

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

BLUE SPRINGS R-IV SCHOOL DISTRICT,)	
et al.)	
Petitioners,)	
)	Case No. 1116-CV34463
v.)	Division 11
)	
SCHOOL DISTRICT OF KANSAS CITY)	
MISSOURI, et al.)	
Respondents.)	

FINAL JUDGMENT AND ORDER

This matter comes before the Court on Blue Springs R-IV School District, Independence 30 School District, Lee’s Summit R-VII School District, North Kansas City 74 School District, Raytown C-2 School District, Mark Cromwell, Ronald Hammons, Misty Rigdon, Jacque Gragg, Spencer D. Fields, Phillip Holloway, and James Bradshaw’s (hereinafter “Area School Districts”) First Amended Petition for Declaratory Relief and Intervenor Plaintiff Center School District #58’s (hereinafter “Center”) Petition in Intervention. In their Amended Petition for Declaratory Relief, Area School Districts seek judgment declaring that Section 167.131 of the Revised Statutes of Missouri (hereinafter “Section 167.131”) violates Article X, Sections 16-22 of the Missouri Constitution (hereinafter the “Hancock Amendment”) and is therefore invalid, unconstitutional, ineffective and without the force of law.¹ In the alternative, Area School Districts seek judgment declaring that the policies and procedures entitled Transfer of Students to Accredited School Districts in Jackson or Adjoining Counties (hereinafter “Transfer Policy”) adopted by the School District of Kansas City, Missouri (hereinafter “KCPS”) violates Section 167.131; and Area School Districts seek judgment enjoining and prohibiting KCPS from enforcing or acting pursuant to the

¹ Section 167.131 is a state law which allows students in an unaccredited school district to transfer to accredited school districts in the same or adjoining counties and requires the unaccredited school district to pay tuition costs to the receiving accredited school district.

Transfer Policy. In its Petition in Intervention, Center does not allege a Hancock Amendment violation but joins Area School Districts in requesting judgment declaring that KCPS's Transfer Policy violates Section 167.131. KCPS and the State of Missouri (hereinafter the "State") deny the relief requested by Area School Districts and Center.

On August 1, 2012, the Court entered Judgment and Order Granting in Part and Denying in Part Center's Motion for Summary Judgment and Partial Judgment and Order Granting in Part and Denying in Part Area School Districts' Motion for Summary Judgment (hereinafter the "Summary Judgment Order"). Following the entry of the Summary Judgment Order, two issues remain unresolved; first, whether Section 167.131 imposes increased costs on Area School Districts resulting in a Hancock Amendment violation, and second, whether KCPS's Transfer Policy related to the amount and timing of tuition reimbursement payments violates Section 167.131.

On August 6, 2012, the parties and their respective attorneys appeared before this Court for trial. Area School Districts, Center and KCPS entered into evidentiary stipulations regarding whether KCPS's Transfer Policy violates Section 167.131. Area School Districts, Center and KCPS thereafter advised the Court that this matter was finally submitted to the Court for ruling and judgment. On August 6 and 7, 2012, Area School Districts and the State introduced and submitted stipulations and evidence regarding whether Section 167.131 imposes increased costs on Area School Districts resulting in a Hancock Amendment violation. On August 8, 2012, Area School Districts and the State made their closing arguments to the Court, and the matter was finally submitted to the Court for ruling and judgment.

On this 16th day of August, 2012, the Court having reviewed the pleadings, evidence and stipulations of the parties enters judgment in favor of Ronald Hammons, Misty Rigdon, Jacque Gragg, Spencer Fields and Philip Holloway and against the State and declares that Section 167.131

violates the Hancock Amendment as to Independence 30 School District, Lee's Summit R-VII School District and North Kansas City 74 School District. The Court enters judgment in favor of the State and against Mark Cromwell and James Bradshaw and declares that Section 167.131 does not violate the Hancock Amendment as to Blue Springs R-IV School District and Raytown C-2 School District. Further, the Court enters judgment in favor of KCPS and against Area School Districts and Center and declares that KCPS's Transfer Policy related to the amount and timing of tuition reimbursement payments does not violate Section 167.131. In support of its Final Judgment and Order, the Court provides the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

KCPS's Transfer Policy and Section 167.131

1. On September 20, 2011, the Missouri State Board of Education reclassified KCPS as unaccredited.
2. On December 21, 2011, KCPS adopted its Transfer Policy.
3. In relevant part, KCPS's Transfer Policy states:

A student attending a KCPS school may transfer to an accredited school in another district in Jackson County or any adjoining county. Student transfers shall occur as provided for by law and in compliance with this policy.

