828 n.24.

57. *Id.* at 828.

58. *Id.* at 829 (citing *State ex rel. Roberts v. Wilson*, 297 S.W. 419, 420 (Mo. Ct. App. 1927); *Lehew v. Brummell*, 15 S.W. 765 (Mo. 1891)).

59. *Breitenfeld*, 399 S.W.3d at 829. The court quoted the following from *State ex rel. Halbert v. Clymer*,

[W]hile [a public education] statute must be liberally construed . . . it would not be right to permit children living in districts whose taxpayers have neglected or refused to maintain schools to have the benefits free of charge, of schools in districts wherein the taxpayers have burdened themselves to erect schoolhouses, employ competent teachers, and maintain schools.

Id. (quoting *State ex rel. Halbert v. Clymer*, 147 S.W. 1119, 1120 (Mo. Ct. App. 1912)).

statutes were different in the past, and the court's task in *Breitenfeld* was not to determine the fairness of the UDTS as a matter of public policy.⁶⁰

The long-standing mandate for school districts in Missouri is to provide a free public education for all students who attend.⁶¹ Students attending an out-of-district school district under statutory directives are included in this mandate.⁶² The court concluded that nothing in the UDTS changed this mandate as both St. Louis Public Schools (SLPS) and Clayton were providing K–12 educational services to eligible students prior to the enactment of the Hancock Amendment.⁶³ Thus, the UDTS did not create a new mandate when it was applied to allow SLPS resident students to attend accredited school districts in adjoining counties as non-residents.⁶⁴

Furthermore, the court held that there was no increased level of service mandated by the UDTS for the purpose of applying the Hancock Amendment test to accepting non-resident students.⁶⁵ The court reasoned that an increase to the student population of Clayton did not result in an increased *level* of educational services provided.⁶⁶ Specifically, the court held that the *level* of services provided by Clayton is not changed even if the district provides the services to more students under the statute.⁶⁷ Clayton's argument that it provided additional services at a greater cost than SLPS failed because those additional costs were not state-mandated; they were the choice of Clayton.⁶⁸

The second prong of the Hancock test evaluates whether the burden is shifted from the state to the local entity.⁶⁹ The *Breitenfeld* court concluded that the Hancock Amendment does not prevent local-to-local burden shifting of

60. *Breitenfeld*, 399 S.W.3d at 829 n.25. The court noted that sections 167.020 and 167.131 were examples of such statutes. *Id.* at 829–30.

61. *Id.* at 830.

62. *Id.*

63. *Id.*

64. *Id.* at 830.

65. *Breitenfeld*, 399 S.W.3d at 830.

66. *Id.* The court distinguished *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1 (Mo. 1992), in which a mandate for school districts to begin providing special education services to disabled three- and four-year-olds was found to be an “unfunded mandate” and a violation of the Hancock Amendment when it did not provide full funding. *Id.* The court reasoned that in *Rolla 31* the school would have been forced to provide public educational services to a new demographic who were not already entitled to a free public education. *Id.* at 830–31.

67. *Id.* at 831.

68. *Id.* The Court noted that while these additional services were “beneficial and commendable,” such discretionary spending was not subject to the Hancock test because it is not mandated. *Id.* at 831 n.27.

69. *Id.* at 831.

responsibilities.⁷⁰ The total number of children eligible for education statewide is not increased, and thus the state is simply shifting existing education responsibilities between the sending and receiving districts.⁷¹ Simply, the UDTS shifts an existing mandate from the unaccredited school district to the accredited school district, and thus the purpose of the Hancock Amendment was not violated.⁷²

Conversely, the mandatory transport provisions of the UDTS constituted a new mandate for SLPS.⁷³ The court held that section 167.231 required districts to provide transportation “[w]ithin all school districts *except metropolitan districts*,” whereas the UDTS created a new mandate of providing transportation to out-of-district schools.⁷⁴ However, the court noted that to prove a Hancock Amendment violation, there must be proof that the mandate is also unfunded.⁷⁵ This proof cannot be merely speculative and must be “specific proof of new . . . duties and increased expenses, and these elements cannot be established by mere common sense or speculation and conjecture.”⁷⁶ Because SLPS did not have any designated accredited school districts to which it would provide transportation, it was forced to speculate on the compliance costs.⁷⁷ Information presented at trial was too speculative because SLPS did not have information available about the distance to the designated school and how much it would cost.⁷⁸ Consequently, the court held that transportation provisions were not an unfunded mandate.⁷⁹

Lastly, the school districts raised an impossibility defense that they could not comply with the statute.⁸⁰ Clayton School District claimed that it would be impossible for the district to provide the necessary resources to educate the potentially thousands of students that could choose to use the UDTS to transfer into Clayton schools.⁸¹ Likewise, SLPS claimed it would be financially impossible for the district to comply with the UDTS.⁸² SLPS argued that it could not afford the tuition and transfer costs associated with implementing the

70. *Breitenfeld*, 399 S.W.3d at 831. The court reasoned that the overall purpose of the Hancock Amendment was to “prevent the State from avoiding taxation and spending limitations by shifting its responsibilities to local governments.” *Id.*

71. *Id.* at 831–32.

72. *Id.* at 832.

73. *Id.* at 833.

74. *Id.*

75. *Breitenfeld*, 399 S.W.3d at 833.

76. *Id.* at 834 (quoting *Sch. Dist. of Kansas City v. Missouri*, 317 S.W.3d 599, 611 (Mo. 2010)) (internal quotation marks omitted).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Breitenfeld*, 399 S.W.3d at 834.

81. *Id.*

82. *Id.*

transfers of the potentially thousands of students out of SLPS and into accredited school districts.⁸³ The court held that “even assuming for purposes of this argument that the defendant school districts are correct that this Court should apply an affirmative ‘impossibility’ defense,” in these circumstances the argument would not apply to the facts in this particular case.⁸⁴ The court reasoned that since SLPS regained provisional accreditation, there no longer was the possibility of thousands of transfers under the UDTs, and that the case was limited to Breitenfeld’s two children who were already attending Clayton schools.⁸⁵ Since the transfer opportunity of two students who already attend Clayton schools would not result in the impossible compliance argued by the school districts, an impossibility defense did not apply.⁸⁶ However, the court noted that it would not issue an advisory opinion on whether the trial court’s determination that the impossibility defense might apply if thousands of students did indeed transfer.⁸⁷

The court’s ruling was narrow on the issue of the unfunded mandate relating to transportation. Further, the court left the door open to an affirmative defense of “impossibility” being successful given the right set of facts.⁸⁸

II. IMPLEMENTING THE *BREITENFELD* HOLDING

A. *Missouri Department of Elementary and Secondary Education Advisory Publication*

When the Missouri Supreme Court determined that the UDTs was constitutional, it did not provide any guidance on how to implement this statute. On June 19, 2013, the Missouri Department of Elementary and Secondary Education (DESE) issued a document titled “Guidance for Student Transfers from Unaccredited to Accredited School Districts” (Guidance for Student Transfers).⁸⁹ The guidance document stated that “[the unaccredited] school district must provide transportation to at least one accredited/receiving school district as established by its board of education.”⁹⁰ Additionally, if the

83. *Id.*

84. *Id.* at 836.

85. *Breitenfeld*, 399 S.W.3d at 836.

