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LAW SUMMARY

Missouri and the Charter School Puzzle: A Story with an Uncertain Ending

JILLIAN DENT*

*Answer the call, send help.
Bless the children, give them triumph now.¹*

I. INTRODUCTION

Education and education reform are often at the forefront of the public consciousness. Currently, three large public school systems in Missouri are at a crossroads: Kansas City Public Schools, which became unaccredited in 2012;² the Normandy and Riverview Gardens School Districts of St. Louis, which were re-classified as unaccredited in 2013;³ and St. Louis Public Schools, whose provisional accreditation was in question after 2013 test results.⁴ The education systems in Missouri's two largest cities, the lifeblood of the state, are in varying states of accreditation, and a looming question, with recent cases such as *Breitenfeld v. School District of Clayton*, is what is in store for the students and residents living within these cities.⁵

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1. AESCHYLUS, *THE ORESTEIA*, quoted in J.K. ROWLING, *HARRY POTTER AND THE DEATHLY HALLOWS*, epigraph (2007).

2. Joe Robertson, *Missouri Education Commissioner to Recommend KC District Remain Unaccredited*, KAN. CITY STAR (Sept. 28, 2013, 5:17 PM), <http://www.kansascity.com/2013/09/26/4510432/missouri-education-commissioner.html>.

3. *State Board Classifies Nine School Districts; Normandy Classified as Unaccredited*, MO. DEP'T. OF ELEMENTARY & SECONDARY EDUC. (Oct. 2012), <http://dese.mo.gov/communications/top-10-by-20-newsletter/october-2012>.

4. Elisa Crouch, *New Ratings Send St. Louis Schools Back to Square One*, ST. LOUIS POST-DISPATCH (Aug. 25, 2013, 10:15 AM), http://www.stltoday.com/news/local/education/new-ratings-send-st-louis-schools-back-to-square-one/article_9ce6a93d-77ee-5f78-ac77-386606edc262.html. These accreditation statuses are as of Fall 2013 and may not reflect the listed schools' current statuses.

5. See *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 820 (Mo. 2013) (en banc) (holding that requiring unaccredited school districts to pay tuition for stu-

Indeed, the educational statistics for Missouri schools are sobering. Only 27% of Missouri students in 2012 were ready for college in all four subjects tested on the ACT college readiness assessment.⁶ In St. Louis Public Schools, only one in three students reads on grade-level, and only 27% of students in 2012 scored on grade-level in the annual math exam.⁷ Further statistical breakdowns show that there are gaps along racial, socio-economic, and geographic location lines. For example, in Columbia, Missouri, 36.8% of black students tested on grade-level for math, whereas 64.3% of white students tested on grade-level.⁸ When it comes to the impact of wealth and poverty on education, Springfield, Missouri's statistics illustrate the divide. In Springfield, 69% of non-low income students read on grade-level, while only 33.4% of low-income students read on grade-level.⁹

So, what to do? How does Missouri help its struggling school districts and students? One education reform movement that has captivated the public's imagination is the charter school movement. A charter school is a publicly funded school in a specific geographic location that is separate from the traditional public school ("TPS") district in that same location.¹⁰ This separation allows for different entities, such as non-profit organizations, institutions of higher education, and even for-profit companies or corporations, to sponsor and run public schools outside of the confines of TPS systems.¹¹ In Missouri, charter schools must be "sponsored" by an institution of higher education, such as the University of Missouri, or the TPS district, though the charter school itself is often run by a non-profit or for-profit organization. In short, charter schools, which are publicly funded, operate within the geographic limits of a TPS district but operate separately from the district. For example, a charter school would have its own school board.¹²

Documentaries such as the popular *Waiting for Superman* portray charter schools as a saving grace and often the only good school choice in crumbling TPS systems.¹³ *Waiting for Superman* contains shots of children and parents weeping with joy, or sorrow, when their lottery number for attending

dents wishing to transfer out of the district and requiring accredited districts to accept and educate the transfer students does not violate the Hancock Amendment).

6. *Why Education Reform*, CHILD. EDUC. ALLIANCE OF MO., <http://www.ceamteam.org/get-educated/why-ed-reform> (last visited July 29, 2014).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Charter School FAQs*, MO. CHARTER PUB. SCH. ASS'N, <http://www.mocharterschools.org/mo-charters/the-model/> (last visited July 29, 2014).

11. See Julie F. Mead, *Devilish Details: Exploring Features of Charter School Statutes that Blur the Public/Private Distinction*, 40 HARV. J. ON LEGIS. 349, 351-52 (2003).

12. *Id.*

13. See Diane Ravitch, *The Myth of Charter Schools*, N.Y. REV. OF BOOKS (Nov. 11, 2010), <http://www.nybooks.com/articles/archives/2010/nov/11/myth-charter-schools/?pagination=false> (discussing the documentary *Waiting for Superman*).

the charter school is either drawn . . . or not.¹⁴ For someone who has only seen *Waiting for Superman* or only heard politicians talk vaguely about school reform and school choice, charter schools may very well seem to be a utopian solution to the woes of failing public schools. However, upon a closer look at the performance of students at charter schools and the trajectory of charter school performance in general, a different picture begins to emerge.

Statistically speaking, charter schools most often do not out-perform the districts in which they are operating.¹⁵ A 2013 study by the Center for Research on Education Outcomes (“CREDO”) found mixed results when comparing educational outcomes for charter school students to TPS students in twenty-six states.¹⁶ For example, “25 percent [of charter school students] have significantly stronger learning gains in reading than their traditional school counterparts, while 56 percent showed *no* significant difference and 19 percent of charter schools have *significantly weaker* learning gains.”¹⁷ While the results of charter schools as a reform tool are mixed, CREDO encourages states to “raise performance and accountability standards for charter schools and to hold them to the higher standards.”¹⁸

Missouri is already ahead of the game on the charter school reform front. In 2012, the Missouri Legislature amended the charter school laws to strengthen academic and financial accountability standards.¹⁹ However, the Missouri legislature also made some questionable changes, such as increasing the types of institutions that can act as charter sponsors and failing to comprehensively address concerns about equal opportunity enrollment of Missouri students.