1. At the time of transfer, students eligible for transfer must be enrolled in kindergarten through twelfth grade and have attended a KCPS school for the two academic semesters immediately preceding the request for a transfer from KCPS. This requirement shall not apply to students enrolling or enrolled in kindergarten.
2. KCPS shall consider tuition requests from the receiving district at the time the student is admitted to the receiving district. If KCPS disagrees with the tuition request, it shall submit its assessment of appropriate tuition to the receiving district. If KCPS and the receiving district cannot reach agreement on the tuition to be paid, the dispute will be submitted to the Missouri State Board of Education for resolution per Missouri law. Until the time at which the State Board renders a decision on the tuition amount, KCPS shall pay the receiving district pursuant to Paragraph 3 herein.

3. In the event of a dispute about the amount of tuition, KCPS shall pay the receiving district KCPS's per-pupil ADA state allocation for each student admitted by the receiving district. (For FY 2012, the rate is \$3,733.00.) Payment shall be made on a monthly basis beginning the month immediately following the student's admittance to the receiving district, and will be made on a monthly basis for each month the student remains enrolled. Payment will be issued within five (5) business days of verification of continued enrollment in the receiving school district.

4. If the State Board ultimately determines that the tuition to be paid to the receiving district is different than what has been paid by KCPS to the receiving district, KCPS will adjust the difference to the receiving district within thirty (30) calendar days that the State Board's decision becomes final.

5. KCPS shall not be responsible for transportation costs associated with students attending accredited districts in Jackson County or an adjoining county except as specifically stated in this policy and pursuant to Missouri law. KCPS will pay reasonable transportation costs for students that are admitted to and attend school in:

- a. North Kansas City 74 School District
- b. Independence 30 School District
- c. Raytown C-2 School District
- d. Center 58 School District

Payments for transportation costs actually provided shall be made directly to the receiving district on a monthly basis at the same time that tuition payments are made.

4. Section 167.131 states:

1. The board of education of each district in this state that does not maintain an accredited school pursuant to the authority of the state board of education to classify schools as established in section 161.092 **shall pay the tuition of and provide transportation** consistent with the provisions of section 167.241 **for each pupil resident therein** who attends an accredited school in another district of the same or an adjoining county.

2. The rate of tuition to be charged by the district attended and paid by the sending district is the per pupil cost of maintaining the district's grade level grouping which includes the school attended. The cost of maintaining a grade level grouping shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, debt service, maintenance and replacements. The term "debt service", as used in this section, means expenditures for the retirement of

bonded indebtedness and expenditures for interest on bonded indebtedness. Per pupil cost of the grade level grouping shall be determined by dividing the cost of maintaining the grade level grouping by the average daily pupil attendance. **If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final.** Subject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.

(Emphasis added.)

5. Section 167.241 of the Revised Statutes of Missouri states:

Transportation for pupils whose tuition the district is required to pay by section 167.131 or who are assigned as provided in section 167.121 **shall be provided by the district of residence**; however, in case of pupils covered by section 167.131, the district of residence shall be required to provide transportation only to school districts accredited by the state board of education pursuant to the authority of the state board of education to classify schools as established in section 161.092, **and those school districts designated by the board of education of the district of residence.**

(Emphasis added.)

6. KCPS's unaccredited status became effective on January 1, 2012.
7. As stipulated on July 27, 2012, Blue Springs R-IV School District, Independence 30 School District, Lee's Summit R-VII School District, North Kansas City 74 School District, Raytown C-2 School District and Center School District #58 are all school districts to which students who reside in KCPS may transfer under Section 167.131.
8. On August 6, 2012, Area School Districts, Center and KCPS filed stipulations with the Court. These stipulations, in addition to the facts that the Court found to be uncontroverted in its Summary Judgment Order, are the facts the Court relies upon to enter its Final Judgment and Order on the issue of whether the KCPS's Transfer Policy related to the amount and timing of tuition reimbursement payments violates Section 167.131.

Hancock Amendment Violation

9. Blue Springs R-IV School District is an accredited Missouri public school district located in Jackson County, Missouri.
10. Mark Cromwell resides in, owns property in, and is a taxpayer of Blue Springs R-IV School District. Mark Cromwell, as a taxpayer of the Blue Springs R-IV School District, has standing to assert a Hancock Amendment claim.²
11. Independence 30 School District is an accredited Missouri public school district located in Jackson County, Missouri.
12. Ronald Hammons resides in, owns property in, and is a taxpayer of Independence 30 School District. Ronald Hammons, as a taxpayer of the Independence 30 School District, has standing to assert a Hancock Amendment claim.
13. Lee's Summit R-VII School District is an accredited Missouri public school district located in Jackson County, Missouri.
14. Misty Rigdon resides in, owns property in, and is a taxpayer of Lee's Summit R-VII School District. Misty Rigdon, as a taxpayer of the Lee's Summit R-VII School District, has standing to assert a Hancock Amendment claim.
15. Jacque Gragg resides in, owns property in, and is a taxpayer of Lee's Summit R-VII School District. Jacque Gragg, as a taxpayer of the Lee's Summit R-VII School District, has standing to assert a Hancock Amendment claim.
16. North Kansas City 74 School District is an accredited Missouri public school district located in Kansas City, Clay County, Missouri.