86. *Id.*

87. *Id.*

88. *See id.*

89. MO. DEP’T ELEMENTARY & SECONDARY EDUC., GUIDANCE FOR STUDENT TRANSFERS FROM UNACCREDITED DISTRICTS TO ACCREDITED DISTRICTS 1 (Dec. 22, 2014), available at https://dese.mo.gov/sites/default/files/Transfer_Guidance.pdf. “[This document] is non-regulatory guidance provided to offer districts assistance in implementing state law. The document will be revised as the Department receives additional questions, when there is new statutory or judicial direction, or as other information and circumstances require.” *Id.*

90. *Id.* at 2.

designated receiving district was at capacity, the sending district should designate an additional receiving district.⁹¹ However, the parent/guardian shall be responsible for transportation if the parent/guardian chooses to enroll the student in a different school district.⁹²

Guidance for Student Transfers also provided guidance for accredited school districts that may receive students from unaccredited school districts. According to the document, accredited school districts “should adopt and publish a policy for class size and student-teacher ratios between the desirable and minimum MSIP5 Resource Standards for all grade levels.”⁹³ Also, accredited school districts should publicly post on their websites the student transfer application as well as the admission process and the current available enrollment slots by grade level.⁹⁴

Additionally, Guidance for Student Transfers provided recommendations for other possible scenarios. For example, students should be permitted to complete the school year at the accredited school district if the unaccredited school district regains accreditation.⁹⁵ If a tuition disagreement or a payment failure occurs, DESE recommended that students should be permitted to finish the school year.⁹⁶ The document instructed unaccredited school districts to pay the receiving school districts within ten days of receiving their monthly state aid distribution.⁹⁷ If the unaccredited school district fails to send tuition payments for two successive months, the Department will withhold the amount of the tuition for each transferring student and will distribute those funds to the receiving district or districts.⁹⁸ Lastly, Guidance for Student Transfers also included guidance for missed enrollment deadlines, requests for assignment to a specific building, interscholastic Missouri State High School Activities Association activities, early childhood education, vocational school admission, and students with Individual Education Plans.⁹⁹

B. Implementation Related to Normandy School District: The Path to Financial Ruin

Almost immediately after the Missouri Supreme Court published its ruling in *Breitenfeld*, concerns about implementing the holding centered on class

91. *Id.*

92. *Id.*

93. *Id.* at 1.

94. MO. DEP’T ELEMENTARY & SECONDARY EDUC., *supra* note 89.

95. *Id.* at 2.

96. *Id.*

97. *Id.*

98. *Id.* at 2.

99. *See* MO. DEP’T ELEMENTARY & SECONDARY EDUC., *supra* note 89, at 1–3.

sizes and staffing shortages in accredited school districts.¹⁰⁰ The director of the Cooperating School Districts of Greater St. Louis was quoted in the *St. Louis Post-Dispatch* as saying: “What we’ve been asking for is reasonable parameters. Class sizes. When can we say we’re full? School boards need to have some local control or the quality of the district would decline and no one would want to transfer.”¹⁰¹ Another person offered this prediction: “Competition is good for schools. . . . When students start leaving, they need to and will start to respond.”¹⁰² That prediction turned out to be correct; however, another parent’s prediction that students would not transfer in “droves” would turn out to be incorrect.¹⁰³

The directive from DESE required that Normandy School District designate a school district to which it will provide transportation for students wishing to transfer.¹⁰⁴ On July 2, 2013, Normandy announced its decision to provide transportation to Francis Howell School District in neighboring St. Charles County, which is over twenty miles away.¹⁰⁵ The Normandy superintendent stated that the district looked at academic performance, class sizes, and available space when choosing Francis Howell.¹⁰⁶ Almost immediately, parents of Francis Howell students began objecting to the transfer students from Normandy.¹⁰⁷ Some were worried about violence; others were worried about academic performance.¹⁰⁸

Francis Howell eventually hosted a crowded town-hall meeting attended by 2500 people on the issue of being forced to accept Normandy students.¹⁰⁹ One parent spoke of being worried about the “violent behavior” that the transfer students would bring.¹¹⁰ Other parents were angry about the possibility of lower test scores and demanded that the board lower class sizes to prevent transfer student enrollment.¹¹¹ Another speaker insisted it was not a race issue,

100. Elisa Crouch, *School Transfer Ruling Issue Is [a] Puzzle*, ST. LOUIS POST-DISPATCH, June 13, 2013, at A1.

101. *Id.* (internal quotation marks omitted).

102. *Id.* (internal quotation marks omitted).

103. *Id.*

104. See MO. DEP’T ELEMENTARY & SECONDARY EDUC., *supra* note 89, at 2.

105. Jessica Bock & Elisa Crouch, *Transfers Face a Long Road*, ST. LOUIS POST-DISPATCH, July 2, 2013, at A1.

106. *Id.*

107. *Id.*

108. *Id.* At least at the high school level, concerns about violence may have been a reasonable reaction based upon violence data from Normandy High School in the recent past. See Elisa Crouch, *Normandy: Most Dangerous School in the Area*, ST. LOUIS POST-DISPATCH, May 5, 2013, at A1 (listing multiple violent incidents at Normandy High School).

109. Jessica Bock, *Parents Vent Anger and Concerns About Safety, Test Scores in Wake of Transfers*, ST. LOUIS POST-DISPATCH, July 12, 2013, at A1.

110. *Id.*

111. *Id.*

but rather “Normandy is not performing in their own district, so they are going to come to Francis Howell and bring [Francis Howell] down.”¹¹²

Normandy transfer students began attending Francis Howell on August 8, 2013.¹¹³ The transfer students had to board their school buses earlier than usual, but aside from a few minor logistical issues, no negative events were reported.¹¹⁴ The transfer students were also able to join athletic teams at their new schools.¹¹⁵

The first significant negative issue drawing media attention occurred at the Normandy School Board meeting on October 24, 2013 when the board voted 3–2 against paying the tuition bill due to the receiving school districts.¹¹⁶ The board also decided to close an elementary school and lay off over 100 employees.¹¹⁷ One board member said his decision was based upon the fact that the students remaining in Normandy would not have the same access to educational resources as those in other districts.¹¹⁸ At its meeting on November 13, 2013, the board reversed its decision and voted to pay the outstanding bills.¹¹⁹ Unfortunately, the district did not have much choice as the state said it would simply redirect Normandy’s funding to districts that were due tuition payments.¹²⁰

The situation became more perilous in early 2014 when Normandy announced that it might not have enough money to meet its payroll through the rest of the year.¹²¹ When Normandy’s superintendent asked what would happen to Normandy’s students if the district failed to meet payroll, the state education commissioner responded by saying that the district would become lapsed, and the State Board of Education, pursuant to state law, would decide

112. *Id.* For a discussion of the racial implications of the transfer, see *infra* text accompanying notes 171–72.

113. See Moore, *supra* note 4.

114. *Id.*

115. Jim Faasen, *High School Transfers Are in a Familiar Spot*, ST. LOUIS POST-DISPATCH (Aug. 13, 2013, 12:15 AM), http://www.stltoday.com/sports/high-school-transfers-are-in-a-familiar-spot/article_ac00c4d0-9458-56ad-a449-f18e503e32e5.html. See also MO. DEP’T ELEMENTARY & SECONDARY EDUC., *supra* note 89, at 2 (granting eligibility for students who transfer pursuant to the UDTS to participate in interscholastic Missouri State High School Activities Association activities sponsored by the receiving school district).

116. Gillerman & Crouch, *supra* note 8.

117. *Id.*

118. *Id.*

119. Margaret Gillerman, *Normandy School Officials Vote to Pay Tuition for Transfers*, ST. LOUIS POST-DISPATCH, Nov. 14, 2013, at A2.