Because charter schools can either be a bastion of innovation *or* a destabilizing force within TPS systems, the outcome for Missouri public education – and most importantly the outcomes for Missouri students – will depend on how the legislature structures its laws to protect and strengthen the TPS systems, while also allowing for innovation and alternative choices via charter schools.²⁰ This Law Summary aims to address some of the great strides Mis-

14. See moviemaniacsDE, *Waiting For Superman | Trailer #1 US (2010)*, YOUTUBE (May 22, 2010), <http://www.youtube.com/watch?v=yFN0nf6Hqk0>.

15. See Grace Chen, *Charter Schools vs. Traditional Public Schools: Which One Is Under-Performing?*, PUB. SCH. REV. (Feb. 27, 2014), <http://www.publicschoolreview.com/articles/123>. See generally *Fast Facts*, NAT’L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/fastfacts/display.asp?id=30> (last visited July 21, 2014).

16. *Charter Schools Make Gains, According to 26-State Study*, CTR. FOR RES. ON EDUC. OUTCOMES (June 25, 2013), <http://credo.stanford.edu/documents/UNEMBAR-GOED%20National%20Charter%20Study%20Press%20Release.pdf>.

17. *Id.* (emphasis added).

18. *Id.*; see also CTR. FOR RESEARCH ON EDUC. OUTCOMES, NAT’L CHARTER SCH. STUDY 2013 (2013), available at <http://credo.stanford.edu/documents/NCSS%202013%20Final%20Draft.pdf>.

19. S.B. 576, 96th Gen. Assemb., 2d Reg. Sess. (Mo. 2012).

20. BRIAN GILL ET AL., RHETORIC VERSUS REALITY: WHAT WE KNOW AND WHAT WE NEED TO KNOW ABOUT VOUCHERS AND CHARTER SCHOOLS (2007), avail-

souri has taken in charter school reform, while also analyzing problematic changes and proposing potential solutions.

II. LEGAL BACKGROUND

In the 1970s, the idea of a “charter school” was born – an idea often attributed to Massachusetts educator Ray Budde.²¹ The purpose of a charter school was to allow educators to branch out from their school district and experiment with educational ideas under the umbrella of public education.²² With early success and enthusiasm for change, the idea of a public charter school spread and “[t]oday there are approximately 5600 charter schools in 41 states, educating over 2 million students, with hundreds of thousands more on waiting lists.”²³ Often, charter schools, which are publicly funded schools, receive the same funding as public schools but operate with less legal red tape and more autonomy.²⁴

Missouri passed its first charter school law in 1998, becoming the twenty-seventh state to do so.²⁵ Missouri Revised Statute Section 160.400, known as the Charter Schools Act, authorized the establishment of independent public charter schools in metropolitan or urban school districts.²⁶ A metropolitan or urban school district was defined as a city “containing most or all of a city with a population greater than [350,000] inhabitants.”²⁷ An organization wishing to apply to become a charter school was to submit an application to a potential sponsor.²⁸ A sponsor was defined as an entity that would oversee the charter school on behalf of the state.²⁹ The charter application was required to include the charter’s mission statement and a description of its organizational structure, governing body bylaws, financial plan, educational and academic goals, and its curriculum.³⁰ A charter school could be approved for a minimum of five years but no more than ten years, with the option to renew the charter upon completion of the initial term.³¹

able at http://www.rand.org/content/dam/rand/pubs/monograph_reports/2007/RAND_MR1118-1.pdf (“The question of systemic effects is at least as important as the question of direct effects, and it represents the heart of the political battle over vouchers and charters.”).

21. *Charter School History*, MU OFF. OF CHARTER SCH. OPERATIONS, <http://musponsorship.missouri.edu/sample-page/charter-school-history/> (last visited July 29, 2014).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Sch. Dist. of Kan. City v. State*, 317 S.W.3d 599, 602 (Mo. 2010) (en banc).

27. S.B. 781, 89th Gen. Assemb., 2d Reg. Sess. (Mo. 1998).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

To establish a public charter school, the applicant group was required to find a sponsor.³² A sponsor under the 1998 Missouri law could be any of the following:

- (1) The school board of the district;
- (2) A public four-year college or university with its primary campus in the school district or in a county adjacent to the county in which the district is located, with an approved teacher education program that meets regional or national standards of accreditation; or
- (3) A community college located in the district.³³

The sponsor of the charter school was to oversee and provide non-financial support to the school, but the sponsor was not liable for acts or omissions in the performance or operation of the charter school.³⁴ A sponsor could revoke the charter “at any time if the charter school commit[ed] a serious breach of one or more provisions of its charter or on any of the following grounds,” including legal violations or failure to meet academic or fiscal standards.³⁵ The Missouri law differed, and still differs, from many other state laws in allowing institutions of higher education to sponsor charter schools.³⁶

In addition to requiring a charter school to obtain a sponsor, the 1998 law set forth many sound requirements.³⁷ A charter school was to be “non-sectarian in its programs, admission policies, employment practices, and all other operations” and was to “[c]omply with laws and regulations of the state relating to health, safety, and minimum educational standards.”³⁸ A charter school, once established, must “enroll all pupils resident in the district in which it operates or eligible to attend a district’s school under an urban voluntary transfer program who submit a timely application.”³⁹ The school was to set forth “a method to measure pupil progress” and to hold themselves “financially accountable.”⁴⁰ To fund the charter schools, the 1998 law required that the school district whose “resident pupils” attended the charter school pay the local, state, and federal aid given for that student to the charter school.⁴¹

Additionally, the 1998 law established a commission to be formed by the Department of Elementary and Secondary Education (“DESE”) to study

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Charter School History*, *supra* note 21 (stating that nationally 90% of charter schools are sponsored by or connected in some way to their local school districts).