² The Missouri Supreme Court has stated clearly that in order to have standing to assert a Hancock Amendment violation a party has to be a taxpayer. *Fort Zumwalt School District v. State*, 896 S.W.2d 918, 921 (Mo. banc. 1995).

17. Spencer D. Fields resides in, owns property in, and is a taxpayer of North Kansas City 74 School District. Spencer D. Fields, as a taxpayer of the North Kansas City 74 School District, has standing to assert a Hancock Amendment claim.
18. Philip Holloway resides in, owns property in, and is a taxpayer of North Kansas City 74 School District. Phillip Holloway, as a taxpayer of the North Kansas City 74 School District, has standing to assert a Hancock Amclaim.
19. Raytown C-2 School District is an accredited Missouri public school district located in Jackson County, Missouri.
20. James Bradshaw resides in, owns property in, and is a taxpayer of Raytown C-2 School District. James Bradshaw, as a taxpayer of the Raytown C-2 School District, has standing to assert a Hancock Amendment claim.
21. KCPS is an unaccredited Missouri public school district located in Jackson County, Missouri.
22. Jackson County, Missouri adjoins and is adjacent to Clay County, Missouri.
23. The mandate to admit non-resident students residing in unaccredited school districts was created by an amendment to Section 167.131 in 1993.
24. Area School Districts are under a statutory mandate, pursuant to Section 167.131 and the Missouri Supreme Court's ruling in *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660 (Mo. 2010), to admit students who reside within KCPS.
25. KCPS is under a statutory mandate, pursuant to Section 167.131 and the Missouri Supreme Court's ruling in *Turner*, to pay the tuition for students who reside within KCPS and elect to transfer to one of Area School Districts.

26. Pursuant to Section 167.131, the rate of tuition to be charged by Area School Districts and paid by KCPS for each transferring student is the per pupil cost of maintaining the Area School Districts' grade level grouping.³

27. As agreed by the parties to this litigation, the per pupil cost of maintaining Blue Springs R-IV School District's grade level groupings are as follows:

K-5: \$12,288/student
6-8: \$12,621/student
9-12: \$13,668/student

28. As agreed by the parties to this litigation, the per pupil cost of maintaining Raytown C-2 School District's grade level groupings are as follows:

K-5: \$13,837/student
6-8: \$13,921/student
9-12: \$14,819/student

29. As agreed by the parties to this litigation, the per pupil cost of maintaining Independence 30 School District's grade level groupings are as follows:

K-5: \$9,391/student
6-8: \$9,357/student
9-12: \$10,255/student

30. As agreed by the parties to this litigation, the per pupil cost of maintaining North Kansas City 74 School District's grade level groupings are as follows:

K-5: \$10,845/student
6-8: \$11,248/student
9-12: \$11,186/student

31. As agreed by the parties to this litigation, the per pupil cost of maintaining Lee's Summit R-VII School District's grade level groupings are as follows:

K-6: \$9,339/student
7-8: \$9,339/student

³ "Grade level grouping" refers to the elementary school grade levels, the middle school grade levels, and the high school grade levels.

9-12: \$10,869/student

32. The per pupil cost of maintaining Area School Districts' grade level groupings represents the tuition or revenue Area School Districts can anticipate receiving from KCPS for each student who resides in KCPS and transfers to Area School Districts.
33. Despite statutory language to the contrary, the Coordinator for the Division of Administrative and Financial Services for the Missouri Department of Elementary and Secondary Education, Dr. Roger Dorson, testified that KCPS would likely continue receiving from the State of Missouri Average Daily Attendance (hereinafter "ADA") allocations or funding for the students who transfer to Area School Districts pursuant to Section 167.131. The State ADA appropriation for KCPS for FY 2012 was \$3,733.00 per student according to KCPS's Transfer Policy.
34. The Missouri legislature annually appropriates unrestricted funds to the Missouri Department of Elementary and Secondary Education for distribution to Area School Districts pursuant to the education foundation formula.
35. Other than funds distributed under the foundation formula, the Missouri legislature has not made an appropriation or disbursement to fund any additional expenses that Area School Districts or KCPS will incur due to the transfer of students residing in KCPS pursuant to Section 167.131.
36. If Area School Districts admit students residing in KCPS pursuant to Section 167.131, they will not receive any specific funding directly from the State of Missouri to finance the costs associated with admitting and educating transferring students.
37. The Missouri Legislature annually appropriates unrestricted funds to Area School Districts pursuant to the education foundation formula. The Department of Elementary

and Secondary Education does not permit Area School Districts to include students attending its schools pursuant to Section 167.131 in its ADA figures for state aid purposes.