120. See discussion *supra* Part II.A.

121. Elisa Crouch, *Normandy at Crossroads*, ST. LOUIS POST-DISPATCH, Jan. 23, 2014, at A1.

where to send the students.¹²² The governor made a request to the state legislature for \$5 million to get Normandy School District through the rest of the academic year; however, the legislature did not act on the request.¹²³ One senator predicted that the request would be an “uphill battle” because the legislature would be wary of setting a precedent.¹²⁴

Due to Normandy’s financial struggles and impending insolvency, the State Board of Education took immediate action on February 18, 2014.¹²⁵ The Board imposed financial oversight of Normandy School District which required that “[a]ll expenditures, contracts, financial obligations and any other action with fiscal implications must be approved by the Department [of Elementary and Secondary Education] beginning immediately and through the remainder of the year.”¹²⁶ By assuming financial oversight of Normandy, the department ensured that Normandy students would finish the school year in their own districts and that the seniors would graduate as scheduled.

After years of struggling, Normandy School District finally met the same fate as the former Wellston School District. On May 20, 2014, the Board of Education voted to remove Normandy’s accreditation effective June 30, 2014 and to void all contracts with the school district.¹²⁷ The Board created the Normandy Schools Collaborative, with a Joint Governing Board appointed by the Board of Education, to administer the school system in Normandy and report directly to the state.¹²⁸ The new school district will not have an

122. *Id.* According to the newspaper account of the meeting, Commissioner Nicastro said this would happen pursuant to state law but did not list what statute she was referring to. Meeting minutes were not yet publically available as of the time of this publication. Commissioner Nicastro was likely referring to section 162.081 which states:

1. Whenever any school district in this state *fails* or refuses in any school year to *provide for the minimum school term required by section 163.021* or is classified unaccredited, the state board of education shall, upon a district’s initial classification or reclassification as unaccredited . . .
 - (2) *Determine the date the district shall lapse* and determine an alternative governing structure for the district. . . .
3. Upon classification of a district as unaccredited, the state board of education may:
 - (2) Lapse the corporate organization of the unaccredited district and:
 - (c) Attach the territory of the lapsed district to another district or districts for school purposes[.]

MO. REV. STAT. § 162.081 (2000) (emphasis added).

123. Crouch, *supra* note 121.

124. *Id.*

125. *State Board Approves Emergency Action for Normandy School District*, MO. DEP’T ELEMENTARY & SECONDARY EDUC. (Feb. 18, 2014), <http://dese.mo.gov/communications/news-releases/state-board-approves-emergency-action-normandy-school-district>.

126. *Id.*

127. MO. DEP’T ELEMENTARY & SECONDARY EDUC., *supra* note 9, at 1.

128. *Id.*

accreditation classification for its first three years of operation.¹²⁹ Because the new district is not “unaccredited,” no students will be permitted to transfer under the UDTS.¹³⁰

III. ANALYSIS OF THE FINANCIAL IMPACT ON NORMANDY OF THE POST-BREITENFELD UDTS IMPLEMENTATION

The financial implications of implementing the UDTS are staggering. The total projected cost to Normandy will be between \$13 and \$15 million per year.¹³¹ This amounts to an approximately 30% reduction in funding while decreasing the number of students by only 20%.¹³² Dr. Ty McNichols, superintendent of Normandy School District, explained that the district’s financial difficulties were not a result of mismanaged money, but rather the result of \$1.3 million worth of tuition payments each month for which the District was not able to plan.¹³³

Cutting costs will not salvage Normandy’s financial situation because the fixed overhead costs cannot be reduced when the number of students decreases. The deputy commissioner of education explained this situation as follows:

The electricity cost is the same, your fixed cost of operation is the same and your debt service and facilities costs don’t go down any . . . [a]nd you don’t want to take three classes that were 22 students apiece and make two that are 35. You can’t do proportional cuts based on a decrease in revenue.¹³⁴

129. *Normandy Schools Collaborative to Operate with New Leadership*, MO. DEP’T ELEMENTARY & SECONDARY EDUC. (June 16, 2014), <http://dese.mo.gov/communications/news-releases/normandy-schools-collaborative-operate-new-leadership>.

130. *Id.*

131. *Normandy Schools: District Plans to Stay Open*, ST. LOUIS POST-DISPATCH, Jan. 16, 2014, at A2.

132. Elisa Crouch & Jessica Bock, *Troubled Districts Hemorrhage Funds*, ST. LOUIS POST-DISPATCH, Feb. 10, 2014, at A1. UDTS specifies how receiving school districts should calculate their tuition costs to bill to the unaccredited school district. *Id.* In some cases, the amount of tuition bill exceeds the normal per-student funding for the unaccredited school district. *Id.* For example, Clayton School District charges \$20,768 tuition to Normandy for each high school student. *Id.* Yet Normandy only receives approximately \$12,000 in total funding for each high school student, thereby creating a net loss for the already struggling school district. See Dale Singer, *Districts Will Get Paid for Transfer Students, Nicastro Says*, ST. LOUIS BEACON (Oct. 25, 2013, 6:15 PM), https://www.stlbeacon.org#!/content/33408/normandy_payments_102513 (quoting a statement from the Normandy School District that it is losing 30% of its funds while having 88% of its students remain in the district).

133. *Normandy Schools: District Plans to Stay Open*, *supra* note 131.

134. Jason Hancock, *Missouri Lawmakers Ponder Budget Impact of Transfers on KC Schools*, KANSAS CITY STAR (Jan. 15, 2014, 1:36 PM), <http://www.kansascity.com/2014/01/15/4753551/missouri-lawmakers-ponder-budget.html#storylink=cpy>.

Furthermore, he added that this fact is especially true in a district trying to improve its student achievement.¹³⁵ A statement from Normandy School District described the situation in a very grim manner: “This unprecedented expenditure renders it virtually impossible for us to educate the 88[%] of students remaining in Normandy schools and simultaneously regain accreditation.”¹³⁶

Despite threats of non-payment, Normandy had almost no choice but to pay the tuition bills and deal with the consequences.¹³⁷ These consequences included closing an elementary school and laying off 103 employees, most of whom were teachers.¹³⁸ When it came time to vote to pay the tuition bill, school board member Terry Artis, who cast the lone dissenting vote, said that “voting to pay the money to other districts when Normandy needed it to educate its remaining students was ‘like someone handing you a pistol’ to commit suicide.”¹³⁹ Education Commissioner Nicastrò described the situation bluntly by saying, “If left unchanged, the current system is financially unsustainable.”¹⁴⁰

While Normandy faced impending bankruptcy caused by these questionable tuition payments, the money that it was paying for tuition was not being used effectively. The UDTS is silent on the issue of how the receiving school districts should use the tuition payments. Multiple school districts chose to not spend most or all of the funds.¹⁴¹ These districts cited concerns that they did not want to depend on this money to fund teachers and other long-term costs for fear that Normandy might stop paying tuition.¹⁴² In researching the expenditures of school districts receiving these tuition payments, the *St. Louis Post-Dispatch* found that less than half of the eleven districts that received 90% of the transfer funds have added teachers or staff as a result of new transfer students from the unaccredited school districts.¹⁴³

Without state intervention to manage Normandy’s finances, April 1, 2014 appeared to be the day that Normandy School District could go insolvent.¹⁴⁴

135. *Id.*

136. Singer, *supra* note 132.

137. Bram Sable-Smith, *Reversing Course, Normandy Board Votes to Pay Tuition Bills*, ST. LOUIS BEACON (Nov. 13, 2013, 9:27 PM), https://www.stlbeacon.org#!/content/33674/normandy_board_meeting_111313. DESE stated that the state would withhold funding to the unaccredited school district and divert those funds to the districts due the tuition payments if the unaccredited school district was unable or unwilling to pay the tuition bill. MO. DEP’T ELEMENTARY & SECONDARY EDUC., *supra* note 89, at 2.

