

FILED
DEC 13 2013
COLE COUNTY
CIRCUIT COURT

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

THE SCHOOL DISTRICT OF KANSAS CITY)
33 d/b/a KANSAS CITY PUBLIC SCHOOLS,)
COUNTY OF JACKSON, STATE OF)
MISSOURI,)
1211 McGee Street)
Kansas City, MO 64106,)

Plaintiff,)

v.)

Case No. _____)

THE MISSOURI STATE BOARD)
OF EDUCATION,)
Serve: Missouri Attorney General's Office)
Supreme Court Building)
207 W. High Street)
Jefferson City, MO 65102)

and)

MISSOURI DEPARTMENT OF)
ELEMENTARY AND SECONDARY)
EDUCATION,)
Serve: Missouri Attorney General's Office)
Supreme Court Building)
207 W. High Street)
Jefferson City, MO 65102,)

Defendants.)

**VERIFIED PETITION FOR MANDAMUS, DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

Plaintiff The School District of Kansas City 33, doing business as Kansas City Public Schools, County of Jackson, State of Missouri (hereinafter "KCPS"), by and through its undersigned counsel, for its Petition for Mandamus, Declaratory Judgment, and Injunctive Relief ("Petition") and pursuant to R.S. Mo. § 536.150, states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff KCPS is a Missouri public school district organized pursuant to R.S. Mo. § 162.461, and located in Jackson County, Missouri.
2. Defendant Missouri State Board of Education (the "State Board") is the head of defendant Missouri Department of Elementary and Secondary Education ("DESE") organized pursuant to R.S. Mo. § 161.020 and located in Jefferson City, Cole County, Missouri.
3. This action is brought pursuant to R.S. Mo. § 536.010, *et seq.*
4. Jurisdiction and venue are proper in this Court pursuant to R.S. Mo. § 536.110(3).
5. This action is a non-contested case as provided by R.S. Mo. § 536.150.
6. The State Board and DESE can be served through the Missouri Attorney General's office at 207 W. High Street, Jefferson City, MO 65102.

ALLEGATIONS COMMON TO ALL COUNTS

KCPS Loses Accreditation

7. Under R.S. Mo. § 161.092(9), as amended on July 12, 2013, the State Board is authorized to classify the public schools of the state, subject to the limitations provided by law, establish requirements for the schools in each class, and formulate rules governing the inspection and classification of schools preparatory to classification.
8. Under 5 CSR 200-100.170, the State Board adopted by reference the Missouri School Improvement Program ("MSIP") Standards and Indicators Manual, which establishes the qualitative and quantitative standards for school districts.
9. The fourth cycle of the Missouri School Improvement Program, known as MSIP 4, became effective in 2006 and measured each school district's achievement of 14 performance

standards each year. In general, under MSIP 4, a district had to meet at least six standards to be provisionally accredited and at least nine standards to be fully accredited by the State Board.

10. Dr. John Covington became Superintendent of KCPS in 2009. Under his leadership, KCPS eliminated its budget deficit by closing twenty-six schools and cutting a third of the district's work force while initiating many educational reforms. On August 24, 2011, Dr. Covington abruptly resigned to take another job in Michigan.

11. On September 19, 2011, the State Board voted to change the classification of KCPS from "Provisionally Accredited" to "Unaccredited," citing KCPS's failure to improve its academic performance and its continuing instability in leadership. KCPS had achieved three of fourteen standards under MSIP 4 in its 2011 performance report, a decline from four in 2010. The loss of accreditation became effective on January 1, 2012.

Blue Springs School District Lawsuit

12. The Unaccredited District Tuition Statute, R.S. Mo. § 167.131, provides that "a school district that loses accreditation with the state board of education must pay tuition for any resident pupil who attends an accredited school in another district in the same or an adjoining county." Section 167.131 also establishes the tuition rate to be paid by the unaccredited district to the accredited district when a student elects to transfer pursuant to the statute.

13. Before KCPS's loss of accreditation took effect, seven taxpayers from the Jackson County school districts of Blue Springs R-IV, Independence 30, Lee's Summit R-VII, and Raytown C-2, as well as the North Kansas City 74 School District in Clay County (collectively "Petitioner Districts") sued the State Board and KCPS in Jackson County Circuit Court, arguing that § 167.131's requirement to admit students from KCPS was an unfunded mandate in violation of the Hancock Amendment, Mo. Const. Art. X, §§ 16 and 21 (hereinafter "Blue

Springs District Lawsuit”). The taxpayers alleged that the tuition the Petitioner Districts could charge KCPS under § 167.131 was insufficient to cover the increased costs they would incur if forced to admit KCPS students. The circuit court granted partial summary judgment to the taxpayers, concluding as a matter of law that § 167.131 imposed a new duty upon the Petitioner Districts. After a bench trial, the circuit court determined that new costs incurred to educate transfer students from KCPS would exceed recoverable tuition in the Lee’s Summit, Independence, and North Kansas City Districts, but not in the Blue Springs or Raytown Districts. All claims against KCPS were resolved on summary judgment before trial.