38. There is no provision of State law or regulation that allows Area School Districts to include students who transfer to their schools pursuant to Section 167.131 in their ADA figures for state aid purposes.
39. Area School Districts cannot issue bonds for capital expenditures, including for capital expenditures made to acquire and install mobile unit classrooms, without voter authorization.
40. In an effort to adequately prepare for students transferring to Area School Districts pursuant to Section 167.131, Area School Districts commissioned a statistical survey to determine the impact of KCPS's loss of accreditation on neighboring school districts.
41. The statistical survey was conducted by Patron Insight, Inc., a firm that provides research, brand development and strategic communications consultation to school districts, municipalities and other government organizations, not-for-profits and for-profit companies.
42. The statistical survey and resulting report (hereinafter the "Report") were supervised and overseen by Kenneth S. DeSieghardt, Chief Executive Officer and Partner of Patron Insight, Inc. Mr. DeSieghardt has 31 years of experience designing and executing successful market research and integrated marketing and communications programs for school districts; municipalities and other government entities; companies serving international, national and local markets; and not-for-profits. Mr. DeSieghardt has

demonstrated expertise in market research, design, management and result analysis; strategic plan development; and marketing plan design, execution and measurement.

43. From March 23, 2012, to April 21, 2012, a 12 to 15 minute telephone survey was conducted with 600 randomly selected, head-of-household residents of KCPS who had at least one child age 18 or younger for whom the survey participant was responsible when it came to that child(ren)'s educational decisions.
44. Survey participants had to live within the boundaries of KCPS, but did not have to send their child(ren) to a school in KCPS.
45. The methodology utilized by the survey produced a random sample of 600 participants resulting in data that has a margin of error of plus or minus four percent, at the 95% confidence level.
46. The objectives of the survey were as follows:
 1. Determine factors that adults with education decision-making responsibilities for children consider to be most important, if a school district selection is an option.
 2. Identify how survey participants would rate the performance of KCPS and Area School Districts on the factors the survey participants considered to be most important.
 3. Determine which school district survey participants would transfer their student(s) to, if they had the option to do so at no tuition costs.
 4. Identify the likelihood of transfer for up to four children in the household from KCPS, or any other educational environment found within the KCPS boundaries, to another neighboring school district. Determine the impact on those transfer decisions of the possibility that transportation to the new district would be the responsibility of the student and his or her responsible adult(s), and the fact that reaccreditation in the future would cause this transfer opportunity to cease.
47. Based on the statistical survey, the Report concluded the following:
 1. A minimum of 1,690 students who reside in KCPS will transfer to Blue Springs R-IV School District.

2. A minimum of 741 students who reside in KCPS will transfer to Raytown C-2 School District.
 3. A minimum of 1,002 students who reside in KCPS will transfer to Independence 30 School District.
 4. A minimum of 2,035 students who reside in KCPS will transfer to North Kansas City 74 School District.
 5. A minimum of 2,291 students who reside in KCPS will transfer to Lee's Summit R-VII School District.
48. The type of information and data contained in the Report is the type of information and data that Area School Districts and other school districts commonly and routinely rely upon to predict and project student enrollment numbers.
49. Despite the legitimate concerns raised by the State that the results of the Report may have been influenced by specifically naming Blue Springs R-IV School District, Raytown C-2 School District, Independence 30 School District, North Kansas City 74 School District and Lee's Summit R-VII School District during the telephone survey, the Court finds the statistical survey and Report credible and reliable. The Court finds it reasonable for Area School Districts to rely on the Report, especially considering that there is no other survey or report available to accurately predict or project the number of students that will transfer to Area School Districts.
50. Of the projected students that will transfer to Area School Districts, 55% will be students in grade level grouping "K-5," 63% will be students in grade level grouping "K-6," 22% will be students in grade level grouping "6-8," 14% will be students in grade level grouping "7-8," and 23% will be students in grade level grouping "9-12."
51. Based on the projected student transfers from KCPS to Area School Districts and the percentages of students in each grade level grouping, the Court can calculate the

anticipated revenue or tuition that KCPS will be required to pay each of the Area School Districts based on the per pupil cost of maintaining grade level groupings set forth above in paragraphs 27-31 above pursuant to Section 167.131.