138. Gillerman, *supra* note 119.

139. *Id.*

140. Hancock, *supra* note 134.

141. Crouch & Bock, *supra* note 132.

142. *Id.*

143. *Id.*

144. *Id.*

This would have immediately displaced the remaining Normandy students into various other school districts. Multiple nearby school districts were already struggling.¹⁴⁵ The quality of education did not significantly improve when Wellston School District dissolved and the students were absorbed by Normandy.¹⁴⁶ Just a few years later, these students are again in the same situation with the dissolution of Normandy School District. The financial collapse of Normandy is even more disappointing and fundamentally unfair, considering that most of the tuition dollars were not spent by the receiving school districts.

The UDTS opens the door to different educational opportunities for some students of unaccredited school districts. Unfortunately, the devastating financial effects of implementing this law throw the education experience of the remaining students into constant turmoil. The benefit to the 20% of students who transfer does not outweigh the harm caused to the 80% of students who remain in an unaccredited school district with almost no hope of improvement. For the UDTS to truly benefit unaccredited school districts, the Missouri legislature must find an alternate funding mechanism that does not destroy the unaccredited school district at the expense of paying school districts that do not even need all of those funds to educate the transfer students.

IV. PROPOSED SOLUTIONS AND OTHER CONSIDERATIONS

A challenged school is the product of a challenged society.¹⁴⁷ In his paper, Carl Parsons details the experience of a secondary school in an impoverished area of England.¹⁴⁸ He argues that “vocal political commitment and extensive academic comment” have resulted in little changes in the outcomes and prospects for the children in that impoverished area.¹⁴⁹ “Where the educability of children has been impaired since infancy and the *roots of disaffection and*

145. In fact, under the new evaluation plan in effect as of the 2012 and 2013 school year, referred to as the “Missouri School Improvement Plan” or “MSIP5,” several of the surrounding districts would be categorized as being only provisionally accredited. Dave Singer, *St. Louis Schools Fare Poorly in First Version of New Education Standards*, ST. LOUIS BEACON (Aug. 23, 2013, 12:13 AM), https://www.stlbeacon.org#!/content/32423/school_accreditation_2013_082113. These include the Jennings, Ferguson-Florissant R-II, and University City School Districts. *Id.* However, it is important to note that “state education officials have said they want at least three years of MSIP5 data before they decide on a district’s accreditation.” *Id.*

146. See Crouch & Bock, *supra* note 132.

147. Carl Parsons, *Challenged School—Challenged Society: Stacking the Odds Against the Poor*, 65 EDUC. REV. 267, 267–68 (2013).

148. *Id.* at 267.

149. *Id.* at 268.

*low aspiration lay outside the school, brilliant leadership and a core of inspirational, well-organized teachers are not enough.*¹⁵⁰

Here, the root of Normandy School District's problems goes back to many years of high poverty and low performance. Simply transferring a portion of the students to other schools does not fix the problem and actually makes the school situation even worse for those students who are left behind. It is not possible to address the entire failing school situation by moving students away and ignoring the poverty and socioeconomic issues at the root of a school district's problems.¹⁵¹

The Missouri Supreme Court's unanimous opinion in *Breitenfeld* clearly interpreted the UDTS as constitutional but did leave open the door for an impossibility defense with the correct set of facts.¹⁵² However, once the impossibility situation has been reached, the school district almost certainly will not have the financial resources to mount an expensive and time consuming challenge to the UDTS before falling into bankruptcy or dissolving. This appears especially clear with the Normandy situation, as Normandy will almost certainly become insolvent long before its lawsuit makes its way through the court system.¹⁵³ As discussed above, the law in its current form is not an effective solution to the problem of failing school districts. The following sections analyze some proposed solutions and other considerations.

A. *Charter Schools Are Not the Answer; School Transfer Is Not the Answer Either*

One plan that was proposed to address the unaccredited school district situation involves placing unaccredited districts under the control of the state and giving control of local schools to nonprofit operators in an arrangement similar to charter schools.¹⁵⁴ Another unofficial proposal included expanding UDTS to allow transfer to more charter schools.

150. *Id.* at 270 (emphasis added).

151. Education Commissioner Chris Nicastro recently stated: "Moving the children is not an answer. What we have to do is figure out how to improve the schools where they live. Children have a right and a need to have quality schools in their neighborhood, and that's what we're intending to create." Dale Singer, *Missouri Board Limits Normandy Transfers, Appoints Some Member to New Governing Panel*, ST. LOUIS PUB. RADIO (June 16, 2014, 8:11 PM), <http://news.stlpublicradio.org/post/missouri-school-board-limits-normandy-transfers-appoints-some-members-new-governing-panel>.

152. *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 836 (Mo. 2013).

153. See discussion *infra* Part IV.D.

154. See ETHAN L. GRAY ET AL., *THE CONDITIONS FOR SUCCESS: ENSURING GREAT PUBLIC SCHOOLS IN EVERY NEIGHBORHOOD* 32–33 (2014). Even before its official release, the authors released the draft version of the plan due to the "substantial interest in this project" and the "complexity of the ideas." ETHAN L. GRAY ET AL., *THE CONDITIONS FOR SUCCESS: EXECUTIVE SUMMARY: ENSURING GREAT PUBLIC SCHOOLS IN EVERY NEIGHBORHOOD* 4 (Jan. 2014),

Charter schools are analogous to the school transfer issue under the UDTS in that both charter schools and transfers pursuant to the UDTS allow students (and their tuition dollars) to transfer out of the traditional public school system and into different schools.¹⁵⁵ A spokesperson for Clayton School District, one of the districts with the highest per-student tuition costs being billed to the unaccredited districts, described the UDTS as forcing Normandy to “hemorrhage money.”¹⁵⁶ Charter schools would also siphon money from the unaccredited school districts causing the same “money hemorrhaging” effect as the existing UDTS statute. Looking at strictly the financial implications, neither charter schools nor UDTS transfers are a long-term answer to improving struggling school districts.¹⁵⁷

Charter schools and school transfer options likely will not fix the quality of education for the poorest children in unaccredited school districts. Research has shown that poor children are more concentrated in traditional public schools in districts where private, charter, and magnet schools were present.¹⁵⁸ Parents who are more engaged and have more resources tend to more often self-select and enroll their children into charter schools, which further contributes to a separation and isolation of poor students in traditional public schools.¹⁵⁹ As a result, charter schools “attract a more homogenous and less impoverished student population than traditional public schools.”¹⁶⁰ Furthermore, poor and minority students face barriers to charter school enrollment.¹⁶¹

Research from urban school districts in New York state shows that other factors have a much greater effect on student performance than the choice of

available at http://mediad.publicbroadcasting.net/p/kwmu/files/201401/Conditions_for_Success_-_Executive_Summary_and_Full_Report.pdf.

155. See MO. REV. STAT. § 160.415 (2000).

156. Crouch & Bock, *supra* note 132.

157. Michael Jones, vice president of the State Board of Education, stated, “A 300-student school does not solve the systemic problems in Normandy.” Elisa Crouch, *In Normandy, Charter Schools Struggle to Take Root*, ST. LOUIS POST-DISPATCH, June 9, 2014, at A1.

158. Salvatore Saporito & Deenesh Sohoni, *Mapping Educational Inequality: Concentrations of Poverty Among Poor and Minority Students in Public Schools*, 85 SOC. FORCES 1227, 1227 (2007).

159. Robert Bifulco & Helen F. Ladd, *Institutional Change and Coproduction of Public Services: The Effect of Charter Schools on Parental Involvement*, 16 J. PUB. ADMIN. RES. & THEORY 553, 557–58 (2006).

160. Robert M. Silverman, *Making Waves or Treading Water: Analysis of NY Charter Schools*, 48 URBAN EDUC. 257, 263 (2013) (citing multiple studies); see, e.g., Bifulco & Ladd, *supra* note 159.