14. The Blue Springs District Lawsuit, captioned as *Blue Springs R-IV School District, et al. v. School District of Kansas City, Missouri, et al.*, SC 92932, was resolved on December 10, 2013, when the Missouri Supreme Court reversed the judgment in favor of the taxpayers in the Lee’s Summit, Independence, and North Kansas City School Districts and upheld the constitutionality of § 167.131 from the Hancock Amendment challenge, on the grounds that § 167.131 does not mandate a new or increased level of activity but merely reallocates responsibilities among school districts. This ruling opens the door to §167.131 transfers of students residing in KCPS as long as KCPS retains its “Unaccredited” classification.

St. Louis School District Regains Provisional Accreditation Under MSIP 4 Standards

15. The St. Louis Public School District (“SLPS”) became unaccredited in 2007 because of steady declines in its academic performance, concerns about its long-term financial stability, and turmoil in its leadership. A Special Administrative Board (“SAB”) was appointed in 2007 and charged with restoring SLPS to full accreditation status.

16. In August 2012, SLPS achieved seven of fourteen standards under MSIP 4 in its 2012 performance report, which met the standard for “Provisionally Accredited” status.

Missouri Commissioner of Education Chris Nicastro (“Commissioner Nicastro”) said the progress was not enough to recommend a change in SLPS’s “Unaccredited” classification.

17. However, based on the outcome of its 2012 performance report, the SAB requested that the State Board change the classification of SLPS to “Provisionally Accredited.” In October 2012, Commissioner Nicastro changed her previously stated position and recommended that SLPS’s classification be changed from “Unaccredited” to “Provisionally Accredited” based on SLPS’s improvement in specific areas, including academic performance and finances. In October 2012, the State Board accepted Commissioner Nicastro’s recommendation and changed SLPS’s classification from “Unaccredited” to “Provisionally Accredited,” effective on January 1, 2013. With the change in SLPS’s classification, as of January 1, 2013, there were three school districts remaining in Missouri that were classified as “Unaccredited”: KCPS in Kansas City and Normandy and Riverview Gardens in the St. Louis area.

Section 167.131 Transfers Severely Impact Normandy and Riverview Gardens Districts

18. After SLPS became unaccredited, some parents sought to have their children obtain § 167.131 transfers and tuition payments from SLPS that would enable them to attend school in the Clayton School District (“Clayton”). Both SLPS and Clayton objected to the enforcement of § 167.131. After the parents filed suit, Clayton and SLPS each maintained that § 167.131 was unenforceable because it created an unfunded mandate in violation of the Hancock Amendment, Missouri Const., Art. X, §§ 16, 22.

19. On June 11, 2013, in *Breitenfeld v. School District of Clayton*, 399 S.W.3d 816, 828-32 (Mo. banc 2013), the Missouri Supreme Court ruled that § 167.131 did not violate the Hancock Amendment because its tuition-payment provision did not impose a new or increased

activity or service on either the unaccredited district or accredited district, as would be necessary to create an unfunded mandate.

20. In the aftermath of the *Breitenfeld* decision, § 167.131 student transfers were implemented in the unaccredited Normandy and Riverview Gardens Districts for the 2013-14 school year. SLPS avoided any § 167.131 transfers because of its new “Provisionally Accredited” classification.. Approximately twenty-five percent of the students residing in the Normandy and Riverview Gardens Districts requested transfers to schools in accredited districts in the same or adjacent counties, including students not previously enrolled in the public schools. DESE estimated that the total costs to both districts for tuition payments to the transferee districts and transportation costs would exceed \$35 million, severely impacting both districts’ financial ability to provide a quality education to their remaining students.

21. DESE estimated that just the Normandy District’s costs of complying with § 167.131 transfers would be in excess of \$15 million for tuition payments and transportation costs for the more than 1,100 transferring students who then resided in the Normandy District (including \$756,000 for sixty-three students who were not previously enrolled in the public schools), which amounted to more than thirty percent of Normandy’s total budget. Even with school closures and layoffs, the Normandy District cannot educate the students remaining in the district with its remaining funds and faces bankruptcy by no later than the end of the 2013-14 school year. In September 2013, the State Board sought an additional \$6.8 million in state funding from the Missouri legislature to help the Normandy District survive until the end of the 2013-14 school year.