52. KCPS will be required to pay Blue Springs R-IV School District \$21,427,035.00 for the projected students transferring to Blue Springs R-IV School District.
53. KCPS will be required to pay Raytown C-2 School District \$10,447,854.00 for the projected students transferring to Raytown C-2 School District.
54. KCPS will be required to pay Independence 30 School District \$9,600,954.00 for the projected students transferring to Independence 30 School District.
55. KCPS will be required to pay North Kansas City 74 School District \$22,410,978.00 for the projected students transferring to North Kansas City 74 School District
56. KCPS will be required to pay Lee's Summit R-VII School District \$22,198,899.00 for the projected students transferring to Lee's Summit R-VII School District.
57. Even if KCPS continues to receive State ADA funding for students who transfer pursuant to Section 167.131 as Dr. Roger Dorson indicated during his testimony, KCPS will likely receive only a portion of the tuition required to be paid to Area School Districts from the State.
58. At some point, KCPS could find itself unable to pay Area School Districts and other receiving school districts for the student transferring pursuant to Section 167.131 and meet its other financial obligations. However, KCPS has not yet determined how many transferring students would bring it to that point.
59. Based on the projected student transfers from KCPS to Area School Districts and the percentage of students in each grade level grouping, the Chief Financial Officer from

each of the Area School Districts calculated the reasonable anticipated education costs and capital outlays, including mobile unit classrooms and furniture, fixtures and expenses (hereinafter “Financial Impact”) that each of the Area School Districts will incur as a result of student transfers pursuant to Section 167.131.⁴

60. The Financial Impact for Blue Springs R-IV School District is \$21,423,650.00.
61. The Financial Impact for Raytown C-2 School District is \$9,714,990.00
62. The Financial Impact for Independence 30 School District is \$11,311,263.00
63. The Financial Impact for North Kansas City 74 School District is \$25,296,178.55.
64. The Financial Impact for Lee’s Summit R-VII School District is \$27,319,508.00.
65. Blue Springs R-IV School District will not incur increased costs as a result of Section 167.131 upon receiving the required tuition payments from KCPS.
66. Raytown C-2 School District will not incur increased costs as a result of Section 167.131 upon receiving the required tuition payments from KCPS.
67. Independence 30 School District will incur increased costs of approximately \$1,710,309.00 as a result of Section 167.131 even if the required tuition payments are made by KCPS.
68. North Kansas City 74 School District will incur increased costs of approximately \$2,885,200.55 as a result of Section 167.131 even if the required tuition payments are made by KCPS.
69. Lee’s Summit R-VII School District will incur increased costs of approximately \$5,120,609.00 even if the required tuition payments are made by KCPS.

⁴ The anticipated costs calculated by the Chief Financial Officer from each of the Area School Districts takes into account the Area School Districts’ assertion that KCPS students are more expensive to educate. Specifically, the Chief Financial Officers from each of the Area School Districts found the additional cost per student is \$1,922. Based on the information available to Area School Districts, the Court finds this projection to be credible and reasonable, and the Court included this increased cost in its calculations of the Financial Impact to each of the Area School Districts.

CONCLUSIONS OF LAW

I. The Hancock Amendment

In 1980, the Hancock Amendment was passed by Missouri voters and codified in Missouri Constitution, Article X, Sections 16-24. The Hancock Amendment protects taxpayers from shouldering increased costs of new financial mandates imposed by the State on political subdivisions. Specifically, the Hancock Amendment requires the State to provide “full state financing” for any “new or expanded activity” required of a political subdivision and prohibits the State from requiring a “new activity or service . . . beyond that required by existing law . . . unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.” Mo. Const. Art. X, §§ 16 and 21. In determining whether a state law violates the Hancock Amendment, a court must decide 1) whether a new or increased activity or service is required by the State of a political subdivision, and 2) the political subdivision experiences increased costs in performing that activity or service. *City of Jefferson v. Mo. Dept. Nat. Resources*, 916 S.W.2d 794, 795 (Mo. 1996).

In its Summary Judgment Order, the Court found, as a matter of law, that Section 167.131 created a new mandate for Area School Districts, and no State appropriation has been made to specifically compensate Area School Districts for the new duties required under Section 167.131. However, the Court found a genuine issue of material fact as to whether Area School Districts will bear increased financial burden as a result of the new mandate of Section 167.131.

After conducting an evidentiary hearing, the Court finds that Independence 30 School District, North Kansas City 74 School District and Lee’s Summit R-VII School District will incur increased costs as a result of students transferring pursuant to Section 167.131. Therefore, the Court enters judgment in favor of Ronald Hammons, taxpayer of Independence 30 School District,

Spencer Fields and Philip Holloway, taxpayers of North Kansas City 74 School District, and Misty Rigdon and Jacque Gragg, taxpayers of Lee’s Summit R-VII School District, and against the State of Missouri and declares that Section 167.131 violates the Hancock Amendment as to Independence 30 School District, Lee’s Summit R-VII School District and North Kansas City 74 School District.