161. Silverman, *supra* note 160, at 272. The author explains that there were “noticeably fewer students in charter schools who were eligible for free lunch programs” while students eligible for reduced-price lunch (indicating less poverty) were more likely to enroll in charter schools. *Id.*

school (charter or traditional public school).¹⁶² The percentage of students eligible for free lunch and the percentage of students suspended tended to have the most effect, which suggests that broader systemic factors are influencing student performance in urban school districts.¹⁶³ This has overarching effects regardless of the structure of school.¹⁶⁴ The author noted that high levels of poverty “can be an overwhelming challenge for students attempting to access all of the opportunities available in public schools.”¹⁶⁵ Furthermore, increased levels of suspension, absenteeism, and other disruptions in attendance have detrimental effects on students’ learning.¹⁶⁶ Also, the percentage of African American students and the turnover rate of teachers were correlated with student outcomes.¹⁶⁷ The authors stated “[t]he percentage of [African American] students is a proxy for the level of segregation in the school districts.”¹⁶⁸

This research can be applied to the situation in Normandy School District as Normandy has a high level of poverty.¹⁶⁹ Additionally, students must wake up at extremely early hours to catch school buses for the twenty-mile trip to a far-away school district. This burden does not make attendance easier for the children who are attempting to better their education but are forced to endure long bus rides to places far beyond their communities. Furthermore, Normandy also has a high rate of disruptions in attendance due to suspensions as Normandy High School has the second highest rate of disciplinary incidents in Missouri.¹⁷⁰

While students who transfer from Normandy¹⁷¹ (a predominantly minority school district) to Francis Howell¹⁷² (a predominantly non-minority school

162. *Id.* at 282.

163. *Id.*

164. *Id.*

165. *Id.*

166. Silverman, *supra* note 160, at 282.

167. *Id.*

168. *Id.*

169. *Missouri Comprehensive Data System*, MO. DEP’T ELEMENTARY & SECONDARY EDUC., <http://mcds.dese.mo.gov/guidedinquiry/Pages/District-and-School-Information.aspx> (follow “District Demographic Data” hyperlink; select “Normandy Schools Collaborative” from “District” pull-down menu; select all school years under “School Year” pull-down menu; follow “View Report” button; scroll to page 2) (last visited Jan. 17, 2015).

170. Crouch, *supra* note 108 (citing data that Normandy High School had 27.8 reported incidents per 100 students, with reported incidents defined as an incident which resulted in a suspension of ten or more days).

171. *Id.*

172. *Missouri Comprehensive Data System*, MO. DEP’T ELEMENTARY & SECONDARY EDUC., <http://mcds.dese.mo.gov/guidedinquiry/Pages/District-and-School-Information.aspx> (follow “District Demographic Data” hyperlink; select “Francis Howell R-III” from “District” pull-down

district) will experience less segregation, those students left behind in Normandy are still segregated. The authors state that “[s]eparate and unequal is prima facie across New York’s urban school districts”;¹⁷³ the same appears to be true with Normandy School District which is comprised of 98.6% minority students.¹⁷⁴ The UDTS has the potential to benefit the 20% of Normandy students who transfer, but does not improve the education for the 80% of the students who remain in the failing Normandy School District.

Perception plays a role in the failing public schools.¹⁷⁵ The public school system becomes more segregated along socioeconomic lines when the lower-middle class and working poor parents choose to move their children out of the traditional public schools.¹⁷⁶ This helps validate perceptions that public schools are continually failing, since the removal of students who are relatively better prepared for school may contribute to driving down average scores on statewide tests of students in traditional public schools.¹⁷⁷ This situation was even more pronounced in Normandy due to that district adding all the students from the even lower performing Wellston School District just a few years prior.¹⁷⁸ Now that all students have the option of transferring schools and 20% of the student body is gone (presumably with the most involved parents who made the choice to send their child to an accredited school district), 30% of Normandy’s budget is also gone.¹⁷⁹ This likely leaves behind the most academically troubled students with an even smaller budget to attempt to turn around this failing school district.¹⁸⁰

Barriers to obtaining educational benefits exist when relocating poor children to non-poor neighborhoods with higher achieving schools. Social

menu; select all school years under “School Year” pull-down menu; follow “View Report” button; scroll to page 2) (last visited Jan. 17, 2015).

173. Silverman, *supra* note 160, at 282.

174. *Missouri Comprehensive Data System*, *supra* note 169.

175. Silverman, *supra* note 160, at 283.

176. *Id.*

177. *Id.*

178. See discussion *supra* Part I.A.

179. See *supra* text accompanying note 132. William Tate, chair of the department of education at Washington University in St. Louis, explained this factor in the following way: “Add in the fact that if you decide to transfer, and your parents or guardians are engaged enough in the system to get you out of your old school, you have a robust family structure. So the people who transfer are different from those who stay.” Dale Singer, *Place Matters: Changing Schools Can Change Student Test Scores, Research Shows*, ST. LOUIS BEACON (Aug. 22, 2013, 6:35 AM), https://www.stlbeacon.org/#!/content/32416/transfer_student_achievement_082113.

180. A board member from an accredited school district explained this situation as follows: “[W]orse yet, the very kids who decide to leave are most likely the best students who are the brightest hope for improving the educational culture of the district, and for raising the very same test scores that got the district in trouble in the first place.” Scott Anderson, Op-Ed., *Transfer Solution Is a Prescription for Failure*, ST. LOUIS POST-DISPATCH, July 24, 2013, at A17.

scientists conducted an experiment in which impoverished families were relocated from low-income neighborhoods to high-income areas and higher performing schools.¹⁸¹ Most students were unable to improve their classroom grades and also had the most adjustment difficulties.¹⁸² Even if improvements were noted, they were short-lived.¹⁸³ Furthermore, while the students became residents of middle-income neighborhoods, they were not members of middle-income *communities*, as the word community implies a “group of geographically bounded people who share a common identity, institutions, social interactions, and daily experiences.”¹⁸⁴ Without supportive services, relocation or transfer programs alone may not result in increased student achievement.¹⁸⁵

Applying these results to Normandy School District suggests that improvements may be limited for the students who choose to transfer. Even if improvements are noted, they will likely be short-lived. The transfer statute also creates the possibility of a school oscillating between accredited and unaccredited in which some years students will transfer and other years they will not. This may create a situation where families (and individual students) switch back and forth between different school environments, which further challenges the ability of students to increase academic achievement. Furthermore, even if the students stay in the accredited school district, they will likely not be assimilated as members of those communities outside the school walls. Instead they will still be in a separate and socioeconomically segregated community twenty miles away from their classmates.

More importantly, transferring students to charter schools or other public school districts does not address the problem of educating the children left behind in the struggling public school district. The UDTs is expensive to implement, and the costs get passed on to those students who remain in the unaccredited school district. For any solution involving charter schools or public school transfer, there must be an alternative funding source that does not cripple the unaccredited public school district. Furthermore, charter schools and school transfers do not address the racial or socioeconomic segregation that has been prevalent in the Normandy community for many years.

181. Micere Keels, *The Importance of Scaffolding the Transition: Unpacking the Null Effects of Relocating Poor Children into Nonpoor Neighborhoods*, 50 AM. EDUC. RES. J. 991, 991 (2013).

182. *Id.* at 1012.

183. Odis Johnson, Jr., *Relocation Programs, Opportunities to Learn, and the Complications of Conversion*, 82 REV. EDUC. RES. 131, 163 (2012).

184. Keels, *supra* note 181, at 1012.

185. *Id.* at 992.