DESE Prepares for Breakup of KCPS Into Charter Schools

22. In the aftermath of Dr. Covington's resignation and KCPS's loss of accreditation, DESE and Commissioner Nicastro became convinced that KCPS could not turn itself around and began working covertly to orchestrate a break-up of KCPS into charter schools.

23. To that end, DESE and Commissioner Nicastro pushed through an amendment to R.S. Mo. § 162.081 ("Senate Bill No. 125"), enacted in July 2013, which accelerates the timetable under which the State Board can take over unaccredited districts. Under the prior version of R.S. Mo. § 162.081, the State Board had to wait two full school years after the school year in which the unaccredited classification was initially assigned before the district's corporate organization would lapse. Under the amended version of R.S. Mo. § 162.081 enacted in Senate Bill No. 125, the State Board can, upon a district's initial classification or reclassification as "Unaccredited," take immediate steps to establish the conditions under which the existing school board shall continue to govern, determine the date the district shall lapse, and determine an alternate governing structure for the district.

24. DESE and Commissioner Nicastro also engineered the hiring of Cities for Education Entrepreneurship Trust ("CEE-Trust") to develop a plan to break up KCPS into charter schools. According to its website, CEE-Trust is "a network of city-based foundations, non-profits and mayor's offices that work together to support education innovation and reform." Among the CEE-Trust members is the Ewing Marion Kauffman Foundation ("Kauffman Foundation") in Kansas City. The Kauffman Foundation is a strong proponent of urban charter schools and founded the Ewing Marion Kauffman School in 2011 as a public charter school within the boundaries of KCPS.

25. DESE's and Commissioner Nicastro's interest in retaining CEE-Trust arose from the work of the Mind Trust, CEE-Trust's parent organization, on a plan issued in December 2011 to reform the Indianapolis Public Schools ("IPS"). The IPS plan recommended that every school in the IPS district become a public charter school, dubbed "opportunity schools," with each school to have substantial control over its own funding, staffing, budgets, culture, curriculum, and services as long as the school met and sustained high performance goals.

26. In May and June 2013, DESE and Commissioner Nicastro worked behind the scenes with the Kauffman Foundation and another private foundation to make CEE-Trust the sole provider for a consulting project that would culminate in a report containing recommendations to DESE and the State Board for a "transformative plan" for KCPS (the "KCPS Project"). DESE worked closely with CEE-Trust on the statement of purpose and scope of work for the KCPS Project, which was to stress the IPS study that resulted in a recommendation of system-wide "opportunity schools." The Kauffman Foundation and another private foundation were to jointly fund the entire \$375,000 cost of the KCPS Project, and both foundations participated with DESE and CEE-Trust in the negotiation of a Memorandum of Understanding ("MOU") between DESE and CEE-Trust.

27. These negotiations between DESE, CEE-Trust, the Kauffman Foundation, and the other private foundation culminated in a final MOU, signed by CEE-Trust on June 17, 2013, which Commissioner Nicastro presented to the State Board for approval on June 18, 2013. The Kauffman Foundation, with the input of CEE-Trust, prepared the talking points for Commissioner Nicastro to use with the State Board to justify retaining CEE-Trust rather than opening up the process for bidding. However, on June 18, 2013, the State Board raised a number of concerns about the MOU with CEE-Trust, including the fact that DESE was proposing

moving forward with a group that was not identified through the typical process. As a result, Commissioner Nicastro informed CEE-Trust, the Kauffman Foundation, and the other private foundation that “we need to pause.”

28. In July 2013, after receiving a special one-time delegation of authority from the State of Missouri’s Office of Administration, DESE issued an Invitation For Bid (“IFB”) for the KCPS Project, now titled “Options to Address Chronic Underperformance in Struggling School Districts.” The general requirements for the project and qualifications for the contractor in the IFB tracked, nearly word for word, the MOU previously negotiated with CEE-Trust, merely substituting the word “contractor” for “CEE-Trust.” CEE-Trust’s response to the IFB also tracked, nearly word for word, the language of the MOU, and CEE-Trust’s bid price of \$385,000 was close to the \$375,000 contract price agreed to in the MOU. Community Training and Assistance Center, Inc., the Curators of the University of Missouri, and The New Teacher Project, Inc. all submitted competing bids for the project at far lower bid prices.