After conducting an evidentiary hearing the Court finds that Blue Springs R-IV School District and Raytown C-2 School District will not incur increased costs as a result of students transferring pursuant to Section 167.131. Therefore, the Court enters judgment in favor of the State of Missouri and against Mark Cromwell, taxpayer of Blue Springs R-IV School District, and James Bradshaw, taxpayer of Raytown C-2 School District, and declares that Section 167.131 does not violate the Hancock Amendment as to Blue Springs R-IV School District and Raytown C-2 School District.⁵

Area School District Arguments

Area School Districts argue that as a matter of law a Hancock Amendment violation exists because the State failed to make a specific appropriation to fund the new mandate required by Section 167.131. In support of this position, Area School Districts cite *Rolla 31 Sch. Dist. et. al. v. State of Mo.*, 837 S.W.2d 1, 7 (Mo. 1992). In *Rolla*, the Missouri Supreme Court found a Hancock Amendment violation because the State failed to provide a specific appropriation “to cover the full cost” of a new mandated program requiring public schools to provide preschool special education. *Id.* In support of this holding, the Missouri Supreme Court cited Article X, Section 21 of the Missouri Constitution, part of the Hancock Amendment, which provides that a State mandated program shall not be lawful “unless a state appropriation is made ... to pay the county or other

⁵ A Hancock Amendment violation does not invalidate Section 167.131 as to all political subdivisions or school districts. The Hancock Amendment provides that Section 167.131 is unenforceable only to political subdivisions or school districts that can establish and prove increased costs or expenses as a result of the mandate required by Section 167.131. See *City of Jefferson City*, 916 S.W.2d at 796.

political subdivision for **any increased costs.**” *Id.* (emphasis added). Ergo, if the political subdivision does not incur “any increased costs,” the Hancock Amendment does not apply. In a more recent Missouri Supreme Court opinion, the court reaffirmed its holding in *Miller v. Director of Revenue*, 719 S.W.2d 787, 788-89 (Mo. 1986) and ruled that a political subdivision must “experience increased costs” before a Hancock Amendment violation can be found. *City of Jefferson*, 916 S.W.2d at 795.

Section 167.131 provides a mechanism for Area School Districts to fund the costs associated with students transferring pursuant to the new mandate created by Section 167.131. The test is whether this mechanism covers “the full cost[s]” of the new mandate. *Rolla*, 837 S.W.2d at 7. If Area School Districts incur increased costs, a Hancock Amendment violation exists. Based on the evidence presented during the hearing conducted on August 6 and 7, 2012, the Court finds that Independence 30 School District, Lee’s Summit R-VII School District and North Kansas City 74 School District will incur increased costs as a result of Section 167.131, but Blue Springs R-IV School District and Raytown C-2 School District will not.

In addition, Area School Districts contend that in order to determine if Area School Districts will incur increased costs it is improper for the Court to compare the tuition payments required to be paid by KCPS to the actual costs associated with educating students transferring pursuant to Section 167.131. Area School Districts argue that if Section 167.131 provides a mechanism or formula to reimburse tuition costs to Area School Districts then this same mechanism or formula should be utilized to determine the actual costs associated with educating students transferring pursuant to Section 167.131. This argument is flawed.

The test is whether Section 167.131 imposes actual increased costs on Area School Districts. The proper method to determine this issue is to compare revenue (tuition reimbursement payments)

to actual costs (the financial impact to Area School Districts). The Court endeavored to make this comparison in its Findings of Fact and determined that Independence 30 School District, Lee's Summit R-VII School District and North Kansas City 74 School District will incur increased costs as a result of Section 167.131, but Blue Springs R-IV School District and Raytown C-2 School District will not.

State of Missouri Arguments

The State argues that the student transfer projections contained in the statistical survey and Report conducted and completed by Patron Insight, Inc, and Mr. DeSieghardt are unreliable and rife with speculation and conjecture. In support of its position, the State cites *Brooks et. al. v. State of Missouri et. al.*, 128 S.W.3d 844, 849 (Mo. 2004). In *Brooks*, the Missouri Supreme Court held that a Hancock Amendment violation requires "specific proof" of increased costs and cannot be supported by mere "common sense or speculation and conjecture." *Id.* The State alleges that the Report is unreliable because Blue Springs R-IV School District, Raytown C-2 School District, Independence 30 School District, North Kansas City 74 School District and Lee's Summit R-VII School District were specifically referenced during the telephone survey, and no other school districts were referenced by name. The State contends that this reference to specific school districts may have influenced the answers provided by the respondents and resulted in a higher percentage of respondents indicating that they would send their child(ren) to one of the Area School Districts. In addition, the State argues that the findings in the Report are merely projections and do not satisfy the specific proof required under *Brooks*. The State contends that actual requests or applications by parents seeking to transfer their children are required to meet the burden set out in *Brooks*. The Court is not so convinced.