37. S.B. 781, 89th Gen. Assemb., 2d Reg. Sess. (Mo. 1998).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

the academic performance of students attending charter schools as well as the impact charter schools were having on the school districts in which they operated.⁴²

In both 2005 and 2009, the charter school laws were amended.⁴³ The 2005 amendments included changes such as requiring higher education sponsors to be of a certain size, expanding restrictions on sponsor-charter relations that create conflicts of interest, requiring charter schools to publish financial reports, and creating additional academic accountability measures.⁴⁴

The 2009 amendments were more minimal.⁴⁵ The amendments added sponsor oversight requirements, including that the sponsor must design and implement “a transparent and rigorous process that uses comprehensive data to make merit-based [charter school] renewal decisions.”⁴⁶ The amendments also specified different information the DESE Charter School Commission needed to examine when evaluating charter school impact on students and communities.⁴⁷ DESE was now to specifically consider:

- (1) Missouri assessment program test performance and aggregate growth over several years;
- (2) Student reenrollment rates;
- (3) Educator, parent, and student satisfaction data;
- (4) Graduation rates in secondary programs; and
- (5) Performance of students enrolled in the same public school for three or more consecutive years.⁴⁸

According to the amendments, DESE was to make the results of its study public.⁴⁹

In early 2011, the Ewing Marion Kauffman Foundation commissioned a report to evaluate the performance of Missouri’s charter schools over the preceding ten years.⁵⁰ To create the report, Public Impact and the National Alliance for Public Charter Schools “conducted a study to explore the charter school movement in Missouri.”⁵¹ Due to the report and growing concerns over the effectiveness of charter school laws in Missouri, Governor Jay Nixon asked the Missouri Legislature to look into the study’s recommended

42. *Id.*

43. S.B. 287, 93d Gen. Assemb., 1st Reg. Sess. (Mo. 2005); S.B. 291, 95th Gen. Assemb., 1st Reg. Sess. (Mo. 2009).

44. *See* Mo. S.B. 287.

45. *See* Mo. S.B. 291.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Delivering on the Promise – How Missouri Can Grow Excellent, Accountable Public Charter Schools*, EWING MARION KAUFFMAN FOUND., <http://www1.kauffman.org/education/delivering-on-the-promise.aspx> (last visited July 29, 2014).

51. *Id.*

changes.⁵² Hearing the governor's call for change, the Missouri Legislature decided it was time for an overhaul of the charter school laws governing Missouri.⁵³

III. RECENT DEVELOPMENTS

On June 27, 2012, Governor Nixon signed Senate Bill 576 into law, reforming charter school laws in Missouri for the third time.⁵⁴ Citing failures and closings of charter schools in Kansas City and St. Louis, Governor Nixon stated, "I called on the Legislature to send me a comprehensive charter school accountability bill that holds all charter schools – and their sponsors – to high standards of academic achievement and financial integrity."⁵⁵ Starting August 28, 2012, the higher standards and more rigorous application and oversight processes went into effect, as well as new laws allowing for the expansion of charter schools throughout Missouri.⁵⁶

The amended law gave DESE more control over the charter school application and oversight process, in addition to clarifying and strengthening charter application requirements.⁵⁷ Whereas beforehand corporations or groups of individuals could make their charter application directly to any sponsor, the amended law requires applications be made directly to DESE and sets forth the application process to be established.⁵⁸ Language specifying what an application and eventual charter contract require was also clarified. For example, originally the charter was required to include "the educational goals and objectives to be achieved by the charter school."⁵⁹ This line was replaced with the following paragraph:

A description of the charter school's pupil performance standards and academic program performance standards The charter school program shall be designed to enable each pupil to achieve such standards and shall contain a complete set of indicators, measures, metrics, and targets for academic program performance, including specific

52. Heather Hollingsworth, *Charter School Bill Would Boost Oversight*, NEWS TRIBUNE.COM (June 23, 2012), <http://www.newstribune.com/news/2012/jun/23/charter-school-bill-would-boost-oversight/>.

53. *Id.*

54. *Gov. Nixon to Sign into Law Bill Requiring Greater Accountability from Charter Schools and Their Sponsors*, OFF. OF MO. GOVERNOR JAY NIXON (June 27, 2012), http://governor.mo.gov/newsroom/2012/Gov_Nixon_to_sign_bill_requiring_charter_schools_accountability.

55. *Id.*

56. *Id.*

57. *Id.*

58. MO. REV. STAT. § 160.403.1 (2012).

59. S.B. 576, 96th Gen. Assemb., 2d Reg. Sess. (Mo. 2012).

goals on graduation rates and standardized test performance and academic growth.⁶⁰

Additional charter requirements include the specification of a grievance process for parents or guardians, a description of the relationship and intervention policy between the charter school and its sponsor, a description of the charter school's plans for serving special education students, and the procedures to be implemented should the charter school close.⁶¹

Importantly, the law amended the amount of time for which a charter could be issued. Originally, a charter was to be issued for no less than five years and no more than ten years, with the option of renewal.⁶² The amended law allows charters to be issued for a maximum of five years.⁶³

The law also establishes clearer, stricter guidelines for evaluating student performance – both for sponsors and for the charter schools themselves. Charter schools were always required to “[d]esign a method to measure pupil progress toward the pupil academic standards[.]”⁶⁴ However, the original law only specified that charter schools had to collect baseline data during the first three years to assess academic performance.⁶⁵ The amended law replaced the language with the following:

Establish baseline student performance in accordance with the performance contract during the first year of operation, collect student performance data as defined by the annual performance report throughout the duration of the charter to annually monitor student academic performance.⁶⁶

Essentially, sponsors are now required to annually and extensively review student achievement data.⁶⁷ The sponsors are also given more authority in revoking a charter: the amendments provide that a sponsor can revoke a charter if there is “[c]lear evidence of underperformance as demonstrated in the charter school's annual performance report in three of the last four school years.”⁶⁸ The amendments added accountability measures to the renewal process, imposing a more stringent list of requirements that a sponsor must

60. MO. REV. STAT. § 160.405.1(7) (2012).

61. § 160.405.1(13)-(16) (requiring, among other things, that charter schools, in their application to a sponsor, detail procedures should the charter close, such as: a plan for orderly transition of student and personnel records; a notification system to inform parents, students, the local school district, and the state board of education; and a plan for disposition of assets).