29. On July 15, 2013, Commissioner Nicastro wrote that “we’ve been working on this for some time and that we are preparing to develop a statewide plan to address all the persistently low achieving and failing public schools and districts.” Commissioner Nicastro stated that she was trying to convince Governor Nixon that “creating an achievement district or something along those lines with an office dedicated to talent and an office dedicated to innovation/charter expansion could be his legacy.” Commissioner Nicastro further asserted that “[w]hile I hope for legislative and/or Governor leadership and/or support for this work, I’m prepared to move forward with or without it.” She stated that her “intention would be to have a plan in place by January so as to allow for adequate transition time if necessary.”

30. In August 2013, DESE evaluated the competitive bids based on the subjective criteria of (1) experience, reliability and expertise of personnel (max. 45 points) and (2) method of performance (max. 10 points) along with the objective factor of cost (max. 45 points). Two of the bid evaluators, Margie Vandeven and Robin Coffman, had participated in the prior negotiation of the MOU with CEE-Trust. Not surprisingly, CEE-Trust was awarded the maximum number of points for the two subjective criteria, enabling it to prevail by a single point over the competing \$124,700 bid of Community Training and Assistance Center, Inc., although CEE-Trust's bid was more than three times higher. As with the MOU, the entire cost of the CEE-Trust contract is being funded by the Kauffman Foundation and another private foundation.

31. In August 2013, DESE submitted as an action item to the State Board the recommendation that the State Board authorize DESE to move forward with the execution of the plan of action for KCPS and other unaccredited districts that was to be prepared by CEE-Trust and submitted in January 2014.

KCPS Improves Academic Performance and Achieves Provisional Accreditation Status

32. For many years, KCPS has educated students drawn primarily from the urban core of Kansas City, Missouri. Approximately ninety-seven percent of students enrolled in KCPS fall into one or more of the following five "subgroups" which have historically performed below the state total: Black, Hispanic, English language learners ("ELL"), low-income students eligible for free or reduced lunch ("FRL"), and students with disabilities who are being educated pursuant to an individual education plan ("IEP"), *i.e.*, special education. The students in these subgroups commonly are referred to as being "at risk" of academic failure.

33. Approximately twenty-four percent of the students enrolled in KCPS are ELL students, which is by far the highest percentage in the state. The statewide average of ELL

students is approximately 1.4%. SLPS has the next-highest percentage of ELL students, with approximately eleven percent. For purposes of MSIP assessment, these ELL students are measured just like other students in math and science within one year of enrollment and in English language arts within two years of enrollment.

34. Dr. Stephen Green was named Superintendent of KCPS in April 2012 after serving as Interim Superintendent since August 2011. Under Dr. Green's leadership, KCPS began a focused, multi-year initiative to improve the academic performance of its students. In August 2012, KCPS achieved five of fourteen standards under MSIP 4 in its 2012 performance report, up from three in its 2011 performance report. KCPS narrowly missed meeting the standard in a mathematics category, which would have meant provisional accreditation status. KCPS thus remained unaccredited for the 2012-13 school year.

35. In December 2011, the State Board approved the fifth version of the Missouri School Improvement Program ("MSIP 5"), to become effective for the 2012-13 school year. The MSIP 5 standards are more rigorous than MSIP 4 and are intended to raise the bar for the academic standards expected from Missouri public schools. MSIP 5 includes a scoring guide by which DESE computes an Annual Performance Report ("APR") score for each district and school. For kindergarten through twelfth grade ("K-12") districts, the APR score is comprised of scores for each of the MSIP 5 performance standards for (1) academic achievement; (2) subgroup achievement; (3) college or career readiness; (4) attendance rate; and (5) graduation rate. Under MSIP 5, three distinct metrics focusing on status, progress, and growth (where applicable) are all tabulated to calculate a single comprehensive score used to determine the

accreditation status^{1/} of a school district. Each district's APR score provides an objective analysis of the district's attainment of the MSIP 5 performance standards and indicators.

36. Under MSIP 5, for K-12 districts, the maximum number of points available for academic performance (56), subgroup achievement (14), college and career readiness (30), attendance rate (10), and graduation rate (30) come to a total of 140 possible APR points. The percentage of overall points earned on the APR defines each district's APR accreditation status for that year, using one of the following accreditation categories: (1) "Accredited with Distinction," meaning the district earned ninety percent or more of the possible APR points and met other criteria as established by the State Board; (2) "Accredited," meaning the district earned seventy percent or more of the possible APR points; (3) "Provisionally Accredited," meaning the district earned fifty percent or more of the possible APR points; or (4) "Unaccredited," meaning the district earned fewer than fifty percent of the possible APR points.