B. Community Involvement and Resource Integration Are Both Needed to Overcome the Effects of Poverty on School Performance

In addition to the implementation of the UDTS being financially unsustainable, transferring students to far away districts does not address the community issues that greatly contribute to a failing school district. Learning is not limited to just the classroom, and the issue of failing school districts will not be solved without significant family and community involvement in each student's education. Parents who do not give in to learned helplessness and other problems related to raising students in poverty will help to limit the effects of socioeconomic status on student performance.¹⁸⁶

Poverty and economic deprivation have an "overwhelming impact" on student outcomes.¹⁸⁷ The failure of so many reform efforts has led some scholars to conclude that there is "little hope for substantive reform without more robust community participation as a key component."¹⁸⁸ A more comprehensive approach is needed to meet the social and educational needs of students in struggling districts.¹⁸⁹ Issues such as absenteeism and suspensions, which are highly influential on student performance, cannot be cured with student transfers to other school districts, as the underlying problems still remain.¹⁹⁰ Educational policymakers need to work with other agencies and community groups to develop strategies that are designed to reduce the adverse impact of poverty on educational outcomes.¹⁹¹

Until the community issue of poverty is addressed, reforms inside the school likely will not yield the type of results that our society desires. According to recent research, schools in the United States with fewer than 25% of their students living in poverty rank among the world's highest scorers.¹⁹² However, when scores of students from schools with high poverty rates are

186. See Robert H. Bradley & Robert F. Corwyn, *Socioeconomic Status and Child Development*, 53 ANN. REV. PSYCHOL. 371, 384 (2002); Sarah Ransdell, *There's Still No Free Lunch: Poverty as a Composite of SES Predicts School-Level Reading Comprehension*, 56 AM. BEHAV. SCIENTIST 908, 909 (2012) (citing various studies).

187. Silverman, *supra* note 160, at 285.

188. Aaron Schutz, *Home Is a Prison in the Global City: The Tragic Failure of School-Based Community Engagement Strategies*, 76 REV. EDUC. RES. 691, 702 (2006).

189. Silverman, *supra* note 160, at 285. Furthermore, Ransdell made the following blunt statement: "If a school district . . . chooses to improve reading comprehension scores by improving teaching and instruction alone, it will fail." Ransdell, *supra* note 186, at 922. Ransdell argued that school districts should provide social workers who attend to the need of at-risk students. *Id.*

190. See, e.g., Silverman, *supra* note 160 (discussing systemic issues such as poverty, suspensions, and poor attendance).

191. Helen F. Ladd, *Presidential Address: Education and Poverty: Confronting the Evidence*, 31 J. POL'Y ANALYSIS & MGMT. 203, 219 (2012).

192. Michael A. Rebell & Jessica R. Wolff, *Educational Opportunity Is Achievable and Affordable*, PHI DELTA KAPPAN, Mar. 2012, at 62, 62.

added, the rank for the United States drops to the middle of the advanced industrial nations.¹⁹³ With a 22% child poverty rate, the problem does not solely rest with the general educational system; the educational system is having a poverty crisis.¹⁹⁴ Michael Rebell and Jessica Wolff of Columbia University explain the situation in the following way: “According to a growing body of research, America will attain its goals of equity in preparing students to function effectively as citizens and productive workers only through a concerted effort to eliminate socioeconomic barriers.”¹⁹⁵

Through their research, Rebell and Wolff identified multiple areas of support services that would help children overcome the socioeconomic barriers to educational success.¹⁹⁶ The areas include: (1) early childhood education, (2) routine and preventative physical and mental health care that assures students are able to learn effectively, (3) after-school, summer, and other expanded learning time opportunities to promote the development necessary to succeed in school, and (4) family engagement that foster students’ academic development.¹⁹⁷ All of these items focus on the *local* community involvement that will likely be more difficult for far-away school districts to implement. It may be unreasonable for the administration and teachers of a receiving school district to acknowledge, understand, and address some of these issues.¹⁹⁸

“The most promising efforts to bring local neighborhoods and schools together emerge from communities, not from schools.”¹⁹⁹ Often times the

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. Rebell & Wolff, *supra* note 192, at 62.

198. One example of a way to improve academic achievement through the use of community involvement and resource integration is by addressing childhood asthma in the community. See Paul W. Newacheck & Neal Halfon, *Prevalence, Impact, and Trends in Childhood Disability Due to Asthma*, 154 ARCHIVES PEDIATRICS & ADOLESCENT MED. 287, 290 (2000); but see Howard Taras & William Potts-Datema, *Childhood Asthma and Student Performance at School*, 75 J. SCH. HEALTH 296, 312 (2005). Investing in a system which coordinates the school and community resources to deal with childhood asthma likely will help address some of these issues that may go untreated outside the walls of the school. A school district like Francis Howell will likely have more difficulty implementing programs coordinating community resources and community involvement for a community that is twenty miles away with vastly different demographics.

199. Schutz, *supra* note 188, at 726. See also CENTERS FOR DISEASE CONTROL AND PREVENTION, DEP’T OF HEALTH & HUMAN SERVICES, STRATEGIES FOR ADDRESSING ASTHMA WITHIN A COORDINATED SCHOOL HEALTH PROGRAM (2006), available at <http://www.cdc.gov/HealthyYouth/asthma/pdf/strategies.pdf> (recommending strategies for schools to address such as the following: establishing management and support systems for asthma-friendly schools; providing safe, enjoyable physical education and activity opportunities for students with asthma; and coordinating school, family, and community efforts to better manage asthma symptoms and reduce school absences among students with asthma).

community has an underlying distrust and fear of school officials which, along with a lack of resources in the schools and inherent bureaucratic barriers, creates a situation that is not conducive to productive community and school interaction.²⁰⁰ One scholar described how a lack of “vibrant community-school relationships” can prevent improvement in academic performance:

[T]eachers simply do not teach effectively when they hold inaccurate deficit visions of children, families, and communities. Nor can they scaffold their instruction on what students already know if they do not acknowledge the skills and capacities that children bring with them. More generally, teachers, parents, and community members cannot work together effectively (ensuring that Epstein’s three circles of family, community, and school overlap in supportive ways) if they do not understand each other.²⁰¹

Consequently, there is little hope that school reform effects can be sustained long-term if there is not a very productive community-school relationship.²⁰²

Succeeding in turning around high poverty schools requires a different approach to community involvement. North Carolina State University’s Northeast Leadership Academy (NELA) used an innovative approach to prepare leaders to work in high poverty school districts.²⁰³ While the NELA plan focused on rural, low-performing districts with high poverty, the plan yields valuable lessons applicable to Normandy School District, which also deals with high concentrations of poor and minority students and low per-pupil funding.²⁰⁴ The NELA plan included advocating a “community-focused” component of the program.²⁰⁵ The program immersed the fellows in the community so they could “learn how to build networks of partnerships to provide the critically needed resources, support, and opportunities for students in high-need schools.”²⁰⁶ The program changed leadership preparation from school leadership to community leadership.²⁰⁷

While school transfer options might open doors for students with eager and engaged parents, students who are struggling because of issues beyond the school’s walls will not benefit from school transfer options. Moreover, these students are likely the ones left behind. With less funding, unaccredited schools may not have the money to invest in programs that coordinate community resources because these unaccredited school districts are spending millions of dollars to drive students to school districts over twenty miles away.

200. Schutz, *supra* note 188, at 726.

201. *Id.*

202. *Id.*

203. Bonnie C. Fusarelli & Matt Militello, *Racing to the Top with Leaders in Rural, High Poverty Schools*, 43 PLAN. & CHANGING J. 46, 46 (2012).

204. *Id.* at 46–47.

205. *Id.* at 52.

206. *Id.*

207. *Id.* at 55.