62. Mo. S.B. 576.

63. § 160.405.1(9).

64. § 160.405.4(6)(a).

65. Mo. S.B. 576.

66. § 160.405.4(6)(a).

67. § 160.405.7.

68. § 160.405.8(1)(b).

examine when determining a charter school renewal.⁶⁹ These requirements will ultimately allow the state to more easily close down under-performing charter schools.

In addition to strengthening a watchful eye over academic performance, the amended law requires more accountability for each charter school's financial situation. For example, a sponsor must have a policy in place to revoke a charter if there is a "violation of the law or the public trust that imperils students or public funds."⁷⁰ During the renewal process the sponsor must make sure the "charter school is organizationally and fiscally viable."⁷¹ If a sponsor determines that one of its charter schools is experiencing financial stress, the sponsor must report the school to DESE, which shall then provide a list of such schools to government officials each year.⁷² Under the amended law, the state auditor has the power to audit any charter school in the same manner that she can audit any other public school, a grant of power not explicitly bestowed before the amendments.⁷³

While strengthening DESE's control over the charter school process and tightening charter school accountability controls, the amendments also expanded the reach of charter schools. Whereas previously charter schools could only be operated in urban or metropolitan areas such as Kansas City and St. Louis, the law now allows charter schools to operate in any "school district that has been declared unaccredited."⁷⁴ The law also permits the establishment of charter schools in provisionally accredited school districts that have been provisionally accredited or unaccredited for three consecutive years.⁷⁵ However, in provisionally accredited school districts that are provisionally accredited for financial reasons, charter school eligibility will be determined by a school board of education vote in the third year of provisional accreditation.⁷⁶ Lastly, charter schools can be established in an accredited school district.⁷⁷ However, a charter school in an accredited school district may only be sponsored by the local school board.⁷⁸

69. § 160.405.9(2).

70. § 160.405.8(1)(b).

71. § 160.405.9(2)(b).

72. MO. REV. STAT. § 160.417 (2012).

73. MO. REV. STAT. § 29.205 (2012). It does not appear that annual audits by state entities are required; rather, sponsors are supposed to exercise oversight, and auditors can audit at any point should they find it necessary.

74. MO. REV. STAT. § 160.400.2(3) (2012).

75. § 160.400.2(4).

76. § 160.400.2(4)(a)-(b).

77. § 160.400.2(5).

78. *Id.* Some have criticized this requirement, arguing that local school districts would be "reluctant to sponsor their own competition, particularly if charter funding comes out of the school district budget." Gill, *supra* note 20, at 48. Supporters of this provision argue that allowing charters in any successful district without local support may result in duplicative overhead, budgetary issues, and negative competition. *Id.* at 224.

This expansion of charter school reach into unaccredited and provisionally accredited school districts creates the potential for problems should those school districts regain accreditation.⁷⁹ The law provides that unaccredited schools that have gained provisional accreditation will be considered unaccredited until they reach three full years of provisional accreditation.⁸⁰ A similar stipulation exists for provisionally accredited schools transitioning to accreditation.⁸¹ However, even once a school gains full accreditation, “a charter school may continue to be sponsored by the entity sponsoring it prior to the classification of accredited without provisions and shall not be limited to the local school board as a sponsor.”⁸²

The law also expands the potential geographic distance between charter schools and their sponsors. Originally, the higher education sponsor of a charter school was required to have “its primary campus in the school district or in a county adjacent to the county in which the district is located.”⁸³ However, this language was stricken by the 2012 amendments. The provision now reads that a sponsor may be “[a] public four-year college or university . . . with an approved teacher education program that meets regional or national standards of accreditation.”⁸⁴ The amendments also created the Missouri Charter Public School Commission, which can be a sponsor of a charter school as well.⁸⁵

While expanding the opportunity to sponsor charter schools, the amended law also places stricter requirements on sponsors. Charter school sponsors are now required to develop policies and procedures for rigorous evaluation of applications, “the performance framework that the sponsor will use to evaluate the performance of the charter school,” and the sponsor’s “intervention, renewal, and revocation policies.”⁸⁶ Additionally, the law shifts the responsibility of providing documentation and accountability proof to the sponsor.⁸⁷

The State Board of Education, similarly to the old law, is tasked with making sure charter schools are in compliance with the law.⁸⁸ The 2012 changes give the State Board of Education slightly more leeway, though, to check in on charter schools: “[n]othing shall preclude the department from undertaking an evaluation at any time for cause.”⁸⁹ If a charter school is

79. This problem does not apply to Kansas City or St. Louis, as charter schools are authorized in those districts regardless of accreditation status. *See* § 160.400.2(1)-(3).

80. § 160.400.4(1).

81. § 160.400.4(2).

82. § 160.400.4(3).

83. S.B. 576, 96th Gen. Assemb., 2nd Reg. Sess. (Mo. 2012).

84. *Id.*

85. MO. REV. STAT. § 160.425 (2012).

86. § 160.400.16(1)-(6).

87. § 160.400.17(1).

88. *Id.*

89. *Id.*

found to not be in compliance and does not comply within the remedial period, the state board can remove the charter school from the authority of its current sponsor, granting sponsorship to the newly created Missouri Charter Public School Commission.⁹⁰

As previously stated, the 2012 amendments established the Missouri Charter Public School Commission.⁹¹ The commission is to consist of nine individuals appointed by the governor and chosen through a variety of processes.⁹² The members must collectively “possess strong experience and expertise in governance, management and finance, school leadership, assessment, curriculum and instruction, and education law,” as well as a commitment to the idea of charter schools.⁹³ The commission may, as stated above, become a sponsor of a charter school either by approving an application themselves or by being appointed a sponsor if the State Board of Education removes sponsorship from another entity.⁹⁴

IV. DISCUSSION

Many of the changes made by the 2012 charter school reform amendments are strong steps in the right direction, such as increased financial accountability procedures and newly required transparency measures for both charter schools and their sponsors.⁹⁵ Other changes, however, are a step backwards. For example, the increased opportunity for institutions of higher education to sponsor charter schools not within geographic reach may decrease charter school oversight by the very institutions tasked with evaluating academic and financial accountability.⁹⁶ The increased opportunities for establishment of charter schools may also lead to negative impacts on TPS systems in Missouri, especially when the law problematically allows charter schools to avoid serving the most disadvantaged students through “opt-in” enrollment and “counseling out” of less desirable students.⁹⁷

Overall, there is much good to commend in the amendments, but the citizens in the great state of Missouri should evaluate and reflect on the out-

90. § 160.400.17(2)-(3).