37. For the 2012-13 school year, KCPS used a systematic approach to regaining accreditation by maintaining a laser-like focus on district- and building-level data. At the district level, KCPS mastered the new MSIP 5 scoring matrix, created district- and building-level targets, and implemented an internal tracking and auditing system for academics, college and career readiness, graduation rate, and attendance. At the individual school level, KCPS set each school's goals and targets based on its individualized academic and performance data. Quarterly benchmarks were put in place to monitor and measure progress in each school. At the level of individual students, KCPS established goals and targets based on each student's personalized academic data, and teachers monitored and measured each student's progress. KCPS used instructional coaches to work with teachers who had the lowest performing students. This

^{1/} The term "accreditation status" is used when describing the status of a district's APR for a given year. The term "accreditation classification" is used to describe the official designation voted and approved by the State Board for a district.

strategic approach provided teachers with the knowledge to move their students forward regardless of their current performance level.

38. KCPS's systematic approach to improving its students' performance worked. When its MSIP 5 APR score was released in August 2013, KCPS earned an APR score of eighty-four, amounting to sixty percent of the 140 possible APR points, which put KCPS squarely in the middle of the "Provisionally Accredited" range. KCPS currently shares provisional accreditation status with twenty-one other school districts throughout Missouri, including the Hickman Mills District in Kansas City. The APR score for KCPS as a whole was also better than the APR scores for eight of the charter schools operating within KCPS's boundaries.

39. The much-improved performance of KCPS under the more rigorous MSIP 5 standards stood in marked contrast to the performance of SLPS, which the State Board had just reclassified as provisionally accredited in October 2012 based on its progress under the MSIP 4 standards. Under the new MSIP 5 standards, SLPS received only 24.6% of the possible APR points, falling deeply back into the "Unaccredited" accreditation status range. Likewise, the two other districts (besides KCPS) that the State Board had previously classified as "Unaccredited" also performed poorly under the MSIP 5 standards. Normandy received 11.1% and Riverview Gardens 28.6% of the possible APR points, both also deeply in the "Unaccredited" status range.

40. In addition to the dramatic improvement in its students' performance since becoming unaccredited, KCPS also has substantially improved its financial and leadership stability. KCPS's revenues exceeded its expenses for each of fiscal years 2011, 2012, and 2013. KCPS's annual compliance audits resulted in zero findings of error in both 2012 and 2013. In

addition, Dr. Stephen Green has served as KCPS's superintendent since 2011 and is under contract through 2016, with an option for two additional years.

The State Board Accepts DESE's Recommendation and Refuses to Change KCPS's Unaccredited Classification

41. MSIP 5 distinguishes between a district's APR accreditation status and its accreditation classification. While the percent of overall points earned on the APR defines each district's APR accreditation status that year, a district's accreditation classification does not change until the State Board rules otherwise. DESE is to review each district's accreditation status and the APR supporting data to identify a district's accreditation status and trends in performance outcomes, and use this data review process to make accreditation classification recommendations to the State Board. Under MSIP 5's standards, DESE's recommendations are to be made based on APR status and APR trends and may include other factors as appropriate, including financial status and/or leadership stability.

42. In the development of the MSIP 5 standards, stakeholders expressed the concern that the more rigorous MSIP 5 standards could negatively affect APR scores and accreditation classifications in the near term until districts and schools could adjust. To address these concerns, MSIP 5 states that "[t]hree (3) APRs, each reflecting three (3) years of performance data, will be used for classification recommendations. This means that for the vast majority of districts, the department will review a district's 2013 APR, 2014 APR, and 2015 APR for MSIP 5 accreditation classifications in the fall of 2015. If a district's accreditation warrants a change from its classification prior to 2015, the district's [MSIP 4] APR will be reviewed in conjunction with the MSIP 5 APR."

43. In December 2012, DESE was asked when districts would be held accountable to the MSIP 5 performance standards and responded that it "does not intend to make MSIP 5

classification recommendations to the [State Board] until the district has acquired three MSIP 5 APRs, fall 2015. However the [State Board] may consider changing a district's classification at any time as outlined in the MSIP 5 rule." The reason for the requirement of three MSIP 5 APR's was to prevent a school district from being unfairly penalized by a change to a new standard of measurement. It was not to preclude recognition of districts that improved their performance.

44. Nonetheless, during the summer of 2013, before any MSIP 5 APR scores were announced, Commissioner Nicastro repeatedly asserted that DESE would not recommend any change in accreditation classification for any district for the 2013-14 school year.