It is likely that Francis Howell School District might have trouble implementing programs for students in a community over twenty miles away for which they have little knowledge or direct experience.

Improvement of an unaccredited school district like Normandy must result from a comprehensive system of educational and community interactions. The UDTS greatly disrupts any comprehensive system by taking students out of the community school district and placing them in multiple different school districts. The long-term success of the public school system in Normandy depends on the interactions of the community and the schools attended by these children. Furthermore, if Normandy becomes insolvent from the crippling financial effects of the UDTS, students will be transferred to multiple school districts.²⁰⁸ This will split the Normandy community into new pieces creating yet another barrier to interactions between the community and the school districts. For any hope of long-term success in Normandy, the reforms need to start with and include the community.²⁰⁹

C. *Avoiding the “Unaccredited” Classification and the Effects of the UDTS*

Prior to the state dissolving Normandy School District, the Missouri Association of School Administrators created a proposal that would have rendered the UDTS moot.²¹⁰ Its plan involved replacing the current rating system for accreditation. In this new system, there would be no “unaccredited” option. Instead, the lowest accreditation level for a district would be “academically stressed.”²¹¹ By avoiding the “unaccredited” label, the proposal hoped to make the UDTS inapplicable as that statute is based on a district being unaccredited. If an “academically stressed” school is unable to demonstrate academic improvement for three consecutive years or for four out of five years, the state may designate the school building as “Lapsed.” Once a school is “Lapsed,” then “the students and physical property would be transferred to another district under current Missouri law.”²¹²

But the state did not change the rating system or the unaccredited classification; the Board of Education simply dissolved Normandy and created a new district without any accreditation classification at all. This might stop the flood of student transfers and its associated tuition bills for Normandy School district; however, it does not improve the prospects for any other unaccredited

208. Crouch, *supra* note 121.

209. DAVID MATTHEWS, IS THERE A PUBLIC FOR PUBLIC SCHOOLS? 8, 11 (1996).

210. MO. ASS’N SCH. ADM’RS, A NEW PATH TO EXCELLENCE (2014), available at <http://www.masaonline.org/vimages/shared/vnews/stories/527a57f45c3db/REVISED%20New%20Path%20To%20Excellence.pdf>.

211. *Id.* If an individual school within a level 3 district achieves a score above fifty percent, that school would not be considered “academically stressed.” *Id.*

212. *Id.*

school district. The problem of unaccredited school districts and poor academic performance is a long-standing issue that deserves a comprehensive solution as the past efforts of DESE and the legislature have failed to fix this problem. Attempting to avoid the UDTS through a change in application of the terminology flies in the face of the legislature's intent. Creating a long-term solution needs to involve the legislature as such a plan will also require some consistent funding mechanism. Relying solely on DESE to fix unaccredited school districts on its own will cause these districts to likely suffer the same fate as the Wellston School District and its students: the same lack of academic achievement just under the name of a different school district.

D. Normandy School District's Last Stand: An Attempt to Fight Back

Shortly after the Board of Education announced its intention to lapse the district's accreditation and dissolve the district, Normandy, along with taxpayers and the school board president, filed a lawsuit against the Board of Education and the school districts receiving transfer students from Normandy.²¹³ The lawsuit alleged that "[a]s a result, Normandy School District's funds and its taxpayers' revenues are being diverted outside the District to excessively subsidize other school districts."²¹⁴ The suit further alleged that DESE has no authority to withhold Normandy's state funding if the district would stop paying the tuition bills for its transfer students.²¹⁵ Similar to *Breitenfeld*, the suit claimed that the transportation mandate of the UDTS violates the Hancock Amendment because the State of Missouri did not provide state financing for the new mandate of providing bus transportation to other school districts.²¹⁶ Moreover, the suit also alleged that the UDTS violates the equal protection clauses of the Missouri Constitution and the Fourteenth Amendment of the U.S. Constitution because the UDTS "disparately impacts the rights of African-American pupils because the requirement to pay tuition costs that greatly exceed the actual costs incurred by the Receiving Districts . . . deprives the Normandy School District of operating funds to educate the 85% of pupils remaining in the District, who are predominantly African-American."²¹⁷

While the school district in *Breitenfeld* argued that it was impossible to comply with mandates of the UDTS, Normandy may find that it will be impossible to follow through with its lawsuit. The day after Normandy filed its

213. Elisa Crouch, *Normandy School District Sues State, Other Districts over School Transfer Law*, ST. LOUIS POST-DISPATCH, May 22, 2014, at A1; Petition for Declaratory Judgment at 6–7, *Normandy Sch. Dist. v. Missouri*, No. 14SL-CC01721 (Cir. Ct. St. Louis Cnty. May 21, 2014).

214. Petition for Declaratory Judgment, *supra* note 213, at 6.

215. *Id.* at 21–22.

216. *Id.* at 32–33.

217. *Id.* at 24–25.

lawsuit, DESE sent a letter to Dr. McNichols, Normandy's superintendent, stating the expenses relating to the lawsuit "have not been and will not be approved by [DESE]."²¹⁸ Normandy responded by filing a motion seeking a temporary restraining order against DESE.²¹⁹ Normandy also sought to prevent DESE from withholding \$2 million in funding which DESE would use to pay Normandy's outstanding tuition bills from April, May, and June.²²⁰ A hearing on the motion was scheduled for June 20, 2014.²²¹

The transfer situation ended for most students on June 20, 2014, prior to the motion hearing being held. That day, Francis Howell School District announced their decision to revert to their prior policy of only accepting transfer students if required by law.²²² If the courts agree that the UDTS no longer applied to Normandy Schools Collaborative, Francis Howell would no longer be required by law to accept the transfer students from Normandy.²²³ Normandy Schools Collaborative will save approximately \$900,000 by not providing transportation for the transfer students to Francis Howell School District schools.²²⁴ That same day, Normandy School District dropped its lawsuit against the Board of Education and the other school districts.²²⁵

Normandy's lawsuit might have resulted in a holding different from the *Breitenfeld* case. *Breitenfeld* contained various unknowns, such as the total number of transfer students, transfer location, and overall cost. Here, Normandy experienced the effects of UDTS for one year and thus can provide a more certain impact of the UDTS's effects than the district in *Breitenfeld*. The district can provide information on the number of students transferring, the cost of tuition, the cost of transportation, and the negative impact on the remaining students. Unfortunately, it is unrealistic to think that Normandy would have had the financial ability to stay afloat long enough to see this case all the way through the court system. However, the attention of the lawsuit might keep focus on this issue long enough that the legislature takes action to

218. Letter from Ronald Lankford, Deputy Comm'r, Mo. Dep't Elementary & Secondary Educ., to Dr. Ty McNichols, Superintendent, Normandy Sch. Dist. (May 22, 2014), available at <http://dese.mo.gov/sites/default/files/Normandy%20SD%20-%20DESE%20Response%20to%20Initiation%20of%20Legal%20Action%205-22-14.pdf>.

219. Elisa Crouch, *Normandy School District Seeks Restraining Order Against the State*, ST. LOUIS POST-DISPATCH, June 14, 2014, at A2.

220. *Id.*

221. *Id.*

222. Jessica Block & Elisa Crouch, *Francis Howell School District: "No" to Normandy Students*, ST. LOUIS POST-DISPATCH, June 21, 2014, at A1.

223. *Id.*

224. *Id.*

225. Elisa Crouch, *Normandy School District Drops Suit Against State Board Over Transfer Law*, ST. LOUIS POST-DISPATCH, June 21, 2014, at A4.

permanently solve the problems caused by the UDTS.²²⁶ A permanent solution is urgently needed to fix this disruptive educational situation and allow Normandy students the chance to experience improved schools.