91. MO. REV. STAT. § 160.425 (2012).

92. § 160.425.2-.3.

93. § 160.425.4.

94. § 160.425.6.

95. See MO. REV. STAT. § 160.405.4(6)(a), .9(2)(b) (2012).

96. *Id.*

97. See Robert A. Garda, Jr., *Culture Clash: Special Education in Charter Schools*, 90 N.C. L. REV. 655, 685-87 (2012) (discussing litigation regarding charter school practices of “counseling out” disabled students, a process in which schools discourage disabled students from enrolling or encourage disabled students to leave the school); Monica Teixeira de Sousa, *Compelling Honesty: Amending Charter School Enrollment Laws to Aid Society’s Most Vulnerable*, 45 URB. LAW. 105, 106, 111 (2013) (discussing how enrollment laws can “determine student access to charter schools”).

comes produced by the charter school reform laws so that Missourians can be sure that the laws are a force for good in the education of their students. To be sure, these changes are very new and Missourians will not fully know the impact of the changes for some time. However, by noting potential problems, Missourians can consistently evaluate charter school and TPS performance and prepare to make needed alterations in order to better serve Missouri's students.

A. The Commendable: Increased Financial and Academic Accountability and Transparency Requirements for Missouri Charter Schools

Recent high profile closures of charter schools in Kansas City and St. Louis have illustrated the need for the reforms outlined in the 2012 amendments. Certainly, the 2012 amendments to the charter school law address recent problems and provide great strides forward by increasing procedural safeguards meant to identify financially struggling schools and by requiring increased sponsor supervision of charter school financial and academic accountability.

Imagine Schools, a network of six charter schools that had operated in St. Louis for many years, closed suddenly in 2012, throwing over 3,000 students into limbo and leaving behind an outstanding check of \$250,000.⁹⁸ According to the Huffington Post, "Imagine Schools in St. Louis had performed below the city's public schools on state tests, and also spent significantly less money on instruction compared to administrative costs."⁹⁹ Not only were the Imagine Schools under-performing academically but the schools were spending more money on administrative costs, such as overhead and administration salaries, than on instruction costs, such as books and teacher salaries.¹⁰⁰ Imagine Schools' situation illustrates Missouri's need for increased charter school financial accountability.

The 2012 amendments provide some of the change needed to prevent a future closure such as the Imagine Schools' closing. Auditors can now audit charter schools at any time, just as they can with TPS.¹⁰¹ Additionally, sponsors of charter schools are required to review their schools to ascertain whether the school is acting in a fiscally viable manner and whether money is being used appropriately. For example, the charter, a binding contract on both the charter school and its sponsor, must contain "[p]rocedures consistent with the Missouri Financial Accounting Manual, for monitoring the financial accountability of the charter."¹⁰² Upon renewal of the charter, the sponsor

98. *St. Louis Charter School Closures Costs \$250,000, Missouri Approves Two New Schools*, HUFFINGTON POST (Oct. 17, 2012, 4:26 PM), http://www.huffingtonpost.com/2012/10/17/closure-of-six-charter-sc_n_1974695.html.

99. *Id.*

100. *Id.*

101. S.B. 576, 96th Gen. Assemb., 2nd Reg. Sess. (Mo. 2012).

102. *Id.*; see also MO. REV. STAT. § 160.405.1(10) (2012).

must analyze financial information, specifically determining whether the school is “organizationally and fiscally viable.”¹⁰³

The supervisory requirements strengthening financial accountability benefit not only charter school students but also TPS students who may suffer from an unexpected influx of students when a charter school unexpectedly closes.¹⁰⁴ Certainly, the Imagine Schools’ closings impacted St. Louis Public Schools (“SLPS”). SLPS had recently regained provisional accreditation in 2012.¹⁰⁵ However, after the influx of 3,000-plus students from the underperforming closed Imagine Schools, SLPS’ scores in 2013 went down, putting SLPS in jeopardy of losing its hard-earned provisional accreditation.¹⁰⁶ Not only that, but the 3,000-plus students were uprooted and dispersed to schools their friends did not attend and where the teachers, administrators, and surroundings were unfamiliar, creating chaos for all students and endangering the stability required for academic achievement.

Similarly, Derrick Thomas Academy (“DTA”) in Kansas City left many reeling after its closure in summer 2013, leaving behind a passel of unpaid teachers, 950 students in need of a new school, and \$10 million in debt.¹⁰⁷ The University of Missouri – Kansas City (“UMKC”), the sponsor of DTA, had put DTA on notice due to DTA’s poor financial situation and poor test scores; however, the notice came too late – it did not stop the impending disaster of 2013, when UMKC pulled its support and DTA closed.¹⁰⁸

Interestingly, DTA was *not* one of the five charter schools listed as financially stressed after the 2012 amendments took place, which shows that the law, while better, is still flawed.¹⁰⁹ Additionally, the Missouri Charter Public School Association (“MCPSA”) “fully supports financial accountability for the state’s charter schools,” but was critical of the lack of background information taken into account by the new law when determining financial

103. § 160.405.9(2).

104. See *St. Louis Charter School Closures Costs \$250,000, Missouri Approves Two New Schools*, *supra* note 98.

105. See Vera Culley, *SLPS Regain Provisional Accreditation*, ST. LOUIS PUB. SCHS. (Oct. 16, 2012, 12:33 PM), <http://www.slps.org/Page/16007>; MO. DEP’T OF ELEMENTARY AND SECONDARY EDUC., ACCREDITATION CLASSIFICATION (2012), available at <http://dese.mo.gov/sites/default/files/qs-si-msip-accreditationclassification10162012.pdf>.