45. In August 2013, following the release of its dramatically improved APR score, KCPS formally requested that the State Board consider reclassification of KCPS as "Provisionally Accredited" in light of KCPS's achievement of an APR of 84 for its 2013 MSIP 5 score, falling in the mid-range of "Provisionally Accredited" status, and its previous 2012 MSIP 4 score of five of fourteen standards (just missing six), the most standards met by KCPS since 2007.. KCPS was then the only district in Missouri with a "Provisionally Accredited" status and an "Unaccredited" classification.

46. On September 4, 2013, the entire senior leadership team of KCPS made a detailed presentation to DESE, seeking DESE's recommendation that KCPS's classification be changed from "Unaccredited" to "Provisionally Accredited" in recognition of KCPS's progress in reaching "Provisionally Accredited" status. KCPS outlined the systematic and sustainable steps taken in the 2012-13 school year that drove its improvement to "Provisionally Accredited" status and its operational roadmap for the 2013-14 school year that would advance the academic performance of KCPS's students, maintain KCPS's financial stability, and further improve KCPS's MSIP 5 APR score in 2014.

47. On September 17, 2013, the leadership of KCPS made a presentation to the State Board in support of KCPS's request that the State Board change its classification of KCPS from "Unaccredited" to "Provisionally Accredited."

48. By letter dated September 26, 2013, Commissioner Nicastro informed KCPS that DESE would not be recommending to the State Board that KCPS's accreditation status be changed this year.

49. On October 22, 2013, DESE made a presentation to the State Board, during which it recommended that KCPS's classification remain as "Unaccredited." DESE's presentation singled out KCPS's academic status for criticism, while giving short shrift to the many areas in which KCPS had made progress and scored points under the binding MSIP 5 standard, pushing its APR score up to the middle of the "Provisionally Accredited" range. DESE completely ignored other factors, such as KCPS's financial status and leadership stability, which were to be considered under MSIP 5 in conjunction with DESE's classification recommendation.

50. By letter dated October 23, 2013, DESE notified KCPS that the State Board had met during its regular session on October 22, 2013, and that during the meeting, no action was taken to change KCPS's current classification from "Unaccredited." KCPS later learned that the State Board was not willing to reject Commissioner Nicastro's recommendation.

51. In a press release dated December 9, 2013, the State Board justified its decision not to change KCPS's "Unaccredited" classification by focusing on the academic performance of KCPS's so-called "open enrollment" schools, while ignoring the MSIP 5 criteria applicable to the entire district that are, by law, to be considered in determining KCPS's accreditation classification. The press release is further evidence that the State Board did not conduct a proper

independent analysis of KCPS's performance under the applicable MSIP 5 standards before reaching its decision to reject any change in KCPS's accreditation classification.

52. The State Board's decision, at DESE's recommendation, to maintain KCPS's "Unaccredited" classification was essential to carrying out the State Board's and DESE's plans to break up KCPS into charter schools after CEE-Trust issues its report in January 2014. Under R.S. Mo. § 162.081, the State Board can only take over the governance of KCPS as long as KCPS retains its "Unaccredited" classification. Commissioner Nicastro, DESE, and the State Board are not about to let KCPS's rapidly improving performance and new MSIP 5 status as "Provisionally Accredited" interfere with Commissioner Nicastro's, DESE's, and the State Board's plans to break up KCPS. Thus, the State Board's adoption of Commissioner Nicastro's recommendation was not because KCPS had yet to achieve "Provisionally Accredited" or "Accredited" APR scores for three consecutive years under MSIP 5, but rather because the State Board had to maintain KCPS's "Unaccredited" classification to retain the authority to implement DESE's and Commissioner Nicastro's plans.

53. Even apart from DESE's, Commissioner Nicastro's, and the State Board's plans to break up KCPS, the State Board's refusal to change KCPS's "Unaccredited" classification could subject KCPS to severe operational disruption and financial distress in light of the Missouri Supreme Court's having upheld again the constitutionality of the Unaccredited District Tuition Statute, R.S. Mo. § 167.131, in the Blue Springs School District Lawsuit. Any student residing in KCPS can soon apply for § 167.131 transfers as long as KCPS retains its "Unaccredited" classification, with such transfers most likely to commence at the beginning of the 2014-15 school year. Based on the recent experience of the Normandy and Riverview Gardens Districts, KCPS would face significant disruption in the operation of its schools if a

sizable percentage of its students transferred to accredited districts in Jackson or adjacent counties. KCPS would have to pay the tuition and transportation costs both for its students and for any other students residing in KCPS who previously attended private or charter schools. As Commissioner Nicastro has acknowledged, the § 167.131 tuition formula substantially overcompensates the receiving districts and would have severe repercussions on the financial viability of KCPS and its ability to educate its remaining students.