During the evidentiary hearing conducted on August 6 and 7, 2012, the Court heard from the Chief Financial Officers from each of the Area School Districts. Every Chief Financial Officer testified that the type of information and data contained in the Report is the type of information and data that Area School Districts and other school districts commonly and routinely rely upon to predict and project student enrollment numbers. In addition, the Report is the only available information resource for Area School Districts to use for planning for students transferring pursuant to Section 167.131. Despite the legitimate concerns raised by the State that specifically naming Blue Springs R-IV School District, Raytown C-2 School District, Independence 30 School District, North Kansas City 74 School District and Lee's Summit R-VII School District during the telephone survey may have influenced the results, the Court finds the statistical survey and Report credible and reliable. It is reasonable for Area School Districts to rely on the Report to predict, project and prepare for the students who will transfer to Area School Districts pursuant to Section 167.131.

The State also argues that the financial impact of Section 167.131 as alleged by Area School Districts and adopted by the Court is exaggerated. The State contends that Area School Districts will be able to absorb students transferring pursuant to Section 167.131 without incurring the increased education costs and capital outlays suggested by the Chief Financial Officer of each of the Area School Districts. The Court finds otherwise.

The Chief Financial Officer of each of the Area School Districts testified to the increased costs associated with educating students from KCPS and the capital outlays that must be invested to enroll the projected students transferring to Area School Districts pursuant to Section 167.131. While the increased costs to Area School Districts calculated by the Chief Financial Officers are projections, the Court finds these projections and calculations very credible and reliable. The projections made by the Chief Financial Officer of each of the Area School Districts are very

conservative. For example, the Court heard testimony that Independence 30 School District incurred \$250,000.00 in expenses converting the student records of KCPS's students into its digital student record database after annexing a portion of KCPS in 2007. These types of miscellaneous expenses were not included in the projected costs calculated by Area School Districts, but Area School Districts will surely experience such costs and expenses. Therefore, the Court finds that the financial impact of Section 167.131 as alleged by Area School Districts and adopted by the Court is not exaggerated and may actually underestimate the increased costs that Area School Districts will experience as a result of student transfers pursuant to Section 167.131.

Final Concerns

The Court cautions school districts affected by Section 167.131 and parents and students interested in transferring from KCPS that many of the issues associated with the transfer of students pursuant to Section 167.131 remain unresolved. This Court's ruling will undoubtedly be appealed. Considering the myriad of evidentiary and legal issues involved in this opinion, the Court's ruling could very likely be reversed and/or significantly altered. In addition, the evidence which supports the Court's ruling is in flux and constantly changing. The costs associated with students transferring pursuant to Section 167.131 could vary year to year for KCPS and school districts enrolling transferring students. In fact, this Court's ruling could alter the projected number of students expected to transfer to eligible school districts resulting in increased costs for Blue Springs R-IV School District and Raytown C-2 School District not contemplated by the Court. Therefore, additional Hancock Amendment challenges could be brought by KCPS and school districts that enroll students residing in KCPS pursuant to Section 167.131.

The Court's ruling also assumes KCPS will pay Area School Districts and other accredited school districts receiving student transfers from KCPS the tuition required by Section 167.131.

Pursuant to the holding in *Brooks*, the Court cannot speculate as to KCPS's ability to pay the tuition reimbursements as required by Section 167.131, but the Court has struggled with this issue. At some unknown breaking point, KCPS may very well become unable to pay receiving school districts the tuition reimbursement required by Section 167.131. If KCPS cannot make these tuition reimbursements, a Hancock Amendment violation will likely exist for each and every school district that enrolls students residing in KCPS pursuant to Section 167.131.

II. KCPS's Transfer Policy and Section 167.131

In the event that the Court did not find that Section 167.131 violated the Hancock Amendment, Area School Districts seek judgment declaring that KCPS's Transfer Policy violates Section 167.131 and requests the Court enjoin and prohibit KCPS from enforcing or acting pursuant to the Transfer Policy. Likewise, Center joins Area School Districts in requesting judgment declaring that KCPS's Transfer Policy violates Section 167.131. Area School Districts and Center allege that KCPS's Transfer Policy violates Section 167.131 in three ways:

1. The policy states that KCPS will only pay tuition for students who have attended school in KCPS the previous two semesters;
2. The policy provides that KCPS may dispute the requested tuition amounts submitted from an admitting school district, and KCPS will only pay its per-pupil ADA state allocation to the admitting school district until the State Board of Education resolves the dispute; and KCPS will only make tuition payments to admitting school districts on a monthly basis and not upfront for the entire year or semester;
3. The policy states that KCPS will only reimburse reasonable transportation expenses to the following school districts:
 - a. North Kansas City 74 School District
 - b. Independence 30 School District
 - c. Raytown C-2 School District
 - d. Center 58 School District