106. Crouch, *supra* note 4.

107. Mará Rose Williams, *Derrick Thomas Academy Owes \$10 Million, Lawsuit Says*, OLATHE NEWS (Aug. 1, 2013), <http://www.theolathenews.com/2013/08/01/2036622/derrick-thomas-academy-owes-10.html>.

108. Paul Koepp, *Closing of Derrick Thomas Academy Leaves Legal Mess*, KAN. CITY BUS. J. (Jul. 24, 2013, 2:18 PM), <http://www.bizjournals.com/kansascity/news/2013/07/24/closure-of-derrick-thomas-academy.html?page=all>.

109. See *Report on Financially Stressed Charter Schools Missing Necessary Background*, MO. CHARTER PUB. SCH. ASS’N (Oct. 18, 2012), <http://www.mocharterschools.org/report-on-financially-stressed-charter-schools-missing-necessary-background/>.

stress.¹¹⁰ For example, the MCPSA noted that the five schools deemed financially distressed in 2012 were all schools that had been in operation for less than five years.¹¹¹ As MCPSA noted, DESE is “well aware that it will take three years for a new charter school to build the financial reserve capacity to be above this distinction.”¹¹² While there are certainly kinks in the system, the amendments’ requirements for increased financial oversight are certainly warranted even if changes still need to be made, as evidenced by DTA’s closure despite its absence from the “financially distressed” list.

The requirements of increased sponsor supervision, both of academic performance and fiscal responsibility, are positive changes. Sponsors are now required to annually and extensively review student achievement data and are given more authority to revoke a charter.¹¹³ The amendments require a sponsor to engage in annual review of the charter school’s performance on state assessments, collect baseline academic achievement data, engage in analysis of student growth, and publish annual report cards detailing the school’s performance.¹¹⁴

In addition to annual review of academic achievement, the amendments require a sponsor to engage in a more detailed analysis of achievement when deciding whether to renew the school’s charter.¹¹⁵ Specifically, in determining whether to renew the charter, the sponsor must complete a “thorough analysis of a comprehensive body of objective evidence” and consider whether:

The charter school has maintained results on its annual performance report that meet or exceed the district in which the charter school is located based on the performance standards that are applicable to the grade level configuration of both the charter school and the district in which the charter school is located in three of the last four school years.¹¹⁶

The sponsor must then present this analysis and the renewal application to the State Board of Education in order to obtain renewal of the charter.¹¹⁷ The

110. *Id.*

111. *Id.*

112. *Id.*

113. *See* MO. REV. STAT. § 160.405.8(1)(b) (2012) (providing that sponsors can revoke a charter based on “[c]lear evidence of underperformance” or “[a] violation of the law or the public trust that imperils students or public funds”). This section was added by the 2012 amendments. S.B. 576, 96th Gen. Assemb., 2nd Reg. Sess. (Mo. 2012).

114. § 160.405.7(1)-(5).

115. § 160.405.9.

116. § 160.405.9(2)(a).

117. § 160.405.9(3)(a)-(d) (“If the charter school sponsor demonstrates the objectives identified in this subdivision, the state board of education shall renew the school’s charter.”).

increased emphasis on making sure charter schools are performing at or above the level of the TPS district in which they reside is paramount, especially if charters are to be touted as a solution to the problem of the academic achievement gap.

A study funded by the Bill and Melinda Gates Foundation examined charter schools in eight states and found a wide variety of outcomes.¹¹⁸ While the study suggested that students attending charter schools graduated and enrolled in college at slightly higher rates than their TPS peers, the study also found that growth and achievement results of charter school students compared to TPS students were extremely varied and that charters often produced lower achievement and growth results.¹¹⁹

The mixed results of this study should highlight the amorphous and many-headed, amicable monster that is public school education.¹²⁰ There are many factors to be taken into account, so readers should be cautious about coming to any overly simple conclusions. However, even if one should be cautious when it comes to “objective” data culled from graduation rates, test scores, student growth, and college enrollment, one should be able to agree that, at the very least, analyzing and discussing the data, as the amendments to the charter school law now require, will enhance one’s understanding of each charter school’s academic health and whether the charter should be renewed.

In addition to requiring sponsors to more carefully watch over the charter schools they sponsor, the 2012 amendments to the charter school law also give DESE increased oversight in the charter school renewal process. Essentially, DESE is now better able to revoke charter sponsorship or aid in intervention with a struggling school should the need arise.¹²¹ Before the amendments, if DESE wanted to dispose of a struggling sponsor they had little to no options for sponsor replacement, other than taking over control of the charter school itself.¹²² However, DESE can now revoke a sponsorship without closing the charter school and can turn the sponsorship over to the newly formed Missouri Charter Public School Commission.¹²³

Finally, the length of time between establishment and renewal of a charter has been shortened. Under the amended law, a charter can only be issued for a maximum of five years before the charter school must apply for renew-

118. See RON ZIMMER ET AL., CHARTER SCHOOLS IN EIGHT STATES: EFFECTS ON ACHIEVEMENT, ATTAINMENT, INTEGRATION, AND COMPETITION (2009).

119. *Id.* at xiii-xv (noting that some of the discrepancy could be due to virtual charter schools, whose lower scores could be attributed to the style of schooling and/or to the types of students who may need to enroll in virtual schools).

120. A recent 2013 study came to similar mixed conclusions about charter school outcomes. CTR. FOR RESEARCH ON EDUC. OUTCOMES, *supra* note 18.

121. MO. REV. STAT. § 160.400.17 (2012); S.B. 576, 96th Gen. Assemb., 2nd Reg. Sess. (Mo. 2012).

122. See Mo. S.B. 576.

123. *Id.*

al.¹²⁴ Five years, as opposed to the former ten-year renewal period, allows for quicker interventions in charter systems that may be flailing or failing, as well as allowing for a timelier checkpoint.¹²⁵ This is important because it can be difficult to evaluate upfront the viability of charter school applicants – some will surpass all of our expectations while others will flounder quickly. Under the shorter renewal period, if the charter school is performing well, it will be renewed; if it is not performing well, the state school board will not renew the charter and an unsuccessful or ill-performing charter school will shut down more quickly than it would have under a ten-year charter period.

In all, the amendments greatly increase the financial and academic accountability of Missouri charter schools by providing clearer guidelines for schools and their sponsors and by providing procedural safeguards, such as a shorter charter renewal period that protects students, teachers, and surrounding schools from abuses that could result in surprising shutdowns due to financial and organizational mismanagement. The Missouri Legislature and Governor Nixon should be commended for these changes; however, other changes made during the 2012 amendment process are less desirable.

B. The Problematic: Missouri Charter Schools and the Potential Negative Impact on Traditional Public School Students

Diane Ravitch, education crusader and historian, used to be a fan of charter schools. In a recent article for the Los Angeles Times, she stated, “The original purpose of charters, when they first opened in 1990 (and when I was a charter proponent), was to collaborate with public schools, not to compete with them or undermine them.”¹²⁶ Ravitch goes on to describe that the charter schools were “supposed to recruit the weakest students, the dropouts, and identify methods to help public schools do a better job with those who had lost interest in schooling.”¹²⁷ Now, charter schools regularly, in an attempt to increase test scores and decrease costs, enroll “minimal numbers of English-language learners and students with disabilities,” which has led to lawsuits throughout the country.¹²⁸

The competitive divide between charter schools and the TPS systems in which they reside will likely increase in Missouri, especially with the new amendments.¹²⁹ For supporters of charter schools, the increase in competition is good news; however, many opponents feel differently. Supporters believe competition from charter schools will “induce improvement and . . .

124. MO. REV. STAT. § 160.405.1(9) (2012); Mo. S.B. 576.

125. See Mo. S.B. 576.

126. Diane Ravitch, *The Charter School Mistake*, L.A. TIMES (Oct. 1, 2013), <http://www.latimes.com/opinion/commentary/la-oe-ravitch-charters-school-reform-20131001,0,6358122.story>.

127. *Id.*

128. *Id.*

129. See MO. REV. STAT. § 160.400.2-3 (2012); Mo. S.B. 576.

innovation” amongst all schools.¹³⁰ Opponents of charter schools believe that competition may hurt the financial viability of TPS districts, in addition to draining “the public schools of their best students, reducing the positive influence of high-achieving peers, and [permitting] the most-motivated parents to exit the public system, [thus] reducing parental pressure for improving the schools.”¹³¹

Regardless of how one feels about the benefits and dangers of market competition in education, the 2012 Missouri charter school law amendments do allow an increased sponsorship pool, which may very well decrease the chances of local school districts acting as sponsors. Essentially, the amendments allow higher education institutions that are not geographically close to the charter school to act as sponsors.¹³² Originally, the charter school law required sponsors to at least be located either in the school district boundaries or in the county adjacent to the school district, suggesting some semblance of working together as one community.¹³³ However, the amendment greatly increases the potential pool of sponsors.¹³⁴ For example, the University of Missouri – Columbia can now sponsor charter schools in Kansas City and St. Louis, whereas before it could not.¹³⁵

Unfortunately, the increased pool of sponsors may decrease the chances of a charter system working with or being sponsored by its neighboring TPS district simply because it is more likely an institution of higher education will sponsor a charter school than a district, which may view the charter school as competition.¹³⁶ The discord between charter schools and their neighboring TPS districts is evidenced by lawsuits filed by school districts in Missouri against charter schools.¹³⁷ According to the University of Missouri, “Almost 90 percent of charter schools are authorized by a local school district, but in

130. See GILL, *supra* note 20, at 117-18.

131. *Id.*

132. See § 160.400.3(2).

133. See Mo. S.B. 576.

134. See *id.*

135. See *id.*

136. See GILL, *supra* note 20, at 48.

137. See *Catapult Learning, LLC v. Bd. of Educ. of St. Louis*, No. 4:07CV936-DJS, 2008 WL 1349646 (E.D. Mo. Apr. 8, 2008) (concerning an allegation by the school board that it was owed over \$200,000 for educational services provided to a charter school); *Sch. Dist. of Kan. City v. State*, 317 S.W.3d 599 (Mo. 2010) (en banc) (deciding a case brought by the Kansas City Missouri School District and taxpayers “seeking declaration that Charter Schools Act violated the state constitution by allegedly permitting the local tax levy to go to local educational agency charter schools in district, and by allegedly placing new, unfunded mandate on district”); *State ex rel. St. Louis Charter Sch. v. State Bd. of Educ.*, 376 S.W.3d 712 (Mo. Ct. App. 2012) (concerning a dispute between the local public school district and a charter school over payment for a school aide).

Missouri, most charter schools are ‘sponsored’ by higher education institutions, like the University of Missouri.”¹³⁸

Studies have shown that charter schools have led to both positive and negative changes in TPS systems. Such changes include implementation of new programs and “changes in educational structures in district schools.”¹³⁹ However, “[n]early half of district leaders [in the U.S. Department of Education’s study] perceived that charter schools had negatively affected their budget.”¹⁴⁰ Ultimately, charter school impact on TPS can be positive, negative, or non-existent, depending on the situation.¹⁴¹ However, Missouri lawmakers could help to mitigate competitiveness and level the playing field between TPS and their charter school counterparts by tying the schools’ fates together. For example, the RAND corporation suggests lawmakers can mitigate negative “systemic effects on nonchoosers” (i.e. the effects charter schools have on the students who stay behind in the TPS system) by establishing communication among schools.¹⁴² Indeed, how else can charter schools instigate change through market competition in TPS if the charters do not share nor communicate their successes with the TPS, and, of course, vice versa?

Unfortunately, Missouri’s law also does not address the problematic ways in which charter schools can cultivate “desirable” student bodies while leaving supposedly less desirable students in a TPS district, which must accept all students. While Missouri’s law requires charter schools to enroll those students within its geographic boundaries and to engage in “equal chance selection” to pick the rest,¹⁴³ charter schools have been known to work around guidelines in order to cultivate higher performing student bodies.¹⁴⁴ For example, a study of the District of Columbia’s charter schools and traditional public schools found that D.C. charter schools expelled 676 students whereas the public schools only expelled 24 students.¹⁴⁵ Additionally, there is “[s]trong evidence of charter schools counseling out disabled stu-

138. *Charter School History*, *supra* note 21.