54. In the meantime, SLPS, which, with a 2013 MSIP 5 APR score deep in the “Unaccredited” range, is performing far worse than KCPS, retains its “Provisionally Accredited” classification previously granted by the State Board and thus faces no imminent threat of DESE-orchestrated restructuring or § 167.131 transfers.

COUNT I – DECLARATORY JUDGMENT AND MANDAMUS

55. KCPS incorporates the allegations of all preceding paragraphs as if set forth herein.

56. The State Board’s authority to classify public school districts in Missouri is governed by the requirements of MSIP 5, which establishes the current qualitative and quantitative standards for the classification of all school districts.

57. The State Board’s decision, based on DESE’s recommendation, to deny KCPS’s request to change its accreditation classification from “Unaccredited” to “Provisionally Accredited” was unlawful, unreasonable, arbitrary, capricious, and/or involved an abuse of discretion, for the following reasons (together with others that discovery may reveal):

- a. The State Board did not apply the MSIP 5 standards, but instead denied KCPS’s request for reclassification as “Provisionally Accredited,” so the State Board could retain its authority under R.S. Mo. § 162.081 to implement Commissioner Nicastro’s and

DESE's plans to break up KCPS into charter schools. DESE's bid-rigging to hire CEE-Trust was in furtherance of this plan.

b. Alternatively, the State Board failed to exercise independent discretion in denying KCPS's request for reclassification as "Provisionally Accredited," but instead simply accepted Commissioner Nicastro's recommendation, which was based on a selective, incomplete, and misleading review of KCPS's performance under the MSIP 5 standards. Commissioner Nicastro's motivation for her recommendation was to maintain the State Board's authority over KCPS as an "Unaccredited" district so the State Board could implement her plan to break up KCPS into charter schools, using the recommendations of the CEE-Trust study as cover.

c. Alternatively, the State Board misapplied the MSIP 5 standards in denying KCPS's request for reclassification as "Provisionally Accredited," by (i) relying on a selective, incomplete, and misleading review of KCPS's performance under the MSIP 5 standards; (ii) relying on factors, such as the performance of "open enrollment schools," that are outside of the MSIP 5 standards, and/or (iii) using the MSIP 5 guideline requiring three consecutive MSIP 5 APR scores as a weapon to lock the rapidly improving KCPS into place as an "Unaccredited" district, while at the same time retaining the "Provisionally Accredited" classification of the underperforming SLPS with a 2013 APR score deep in the "Unaccredited" range.

58. As a direct and proximate result of the State Board's decision, based on DESE's recommendation, to deny KCPS's request to change its classification from "Unaccredited" to "Provisionally Accredited," KCPS has been damaged in the following respects:

a. KCPS faces the imminent threat that the State Board, at DESE's and Commissioner Nicastro's recommendation, will break up KCPS into charter schools pursuant to the recommendations of the CEE-Trust report, which would not improve the educational outcomes of KCPS's students and would abandon those students most "at risk" of academic failure.

b. KCPS faces paying tuition and transportation costs for § 167.131 student transfers, likely beginning in the 2014-15 school year, by a sizeable percentage of the students residing in the district, whether they are currently KCPS students or not, which would substantially disrupt the operation of KCPS's schools, halt any further progress toward achieving full accreditation, and cause severe financial distress.

c. KCPS faces continuing challenges in recruiting well qualified teachers, principals, and administrators because of the uncertainties created by its "Unaccredited" classification.

d. KCPS faces higher costs of lease financing and an inability to pass bond issues for capital improvements as long as it is classified as "Unaccredited."

WHEREFORE, plaintiff KCPS respectfully requests that the Court issue its judgment declaring that defendant State Board's refusal of KCPS's request to change its classification from "Unaccredited" to "Provisionally Accredited" is void and unenforceable; mandating that defendant State Board grant KCPS the classification of "Provisional Accreditation," conditioned upon KCPS maintaining at least "Provisionally Accredited" status in 2014 and 2015 with its MSIP 5 APR scores; granting KCPS its costs, including reasonable attorneys' fees; and such other relief as this Court deems just and proper.

COUNT II – INJUNCTIVE RELIEF

59. KCPS hereby incorporates by reference the allegations contained in all preceding paragraphs as if set forth fully herein.