In its Summary Judgment Order, the Court entered judgment in favor of Area School Districts and Center and against KCPS and declared that KCPS's Transfer Policy violates Section 167.131 by requiring student transferees to have attended KCPS the previous two semesters. In its Summary Judgment Order, the Court also entered judgment in favor of KCPS and against Area School Districts and Center and declared that Area School Districts and Center lack standing to challenge the transportation provision of KCPS's Transfer Policy. Finally, in its Summary Judgment Order the Court denied Area School Districts and Center's Summary Judgment requests regarding KCPS's Transfer Policy related to the amount and timing of tuition reimbursement payments and found that these provisions in KCPS's Transfer Policy do not violate Section 167.131. Pursuant to Missouri Rules of Civil Procedure, this issue was not finally resolved by the Court's Summary Judgment Order; and on August 6, 2012, Area School Districts, Center and KCPS filed with the Court stipulations involving additional facts related to this unresolved issue. After considering these additional facts, the Court finds that KCPS's Transfer Policy related to the timing and amount of tuition payments does not violate Section 167.131.

Area School Districts and Center allege that KCPS's Transfer Policy violates Section 167.131 by stating that KCPS will not pay more than its per-pupil ADA state allocation for each student admitted by a receiving school district if there is a disagreement on the rate of tuition between KCPS and the admitting school district. In addition, Area School Districts and Center allege that KCPS's Transfer Policy violates Section 167.131 by restricting tuition reimbursements to monthly payments and not paying the entire tuition to the admitting school districts upfront for the entire year or semester. Section 167.131 is silent on whether upfront payment of tuition is required; and therefore, KCPS's policy does not violate the statute in this respect. In addition, Section 167.131 contemplates that the amount of tuition payments in which the admitting school

districts are entitled to receive may be disputed, and the statute provides that the State Board of Education shall resolve such disputes. Therefore, Section 167.131 is not violated if a dispute arises regarding the amount of tuition reimbursement between KCPS and an admitting school district, and KCPS, per its Transfer Policy, only pays its per-pupil ADA state allocation until the State Board of Education resolves such disputes. As such, the provision regarding the amount and timing of tuition reimbursement payments in KCPS's Transfer Policy does not violate Section 167.131. For this reason, the Court enters judgment in favor of KCPS and against Area School Districts and Center and declares that KCPS's Transfer Policy related to the amount and timing of tuition reimbursement payments does not violate Section 167.131.

FINAL JUDGMENT AND ORDER

ACCORDINGLY, IT IS ORDERED, ADJUDGED, DECLARED AND DECREED THAT, based upon the foregoing Findings of Fact and Conclusions of Law, as well as the entire record in this case:

1. Judgment is entered in favor of Ronald Hammons, Misty Rigdon, Jacque Gragg, Spencer Fields and Philip Holloway and against the State of Missouri, and the Court declares that Section 167.131 of the Revised Statutes of Missouri violates Article X, Sections 16-22 of the Missouri Constitution as to Independence 30 School District, Lee's Summit R-VII School District and North Kansas City 74 School District.
2. Judgment is entered in favor of the State of Missouri and against Mark Cromwell and James Bradshaw, and the Court declares that Section 167.131 of the Revised Statutes of Missouri does not violate Article X, Sections 16-22 of the Missouri Constitution as to Blue Springs R-IV School District and Raytown C-2 School District.

3. Judgment is entered in favor of School District of Kansas City, Missouri and against Blue Springs R-IV School District, Independence 30 School District, Lee's Summit R-VII School District, North Kansas City 74 School District, Raytown C-2 School District and Center School District #58, and the Court declares that School District of Kansas City, Missouri's policies and procedures entitled Transfer of Students to Accredited School Districts in Jackson or Adjoining Counties related to the amount and timing of tuition reimbursement payments does not violate Section 167.131 of the Revised Statutes of Missouri.

IT IS SO ORDERED.

August 16, 2012

DATE



THE HONORABLE W BRENT POWELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was duly delivered by fax or email on AUGUST 16th, 2012 to:

JOHN ANDREW HIRTH, Attorney for Defendant, (573) 751-0774,

RAY EDWARD SOUSLEY, Attorney for Defendant, 1211 MCGEE STE 1103, KANSAS CITY, MO 64106

(816) 418-7411,

WILLIAM JOSEPH HATLEY, Attorney for Plaintiff, 1000 WALNUT STREET, SUITE 1400, KANSAS CITY, MO 64106-2140

(816) 474-3216, jhatley@spencerfane.com

DUANE ALLEN MARTIN, Attorney for Plaintiff, 2401 BERNADETTE DR #117, COLUMBIA, MO 44204

(573) 777-9648,



Law Clerk or JAA, Division 11