139. See *Challenge and Opportunity: The Impact of Charter Schools on School Districts*, U.S. DEP’T OF EDUC. (Sept. 2, 2003), <http://www2.ed.gov/rschstat/eval/choice/summary.html>.

140. See *id.*

141. Matthew Linick & Christopher Lubienki, *How Charter Schools Do and Don’t Inspire Change in Traditional Public School Districts*, FREE LIBR. (Mar. 1, 2013), <http://www.thefreelibrary.com/How+charter+schools+do,+and+don’t+inspire+change+in+traditional...-a0324589497>.

142. See GILL, *supra* note 20, at 235.

143. MO. REV. STAT. § 160.410 (2012).

144. See Emma Brown, *DC Charter Schools Expel Students at Far Higher Rates than Traditional Public Schools*, WASH. POST (Jan. 5, 2013), http://www.washingtonpost.com/local/education/dc-charter-schools-expel-students-at-far-higher-rates-than-traditional-public-schools/2013/01/05/e155e4bc-44a9-11e2-8061-253bccfc7532_story.html?hpid=z2.

145. *Id.*

dents,” by telling such students that they lack the resources to provide for them.¹⁴⁶ In fact, the Southern Poverty Law Center has filed a class action against charter schools in New Orleans, alleging the charter schools are “denying disabled students admission or . . . counseling them out after it is discovered the child has a disabling condition.”¹⁴⁷ These similar practices are likely occurring in charter school systems in Missouri as well, though no comprehensive studies have been completed.

If there is to be competition, the competition must be fair. Missouri lawmakers must make sure that charter schools and the TPS systems are competing on a level playing field – that charter schools are not gaming the system. Missouri charter school laws currently require that the charter schools enroll those students within their geographic boundaries who apply and then select additional students via lottery.¹⁴⁸ But this set-up is problematic because it creates an unlevelled playing field for many students in an area where charter schools are operating.

First, this system of student selection does not prevent Missouri charter schools from “counseling out and cherry-picking” students after enrollment.¹⁴⁹ Secondly, by requiring parents or guardians to apply to charter schools, charter schools may very well be denying the most disadvantaged students the opportunity to attend charter schools, thereby leaving these disadvantaged students within the TPS.¹⁵⁰ Requiring parents or guardians to take the time to submit an application for their student “predicate[s] an educational opportunity on the willingness or ability of a parent to take the steps necessary to apply to a charter school,” which “runs counter to [decades of] research and common sense.”¹⁵¹ Therefore, more thought should be given to how to structure and regulate charter school enrollment. For example, the legislature could restructure charter school enrollment from an “opt-in” system to a randomized lottery system of all students that then requires the students to “opt-out.”¹⁵²

Ultimately, in addition to taking steps to level the playing field by amending charter school enrollment laws, Missouri should work to minimize competition between charter schools and TPS by requiring charters to receive sponsorship from the public school systems in which they reside, rather than from institutions of higher education, so that communication can be maximized among schools and collaboration increased to the benefit of all. At the very least, legislation should be changed to encourage communication between charter schools and traditional public schools.

146. Garda, Jr., *supra* note 97, at 685-87.

147. *Id.* at 686-87.

148. *See* § 160.410.

149. Garda, Jr., *supra* note 97, at 710-11.

150. Teixeira de Sousa, *supra* note 97, at 111.

151. *Id.*

152. *Id.* at 107.

In short, charter schools and the public school systems may feel forced, in a negative way, to compete with each other rather than work together, sowing discord and creating negative competition where there should be helping hands. This could be remedied by tying charter schools in some way to the public school districts. Many may argue that the benefit of a charter school is that it gets a clean start and that it does not have to be associated with an already dysfunctional school system. Yet, it is clear that by not tying the fates of charter schools to their public school system counterparts, Missouri is failing students both in the under-performing charters and in the school districts that suffer academically, financially, and reputationally¹⁵³ due to the charter schools.

V. CONCLUSION

In all, the Missouri legislature should certainly be commended for the steps it has taken to require financial and academic accountability from Missouri charter schools. With closures of large systems such as the Imagine Schools,¹⁵⁴ it is imperative for both students in charter schools and the students in TPS districts that massive, surprise closures are mitigated. The 2012 amendments will help prevent such closures in the future by requiring sponsors to turn a more watchful eye to their charter school wards. Ultimately, all students will gain from such beneficial, necessary regulations and the balancing of accountability and autonomy.

Of course, an increased focus on tying charter schools to the school districts in which they reside is needed. If charter schools are to be touted as better alternatives to traditional public schools, then they need to actually be better. And they must be better through fair means. Charter schools cannot be allowed to counsel out less desirable students or take advantage of the fact that only more motivated parents will enroll their children in charter schools. Missourians can remedy some of these ills by turning their focus next to charter school enrollment laws and provisions that specifically address unfair practices such as counseling out or expelling specific types of students.

Every school day in Missouri matters. Every day students, teachers, administrators, and staff are working towards a better future for all of Missouri. It is imperative that Missourians do not wait too long before making necessary changes when so much is at stake. Lawmakers, lawyers, and activists must answer the call that has already been answered by students, teachers, administrators, parents, and staff – they must use their influence and

153. TPS and TPS students suffer when charters close, thrusting thousands of unexpected students into the TPS system. TPS also suffer when charter schools are allowed to cherry-pick students by kicking out students perceived as troublemakers or academically challenged students to whom the public schools must then open their doors.

154. See *St. Louis Charter School Closures Costs \$250,000, Missouri Approves Two New Schools*, *supra* note 98; see also text accompanying note 98.

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knowledge of the law to formulate it in ways that better facilitate the hard work of teachers and students. Missouri must be conscientious about the laws it adopts and how it writes them. Missouri must “[a]nswer the call, send help. / Bless the children, [and] give them triumph now.”¹⁵⁵

155. AESCHYLUS, *supra* note 1.