

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

FILED

JUN 13 2014

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

NORMANDY SCHOOL DISTRICT,)
et al.,)
)
Plaintiffs,)
)
v.)
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

Cause No. 14SL-CC01721

Division 12

PLAINTIFFS' FIRST AMENDMENT TO PETITION BY INTERLINEATION

COME NOW all Plaintiffs (including William H. Humphrey) ("Plaintiffs" herein), pursuant to Missouri Rule of Civil Procedure Rule 55.33, and amend their Petition by Interlineation by adding a new Count X and Count XI as follows:

COUNT X

**DECLARATORY JUDGMENT – THE MISSOURI STATE BOARD OF
EDUCATION CANNOT LAPSE THE NORMANDY SCHOOL DISTRICT EFFECTIVE
JUNE 30, 2014 PURSUANT TO §167.131.4 (2013 RSMo, CUM. SUPP.)**

Come now Plaintiffs and for Count X of the Petition directed to Defendants State of Missouri, Missouri State Board of Education and the Department of Elementary and Secondary Education ("DESE") and state as follows:

134. Plaintiffs hereby incorporate paragraphs 1-88 of their Petition filed herein as if fully restated and alleged in this paragraph 134.

135. On May 20, 2014, Defendant Missouri State Board of Education decided to lapse the Normandy School District effective June 30, 2014, pursuant to the purported authority of Mo. Rev. Stat. § 162.081 (2013 Cum. Supp.). A true copy of §162.081 is attached hereto as Exhibit B.

136. A copy of the Missouri State Board of Education's Resolution lapsing the District (as published on DESE's website) is attached hereto as Exhibit C.

137. In making the aforesaid decision to lapse the Normandy School District, the Missouri State Board of Education did not hold any type of hearing at which parties testified under oath or in which the District was allowed to present opposing evidence or contest the State Board's facts, reasoning or decision.

138. The Missouri State Board of Education had previously classified Normandy School District as unaccredited on or about September 18, 2012, with that classification effective January 1, 2013. At that time, the Missouri State Board of Education did not set forth any date for the lapse of Normandy School District.

139. On and after January 1, 2013 through the present time, the Missouri State Board of Education has not appointed any type of special administrative board to operate any part of the District. Rather, the publicly elected seven-member school board has continually served as the school board for the District at all times from January 1, 2013 through the present time.

140. Mo. Rev. Stat. § 162.081.1 (2013 Cum. Supp.) provides as follows:

1. Whenever a school district in this state fails or refuses in any school year to provide for the minimum school term required by section 163.021 or is classified unaccredited, the state board of education shall, upon a district's initial classification or reclassification as unaccredited:

(1) Review the governance of the district to establish the conditions under which the existing school board shall continue to govern; or

(2) Determine the date the district shall lapse and determine an alternative governing structure for the district.

141. Mo. Rev. Stat. § 162.081.3 (2013 Cum. Supp.) provides in part as follows:

3. Upon classification of a district as unaccredited, the state board of education may:

(1) Allow continued governance by the existing school district board of education under terms and conditions established by the state board of education; or

(2) Lapse the corporate organization of the unaccredited district and:

[This subsection (2) goes on to provide that the State Board may appoint a special administrative board; determine an alternative governing structure; attach the territory of the lapsed district to another district(s); or establish one or more school districts within the territory of the lapsed district].

142. Under the express terms of Mo. Rev. Stat. § 162.081.4 (2013 Cum. Supp.), the Missouri State Board of Education cannot lapse the Normandy School District for at least “two consecutive school years” after the District has been classified as unaccredited.

143. Mo. Rev. Stat. § 162.081.4 (2013 Cum. Supp.) provides in its entirety as follows:

4. If a district remains under continued governance by the school board under subdivision (1) of subsection 3 of this section and either has been unaccredited for three consecutive school years and failed to attain accredited status after the third school year or has been unaccredited for two consecutive school years and the state board of education determines its academic progress is not consistent with attaining accredited status after the third school year, then the state board of education shall proceed under subdivision (2) of subsection 3 of this section in the following school year.

144. In accordance with Mo. Rev. Stat. § 162.081.4 (2013 Cum. Supp.), since Normandy School District was classified as unaccredited effective January 1, 2013, the earliest that the Missouri State Board of Education could lapse the District would be the school year after two consecutive school years from the unaccredited classification, or for the 2016-2017 school year (if the conditions set forth in the statutory subsection regarding academic progress then applied).

145. Pursuant to Mo. Rev. Stat. § 162.081.4 (2013 Cum. Supp.), the Missouri State Board of Education has no authority or right to lapse the Normandy School District effective June 30, 2014.

146. Accordingly, Plaintiff's seek a declaration that the Missouri State Board of Education's decision to lapse Normandy School District effective June 30, 2014 is unlawful, void and of no force and effect.

WHEREFORE, Plaintiffs pray for a judgment declaring that the Missouri State Board of Education has no right or authority to lapse the Normandy School District effective June 30, 2014 and that the State Board's May 20, 2014 decision and resolution to lapse the Normandy School District are void and of no effect; for Plaintiffs' costs, including court costs and attorneys' fees incurred herein; and for such further relief in favor of Plaintiffs as the Court deems just and proper in the premises.

COUNT XI

INJUNCTIVE RELIEF – ENJOIN THE UNLAWFUL ATTEMPT TO LAPSE THE NORMANDY SCHOOL DISTRICT

Come now Plaintiffs (including William H. Humphrey) and for Count XI of the Petition directed to Defendants State of Missouri, Missouri State Board of Education and the Department of Elementary and Secondary Education (“DESE”) and state as follows:

147. Plaintiffs hereby incorporate paragraphs 1-88 of its Petition filed herein and paragraphs 135-146 above of this Amended Petition as if fully restated and alleged in this paragraph 147.

148. Normandy School District and its attending students will suffer immediate and irreparable injury, loss or damage if the Missouri State Board of Education, State of Missouri and DESE are not enjoined from lapsing the District. Normandy School District faces the

imminent threat (by June 30, 2014) of being eliminated as a legal entity, a political subdivision of the State of Missouri, and such a result would:

A. Substantially disrupt and harm the administration of educational services for children attending or planning to attend District Schools for the 2014-2015 school year. Due to the chaos and uncertainty created by a lapse and State takeover, more students can be expected to transfer out of the District, further exacerbating the District's financial condition due to continuing payments of millions of dollars in tuition and transportation expenses under § 167.131 RSMo. The termination of all teacher and other employee contracts as mandated by the State Board (Exhibit C hereto) will cause many District teachers and other employees to seek other employment and may leave little or no time for the District to hire new staff needed to operate the school system. Any new special administrative board would have the impossible task in less than two months to prepare for a new school year, hire or rehire an entire group of teachers and staff for the whole District, determine financial needs, budget, plan a curriculum and initiate steps for attempting to make academic progress for the District and its students;

B. Unlawfully eliminate the District's current Board of Education publicly elected by voters to administer the School District by the State Defendant's failure to comply with the time requirements set forth in Mo. Rev. Stat. § 162.081.4 (2013 Cum. Supp.); and

C. The State Defendants will, as they have done for the 2013-2014 school year, continue to require the "new" District to pay the unconstitutional and unlawful tuition and transportation expenses for pupils transferring to accredited school districts, further decimating the finances to operate a school district and hindering needed enhanced services and supplies to children attending schools in the district.

149. Normandy School District cannot be compensated for the losses associated with the unlawful attempt to lapse the District effective June 30, 2014 because the lapse would eliminate the Normandy School District and its publicly appointed Board of Education, and substantially harm the educational services offered to children attending District schools.

150. It is in the public interest to make the State Defendants obey the law, including the time periods set forth in § 162.081.4 (2013 Cum. Supp.). It also is in the public interest to prevent the State Defendants from unlawfully lapsing a public school district and unlawfully eliminating its publicly elected school board.

WHEREFORE, Plaintiffs pray that the Court enter Orders and Judgments against defendants Missouri State Board of Education, State of Missouri and the Department of Secondary and Elementary Education (collectively the “State Defendants”) as follows:

(a) Preliminarily enjoining and prohibiting any and all State Defendants and their respective officers, agents, board members and employees from lapsing the Normandy School District effective June 30, 2014, or otherwise attempting to enforce the Missouri State Board of Education’s Resolution (Exhibit C hereto);

(b) Permanently enjoining all State Defendants and their respective officers, agents, board members and employees from lapsing the Normandy School District effective June 30, 2014, or otherwise attempting to enforce the Missouri State Board of Education’s Resolution (Exhibit C hereto);

(c) Awarding Plaintiffs their costs, including court costs and reasonable attorneys’ fees incurred herein, to be paid by the State Defendants (State of Missouri, Missouri State Board of Education and DESE), and for such further relief as the Court deems just in the premises.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document is being provided to all Defendants by electronic mail on this 13th day of June, 2014 and will be personally served by a Special Process Server.



Missouri Revised Statutes

Chapter 162 School Districts Section 162.081

August 28, 2013

Failure to provide minimum school term, effect of--unaccredited schools, hearing required, board of education options--special administrative board, duration of authority.

162.081. 1. Whenever any school district in this state fails or refuses in any school year to provide for the minimum school term required by section 163.021 or is classified unaccredited, the state board of education shall, upon a district's initial classification or reclassification as unaccredited:

- (1) Review the governance of the district to establish the conditions under which the existing school board shall continue to govern; or
- (2) Determine the date the district shall lapse and determine an alternative governing structure for the district.

2. If at the time any school district in this state shall be classified as unaccredited, the department of elementary and secondary education shall conduct at least two public hearings at a location in the unaccredited school district regarding the accreditation status of the school district. The hearings shall provide an opportunity to convene community resources that may be useful or necessary in supporting the school district as it attempts to return to accredited status, continues under revised governance, or plans for continuity of educational services and resources upon its attachment to a neighboring district. The department may request the attendance of stakeholders and district officials to review the district's plan to return to accredited status, if any; offer technical assistance; and facilitate and coordinate community resources. Such hearings shall be conducted at least twice annually for every year in which the district remains unaccredited or provisionally accredited.

3. Upon classification of a district as unaccredited, the state board of education may:

- (1) Allow continued governance by the existing school district board of education under terms and conditions established by the state board of education; or
- (2) Lapse the corporate organization of the unaccredited district and:

(a) Appoint a special administrative board for the operation of all or part of the district. The number of members of the special administrative board shall not be less than five, the majority of whom shall be residents of the district. The members of the special administrative board shall reflect the population characteristics of the district and shall collectively possess strong experience in school governance, management and finance, and leadership. Within fourteen days after the appointment by the state board of education, the special administrative board shall organize by the election of a president, vice president, secretary and a treasurer, with their duties and organization as enumerated in section 162.301. The special administrative board shall appoint a superintendent of schools to serve as the chief executive officer of the school district and to have all powers and duties of any other general superintendent of schools in a seven-director school district. Any special administrative board appointed under this section shall be responsible for the operation of the district until such time that the district is classified by the state board of education as



provisionally accredited for at least two successive academic years, after which time the state board of education may provide for a transition pursuant to section 162.083; or

(b) Determine an alternative governing structure for the district including, at a minimum:

a. A rationale for the decision to use an alternative form of governance and in the absence of the district's achievement of full accreditation, the state board of education shall review and recertify the alternative form of governance every three years;

b. A method for the residents of the district to provide public comment after a stated period of time or upon achievement of specified academic objectives;

c. Expectations for progress on academic achievement, which shall include an anticipated time line for the district to reach full accreditation; and

d. Annual reports to the general assembly and the governor on the progress towards accreditation of any district that has been declared unaccredited and is placed under an alternative form of governance, including a review of the effectiveness of the alternative governance; or

(c) Attach the territory of the lapsed district to another district or districts for school purposes; or

(d) Establish one or more school districts within the territory of the lapsed district, with a governance structure specified by the state board of education, with the option of permitting a district to remain intact for the purposes of assessing, collecting, and distributing property taxes, to be distributed equitably on a weighted average daily attendance basis, but to be divided for operational purposes, which shall take effect sixty days after the adjournment of the regular session of the general assembly next following the state board's decision unless a statute or concurrent resolution is enacted to nullify the state board's decision prior to such effective date.

4. If a district remains under continued governance by the school board under subdivision (1) of subsection 3 of this section and either has been unaccredited for three consecutive school years and failed to attain accredited status after the third school year or has been unaccredited for two consecutive school years and the state board of education determines its academic progress is not consistent with attaining accredited status after the third school year, then the state board of education shall proceed under subdivision (2) of subsection 3 of this section in the following school year.

5. A special administrative board appointed under this section shall retain the authority granted to a board of education for the operation of the lapsed school district under the laws of the state in effect at the time of the lapse and may enter into contracts with accredited school districts or other education service providers in order to deliver high-quality educational programs to the residents of the district. If a student graduates while attending a school building in the district that is operated under a contract with an accredited school district as specified under this subsection, the student shall receive his or her diploma from the accredited school district. The authority of the special administrative board shall expire at the end of the third full school year following its appointment, unless extended by the state board of education. If the lapsed district is reassigned, the special administrative board shall provide an accounting of all funds, assets and liabilities of the lapsed district and transfer such funds, assets, and liabilities of the lapsed district as determined by the state board of education. Neither the special administrative board nor its members or employees shall be deemed to be the state or a state agency for any purpose, including section 105.711, et seq. The state of Missouri, its agencies and employees shall be absolutely immune from liability for any and all acts or omissions relating to or in any way involving the lapsed district, the special administrative board, its members or employees. Such immunities, and immunity doctrines as exist or may hereafter exist benefitting boards of education, their members and their employees shall be available to the special administrative board, its members and employees.

6. Neither the special administrative board nor any district or other entity assigned territory, assets or funds from a lapsed district shall be considered a successor entity for the purpose of employment contracts, unemployment compensation payment pursuant to section 288.110, or any other purpose.

7. If additional teachers are needed by a district as a result of increased enrollment due to the annexation of territory of a lapsed or dissolved district, such district shall grant an employment interview to any permanent teacher of the lapsed or dissolved district upon the request of such permanent teacher.

8. In the event that a school district with an enrollment in excess of five thousand pupils lapses, no school district shall have all or any part of such lapsed school district attached without the approval of the board of the receiving school district.

(L. 1963 p. 200 § 3-8, A.L. 1973 H.B. 158, A.L. 1992 S.B. 581, A.L. 1993 S.B. 380, A.L. 1998 S.B. 781, A.L. 2005 S.B. 287, A.L. 2013 S.B. 125)

(Source: RSMo 1959 § 165.013)

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Missouri General Assembly

Resolution of the State Board of Education

WHEREAS, Article IX, Section 1(a) of the Constitution of the State of Missouri requires that a free public school system provide for the gratuitous instruction of all persons in this state under the age of twenty-one years; and

WHEREAS, Article IX Section 2(a) vests the supervision of instruction in the public schools in the State Board of Education; and

WHEREAS, Missouri Law, Section 162.081 (RSMo, 2013 Cum Supp), provides that, upon a district's initial classification or reclassification as unaccredited, that the State Board of Education shall review the governance of the district to establish the conditions under which the existing school board shall continue to govern; or determine the date the district shall lapse and determine an alternative governing structure for the district; and

WHEREAS, the State Board of Education on September 18, 2012, classified the Normandy School District as unaccredited, with the classification effective January 1, 2013; and

WHEREAS, the Normandy Transition Task Force was appointed by the Commissioner of Education, with findings received by the Department of Elementary and Secondary Education on May 12, 2014; and

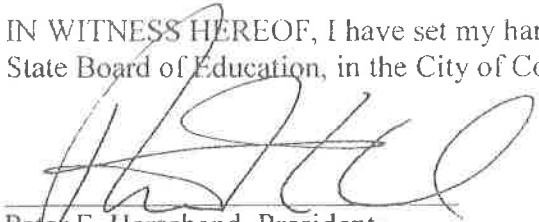
WHEREAS, the Normandy Transition Task Force made recommendations relating to an alternative governance structure within the existing boundaries of the Normandy School District, with the goal of providing children quality neighborhood schools.

NOW, THEREFORE, we, the members of the State Board of Education, by virtue of the powers vested in this Board by the Missouri Constitution and laws of the State of Missouri, do hereby lapse the Normandy School District effective June 30, 2014, with contracts with the Normandy School District voided with district lapse, and hereby establish the Normandy Schools Collaborative effective July 1, 2014, to be governed as follows:

- 1) That, pursuant to Section 162.081.3 (2)(b) a Joint Executive Governing Board shall be appointed by the State Board of Education.
- 2) That from the members of the Joint Executive Governing Board, the State Board of Education shall appoint a chairman to preside over the Joint Executive Governing Board.
- 3) That the Joint Executive Governing Board shall be authorized to retain and exercise all authority granted to the Normandy Board of Education and to take actions necessary for the operation of the Normandy Schools Collaborative subject to the advice and consent of the State Board of Education.

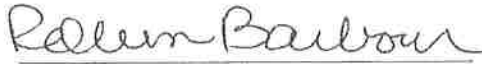


IN WITNESS WHEREOF, I have set my hand and caused to be affixed the Seal of the State Board of Education, in the City of Columbia, on this 20th day of May 2014.



Peter F. Herschend, President
State Board of Education

ATTEST:



Robin Barbour, Executive Secretary
State Board of Education