E. Suggested Alternatives to the Current UDTS

The UDTS not only failed to improve the unaccredited Normandy School District, it devastated the district's finances and destroyed the district's very existence. It may never be known if Dr. McNichols' plan for improving Normandy would have worked, but it is known that the district wasted one year of rebuilding by having to deal with the crippling financial effects of the UDTS. While the UDTS may serve as motivator for school districts to avoid losing accreditation, once a school district becomes unaccredited, the UDTS creates an almost certain path to financial ruin with little benefit to the majority of students.

The main defect that plagues the UDTS is the law's reliance on the unaccredited school district to fund the tuition and transportation requirements. It is an unrealistic expectation for a struggling, unaccredited school district to take on the increased costs of shifting some of its students to other school districts. These increased costs are especially harmful to the unaccredited school district not only because they take money away from other improvement initiatives, but also because the unaccredited school district cannot decrease its expenditures sufficiently to cover the costs.²²⁷ The fixed costs of building maintenance, electricity, and other items cannot be reduced proportionally with decreased enrollment, thus creating a deficit for the unaccredited school district.²²⁸ This funding deficit is further exacerbated by some receiving school districts charging per-student tuition rates that are higher than the amount of per-student funding that the unaccredited school district receives from the local, state, and federal funding sources.²²⁹

If the legislature wants to keep the transfer option for students in unaccredited school districts, the UDTS should be changed so that it is funded in some alternative manner and not by the struggling school district. Passing some of these costs on to the receiving district would not be an excessive burden as evidenced by the fact that most of the receiving school districts did not use all of the tuition funds paid to them, and the amount of extra staff needed at these receiving districts was minimal. Additionally, the state could contribute funds to implement the UDTS, although this is likely to be

226. As of this writing, Riverview Gardens School District remained unaccredited and subject to the UDTS. See Elisa Crouch, *Area Districts Will Get Less in Transfer Tuition*, ST. LOUIS POST-DISPATCH, June 7, 2014, at A1.

227. Hancock, *supra* note 134.

228. *Id.*

229. Crouch & Bock, *supra* note 132.

politically unpopular, considering the Missouri legislature would not approve an additional \$5 million to keep Normandy out of bankruptcy. In the alternative, the legislature could take a middle-of-the-road approach by modifying the tuition calculation method so that the unaccredited school district only pays 50% of the tuition and the receiving districts absorb the rest of the costs. This option would keep the UDTS functioning in its intended manner without creating a financial catastrophe in the unaccredited school districts.

However, transferring students out of unaccredited school districts and into schools in distant communities does not solve the problem of failing school districts. The majority of students are still left behind, and in the case of Normandy, those students are in a worse position than before due to the financial problems and uncertainty of their academic future. The legislature should eliminate the UDTS and focus its efforts on rebuilding the struggling unaccredited school districts by promoting community-based solutions including resource integration between the schools and outside organizations that serve the local community. This will be a step towards a permanent fix for all students, not just a temporary fix for some students who are willing to endure long bus rides to transfer to schools far outside their community.

CONCLUSION

The Missouri Constitution creates a fundamental right to a free public education for children. The Unaccredited District Tuition Statute may help some students in unaccredited school districts in their pursuit of knowledge, but for the majority of the students who choose to stay in their communities' schools, the statute nearly destroys their already struggling public education system. Moreover, as was shown with Wellston School District, DESE's plan to change the governing structure and oversight of the school district will very likely not be enough to institute meaningful change and improve Normandy's future.

For Normandy and other struggling school districts to have a chance at meaningful long-term improvement, Missouri legislators will need to learn what many scholars and other policymakers have already figured out: reforms need to start in and include the community.²³⁰ Transferring students to schools far outside their community is a short-term solution for the limited benefit of only some of the students that results in the financial ruin of the struggling school district.²³¹ Any solution that does not include addressing the effects of impoverished communities on the educational achievements of students is not

230. MATTHEWS, *supra* note 209, at 8, 11.

231. The superintendent of the unaccredited Riverview Gardens School District pointedly stated: "We all know full well the transfer law is not financially sustainable for any district that has to be held accountable to the statute[.]" Crouch, *supra* note 226.

likely to turn around a failing school district. When the problem is beyond the walls of the school buildings, the solutions must include a focus on the community and its role in supporting the education of students.²³² Simply shipping a portion of the students to another school district twenty miles away does not solve the problem.

Students who chose to stay in Normandy schools in hopes of being part of a resurgence of the district are now left with an uncertain future due to the crippling financial effects of the UDTS. One such student was Raquan Smith, a senior who had already endured the closing of Wellston schools before being transferred to Normandy.²³³ Throughout his senior year, Raquan faced the prospect that Normandy would also be dissolved, and, yet again, he would be sent to a different school district. After hearing about Normandy's decision to close an elementary school and lay off over 100 employees, Raquan described Normandy's situation in the following way: "[The situation is] heart-breaking. It's gut-wrenching. I feel like I'm about to lose a part of me . . . I don't want teachers to be laid off."²³⁴ One homeowner described the district's situation as "torment for all of us."²³⁵ Students were left wondering if they would have graduation and prom in Normandy or in another school district.²³⁶

At the same time, Terry White, the former Normandy star quarterback, made an immediate positive contribution to Francis Howell North's basketball team.²³⁷ Terry was not burdened with the prospect of his school district becoming insolvent before the end of the school year. Terry had little doubt that he would finish the school year at Francis Howell North. Raquan, on the other hand, faced an uncertain future yet again because if Normandy became insolvent during the school year, he would likely be transferred to an unknown school district to finish out his senior year of high school. The superintendent of an accredited district acknowledged the unfairness of the situation by saying, "Just dissolving everything in front of kids' eyes, there's nothing child centered about allowing that to happen."²³⁸ In the end, even those that took advantage of the opportunity to leave Normandy in hopes of obtaining a better education might find themselves back in their original position if at some point in time Francis Howell refuses to allow them to continue their education at

232. See Keels, *supra* note 181, at 1012 (noting that relocating children to low-poverty neighborhoods with high-achieving schools without substantial support for children and parents "offers little hope for a positive shift in the trajectory [of grades]").

233. Gillerman, *supra* note 119.

234. *Id.*

235. *Id.*

236. Crouch, *supra* note 121.

237. David Kvidahl, *Francis Howell North Is Enjoying This Season's Basketball Journey*, ST. LOUIS POST-DISPATCH, Jan. 28, 2014, at B6; Nate Latsch, *Normandy Transfer White Settles In*, ST. LOUIS POST-DISPATCH, Feb. 8, 2014, at B11. See also Latsch, *supra* note 3.

238. Crouch & Bock, *supra* note 132.

their new schools. Even with the UDTS potentially no longer applicable to Normandy, the statute still disrupts the education of the students at the struggling school district by allowing Francis Howell to reject these transfer students.

Now that Normandy School District has experienced the same fate as Wellston, it remains to be seen whether the school administrators, state education officials, the legislature, and the community will rally together to create a plan for long-term academic improvement in Normandy or whether everyone will watch another plan fail, just like the UDTS failed the students of Normandy. While the UDTS may no longer apply to Normandy, the statute is still applicable to the other unaccredited school districts and will likely continue to disrupt the education of students in the most troubled school districts.

The superintendent of the Pattonville School District (which is accredited) may have said it best: “Taking money away from [unaccredited school districts] is not going to help them. The focus should be on helping communities, particularly communities of high levels of poverty. You don’t do that by dismantling the public schools. You do that by helping those schools get better.”²³⁹

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239. Elisa Crouch, *Districts Take Steps To Accept Transfers*, ST. LOUIS POST-DISPATCH, June 18, 2013, at A1.

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