60. This Court has the authority to grant injunctive relief pursuant R.S. Mo. § 536.150.

61. Pursuant to R.S. Mo. § 536.120, this Court may issue all necessary and proper process to stay or require an agency to stay the enforcement of its order, or to temporarily grant or extend or require the agency temporarily to grant or extend relief denied or withheld, pending the final disposition of such proceedings for review. Such stay or other temporary relief by a reviewing court may be conditioned upon such terms as shall appear to the court to be proper.

62. KCPS will suffer immediate and irreparable injury, loss or damage if it is not granted injunctive relief, given that:

a. KCPS faces the imminent threat that the State Board, at DESE's and Commissioner Nicastro's recommendation, will break KCPS up into charter schools pursuant to the recommendations of the CEE-Trust report, which would not improve the educational outcomes of KCPS's students and would abandon those students most "at-risk" of academic failure; and

b. KCPS faces paying tuition and transportation costs for § 167.131 transfers by a sizeable percentage of the students residing in the district, whether they are currently KCPS students or not, which would cause substantial disruption in the operation of KCPS's schools and severe financial distress.

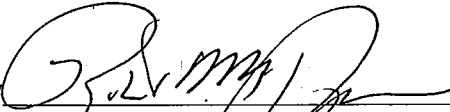
63. There is no way to compensate KCPS for the losses associated with the unlawful, unreasonable, arbitrary, and capricious decision of the State Board to deny KCPS's request to

change its classification from “Unaccredited” to “Provisionally Accredited,” because such decision poses an immediate threat to the survival of KCPS as a district and to the substantial progress being made by KCPS toward regaining full accreditation.

64. Given the nature of the rights and responsibilities implicated, the public interest is best served by the issuance of an injunction and other relief which orders the State Board to change the classification of KCPS to “Provisionally Accredited” on a temporary basis so as to allow a *de novo* review of the State Board’s decision, after this Court has heard evidence on the merits, made a record, decided the facts, and determined whether the State Board’s decision is unreasonable, unlawful, arbitrary, capricious, or otherwise involves an abuse of discretion, before the State Board’s decision results in (1) the State Board taking control of the governance of KCPS as authorized by R.S. Mo. § 162.081, and/or (2) the State Board implementing § 167.131 student transfers of students residing in KCPS’s boundaries.

WHEREFORE, plaintiff KCPS respectfully requests that this Court enter an order which preliminarily orders defendant State Board to change the classification of KCPS to “Provisionally Accredited” until such further order of this Court, or, alternatively, preliminarily enjoins and prohibits defendants State Board, DESE, and their agents, staff, and employees, from taking any affirmative action, stemming from KCPS’s “Unaccredited” classification, to take control of the governance of KCPS as authorized by R.S. Mo. § 162.081 and/or to implement § 167.131 student transfers of students residing in KCPS’s boundaries, until further order of this Court; and for such other and further relief as this Court deems just and proper.

BRYAN CAVE LLP

By  _____

Robert M. Thompson Mo. # 38156

Terence J. Thum Mo. # 32362

Christopher C. Grenz Mo. # 62914

1200 Main Street, Suite 3800

Kansas City, MO 64105

Telephone: (816) 374-3200

Facsimile: (816) 374-3300

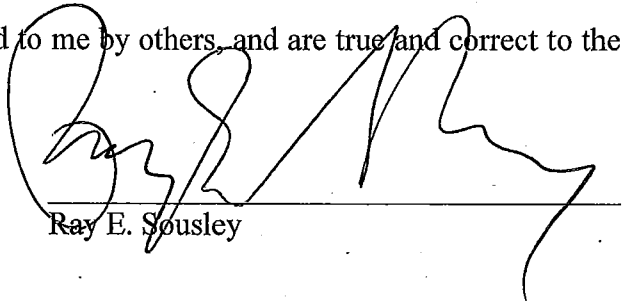
Attorneys for Plaintiff Kansas City Public Schools

VERIFICATION

STATE OF MISSOURI)
) SS:
COUNTY OF JACKSON)

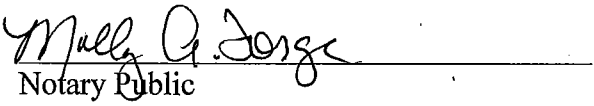
Ray E. Sousley, of lawful age, being duly sworn upon his oath, states as follows:

1. I am Chief Legal Officer of the Kansas City Public Schools.
2. The facts alleged in the Verified Petition are based upon matters known personally to me and/or on information provided to me by others, and are true and correct to the best of my knowledge, information and belief.



Ray E. Sousley

Subscribed and sworn to before me, a Notary Public, on this 11th day of December, 2013.



Notary Public

My commission expires:

