

**THE DETERMINATION THAT THE ST. LOUIS PUBLIC SCHOOLS  
IS UNACCREDITED IS UNLAWFUL, ARBITRARY AND CAPRICIOUS**

1. The St. Louis Public Schools (hereinafter “SLPS”) met sufficient resource and process standards as well as 6 performance standards and therefore should be provisionally accredited. The 2006 DESE Annual Progress Report (November, 2006) for SLPS showed that five of the performance standards required to maintain “provisional accreditation” had been met. Those standards are 9.1.1 MAP Grades 3-5 Mathematics; 9.1.2 MAP Grades 3-5 Communication Arts; 9.4.1 Advanced Courses; 9.4.2 Career Education Courses; and 9.4.4 Career Education Placement. (See Exhibit 1 attached).

In addition to these standards, the Board also met the College Placement standard. Exhibits 2 and 3 attached hereto identify students that were placed in post secondary education in accordance with the MSIP standards in 2004 and 2005 respectively. In addition, SLPS advised DESE of corrected data for 2001. (See Exhibit 4 attached) Exhibit 5 is the calculation which demonstrates that with this data, SLPS has earned four points under this standard and, therefore, has met Standard 9.4.3.

DESE questioned the increase in students attending post secondary education in 2004 and 2005 and subsequently demanded additional data for all five years (2001-2005), including copies of graduation programs listing each student, placement type, race, gender, birthdate, name of college attended and city and state of college attended. The reason for the increase is that for these years the Board of Education retained National Student Clearinghouse (“NSC”) to identify students who were placed in colleges and are

to be included in the calculation of this standard. NSC is a national company specializing in tracking student placements with a national database. Exhibit 6 attached hereto is the agreement hiring NSC to do this work.

DESE's decision to require additional data was arbitrary and capricious. A process for the submission of additional data for 2001, 2002 and 2003 was not established by DESE until February 1, 2007 and DESE set a February 28<sup>th</sup> deadline. This demand for additional data by DESE is not supported by Rule and is arbitrary and capricious.

Since this type of individual student data had never been required before, SLPS central office had not collected the graduate contact sheets for 2001, 2002, or 2003 which would include at least some of the information DESE requested. The high school counselors who were responsible for the follow-up contacts were unable to locate the individual student call records in their buildings. An attempt was made to contact over 4,000 graduates in a 4-week period to reconstruct the follow-up summaries. Given the high mobility of a large portion of the St. Louis population and the fact six years had passed since some of the students graduated, contacting the graduates or a close relative proved difficult.

The Board acted diligently to collect the data requested but the task was too large. The Board requested additional time to compile this information, but this request was

arbitrarily denied. There was no valid reason to deny the Board the time necessary to collect the requested information.

2. The Career Education Course Standard 9.4.2 was met according to DESE in December 2006. (See Exhibit 1)

This standard had been met in prior years. DESE advised on October 6, 2006 that additional courses may also qualify and could be included in the calculation. Exhibit 7 is a document from DESE indicating additional courses from the Career Education Course listing to be added. In addition, DESE identified that courses from Clyde C. Miller and the former St. Louis Career Academy had not been included in the current or prior years' calculation of career education course offerings. On November 2, 2006, SLPS responded with the additional courses. (See Exhibit 8)

Thereafter, DESE changed the numbers used in the APR without explanation and the number of courses went down. Even if there was duplication in the Clyde C. Miller courses, there should be some additional courses, not a reduction. The calculations and manipulation of the data by DESE is arbitrary and capricious. As of May 25, 2007 no detailed written explanation was provided explaining what data was used and the formulas used, despite repeated requests. It did not arrive by the time of this submission. DESE's failure to explain its calculation is arbitrary, capricious and a denial of due process.

SLPS was notified by DESE on March 20, 2007 that the SLPS no longer met the Career Education Course standard. At that time, DESE cited duplication of career course numbers for Miller Career Academy as the reason for the change in status. SLPS had entered the data in the core data screens for this high school according to the specific instructions provided by DESE staff. The superintendent requested a meeting, which DESE granted, to explain the purported loss of this standard. The scheduled meeting on April 24, 2007 was cancelled due to the illness of DESE employee Becky Kemna. A rescheduled meeting was requested as soon as possible, but Ms. Kemna notified the Superintendent that she would not be available until May 23, 2007, a day after the appeal hearing was initially scheduled on this issue. SLPS received for the first time, on May 23, 2007, a general oral explanation from DESE as to why the District lost credit for the Career Education Course standard. The District was still not provided with the data used by DESE or the formulas.

A reason given on May 23, 2007 is that Clyde C. Miller Academy is not an Area Career Center. (See email from Ms. Kemna dated May 22, 2007 attached as Exhibit 9). However, this is incorrect. The State Board granted Area Career Center status effective when Clyde C. Miller opened in August 2004 in a newly constructed facility. (See State Board Minutes attached as Exhibit 10). SLPS staff has been orally told it is a unique anomaly and treated different from other districts. There is no valid Rule identifying the differences, the criteria or methodology used to assess this standard. Such action and reasoning by DESE is arbitrary, capricious and violates DESE's statutory duty to notice and publish its rules.

3. There is no valid Rule which establishes the MSIP criteria being used to unaccredit the District and/or “off cycle” determination of accreditation status.

State Regulation 5 CSR 50-345.100, and the materials incorporated into the Rule, effective July 1, 2006, purport to establish resource standards, process standards, and performance standards to implement the Missouri School Improvement Program Act (hereinafter referred to as the MSIP Rule). However, the MSIP Rule fails to establish any meaningful criteria for a school district to use to determine if it will meet these three standards of the MSIP Rule. Instead, the standards given are unconstitutionally vague, failing to give reasonable notice of what is required. Furthermore, the MSIP Rule fails to establish any criteria for the State Board to utilize in applying these three standards of the MSIP Rule to determine whether a school district is accredited, provisionally accredited, or unaccredited as required by statute. Consequently, the MSIP Rule is so arbitrary and capricious as to create such substantial inequity and be unreasonably burdensome on the school districts affected, including, but not limited to, SLPS. It is also unconstitutionally vague and therefore invalid.

The State Board and DESE utilize a document entitled “Understanding Your Annual Performance Report” (hereinafter the “Unadopted Rule”) to determine whether a school district is accredited, provisionally accredited, or unaccredited.

This Unadopted Rule is an “agency statement of general applicability that implements, interprets, or prescribes law or policy;” consequently, it purports to be a rule, as defined in Section 536.010(6), RSMo. However, the Unadopted Rule has not been lawfully adopted as a rule, pursuant to Section 536.021, RSMo, and is, therefore, null, void and unenforceable, pursuant to Section 536.021., RSMo.

SLPS meets many of the resource standards, process standards, and performance standards required by the MSIP Rule. However, the State Board’s accreditation determination pursuant to its Unadopted Rule fails to take into consideration any of the resource standards and process standards, which SLPS meets. Furthermore, the accreditation criteria in the Unadopted Rule fail to take into consideration performance standards required by the MSIP Rule, such as reading achievement.

Additionally, there is no justification for the Unadopted Rule to arbitrarily create, or for the State Board and DESE to utilize, the fourteen performance standards in the Unadopted Rule from the six achievement standards described in the MSIP Rule or to ignore one of the achievement standards required by the MSIP Rule. Finally, there is no justification for including “subgroup achievement” as one of the fourteen performance standards when “subgroup” and “subgroup achievement” are not defined or even discussed in the MSIP Rule.

SLPS is hereby placing the State Board and DESE on notice in writing, pursuant to Section 536.021.9, RSMo, that the action of declaring SLPS unaccredited, pursuant to

the Unadopted Rule, is based upon the agency's statement of general applicability which should have been adopted as a rule, as required by Sections 536.010 to 536.050, RSMo. Consequently, SLPS will seek to recover its attorney fees against the State Board and DESE to the extent permitted by law in any subsequent litigation challenging the validity of the Unadopted Rule.

4. The State Board action is also arbitrary and capricious as applied to SLPS because the same consideration and actions have not and are not applied to other similarly situated Missouri School Districts. The Wellston School District, which has met less than 6 performance standards, is designated "Interim Accreditation," a category of accreditation that did not exist prior to its state "take over." As stated in the Commissioner's Newsletter of May 22, 2006 posted on the DESE website, Wellston was granted this "interim" status because DESE wanted to give the district "a chance to regroup and move forward." (See Exhibit 11 attached). Additionally, according to DESE, it was granted this "interim" status because the district could not survive the financial implications of tuitioning out its students, and DESE did not want "to transfer Wellston's problems to another district." (See Exhibit 11 attached). The failure to allow SLPS the same opportunity demonstrates that DESE and the State Board's actions are arbitrary and capricious. The arbitrary and capricious nature of these actions are further demonstrated since Wellston was given two years after an initial finding of unaccreditation to improve, whereas St. Louis was provided no such opportunity.

Other school districts in the state, including three in the St. Louis area (Hancock Place, Normandy, Riverview Gardens), and the only other large urban school district in the state, Kansas City, also failed to meet six standards in their 2006 Annual Performance Review, some attaining only three(3) standards. (See Exhibit 12 attached) All, however, have retained either Accredited or Provisionally Accredited status. The purported action directed solely at the SLPS and not applied to other districts is arbitrary and capricious.

5. The current financial condition of the SLPS is not a basis to change its accreditation status “off cycle”. The financial condition of the SLPS is in a significant measure, the result of reduction in funding by the State of Missouri. As stated in the Financial Overview and Analysis of the SLPS prepared by Dr. Leonard R. Westbrook as requested by DESE, the factors included a 15.5% drop in State aid as well as the loss of students due to increases in charter school enrollment.

In the early 2000’s, the Board had positive operating fund balances. Beginning in FY 2004 and continuing into fiscal year 2008, with state funding continuing to be dramatically limited, the Board approved the reduction in expenditures including the closure of schools and reduction of personnel.

In FY 2004, the State Board of Education, DESE and the State of Missouri were fully aware of the financial condition and agreed that the Board could borrow up to \$49,000,000.00 from the desegregation capital account in order to fund the foreseeable operating fund deficits. The State Board and DESE agreed that the repayment of those



borrowed funds need not occur until beginning with the 2005 fiscal year. (See Exhibit 13 attached) That payment schedule was thereafter extended by a loan modification agreement that was again agreed to by DESE and the State of Missouri the following fiscal year. (See Exhibit 14 attached) Therefore, the fiscal condition of the SLPS was not only well-known but accepted and agreed to by the State Board and DESE.

During these operating fund deficits in FY 2004, 2005 and 2006, the SLPS remained provisionally accredited by the State Board. Exhibit 15 shows that the ending fund balances beginning with FY 2005 through FY 2007 have improved in the reduction in the negative fund balance each year. Thus, the fiscal condition of the SLPS has improved over the past three years. DESE has continued to agree and accept the financial condition precipitated by the loans and the expenditures in 2003-2004. Therefore, it is unreasonable, arbitrary and capricious for DESE or the State Board to now rely upon the fiscal condition as a reason to change the accreditation status of the SLPS.

6. The action taken by DESE and the State Board is unconstitutional.

a.) The State Board reacted unfavorably to the resignation of SLPS Superintendent Creg Williams on July 17, 2006. Immediately thereafter, the State Board began a process to rely on certain portions of SB 781 (codified as 162.1100 RSMo, See Exhibits 16, 17 attached) to attempt to transfer “powers” vested in the Board of Education of the City of St. Louis by unaccrediting the District. A finding of unaccredited status was the most expedient means available to the State Board to act and

the State Board had prejudged and was biased in its consideration of the accreditation of SLPS. The State Board began a course of conduct to attempt to divest from the Board of Education certain power, first by creating the Danforth/Freeman Task Force. The Task Force worked upon the assumption that the SLPS would be found unaccredited and the TSD would be reconstituted by the State Board. That overwhelming predetermination by the State Board has denied the Board, the SLPS and parents and students a fair and impartial tribunal before the State Board. This denial of substantive and procedural due process has infected this entire proceeding and invalidates the State Board's actions.

b.) Section 162.1100 is a special law directed only at the SLPS, in violation of Article III, Section 40 of the Missouri Constitution, which prohibits the General Assembly from making any local or specials laws "creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts" or "regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes." Mo. Const. art. III, § 40(21), (24). All other school districts are governed by Section 162.081 of the Missouri Statutes and 5 CSR 50-345.100(3)-(8) and are given two years after being assigned unaccredited status to improve their accreditation before being subject to lapsing. Neither DESE nor the State Board provided any written warnings by Rule or otherwise placing SLPS on notice of an "off cycle" change in its accreditation at any time since SLPS was assigned provisionally accredited status in 2002. No other school district has been reviewed in this manner and such inequitable treatment violates

the Missouri Constitution's prohibition on special legislation found in Article III, Section 40.

7. Section 162.1100.3 provides that “[i]n the event that the school district loses its accreditation, upon the appointment of a chief executive officer, any powers granted to any existing school board in the City not within a County on or before August 28, 1998, shall be vested with the Special Administrative Board of the Transitional School District” (“TSD”).

Importantly, only the powers which existed with the SLPS Board as of August 28, 1998 purport to vest with Transitional School District. Thus any and all powers granted to the SLPS Board after August 28, 1998 are retained by the SLPS Board, while powers granted on or before that date would vest with the Special Administrative Board of the TSD. Thus, for example, pursuant to Section 162.1100.5 and the Desegregation Settlement Agreement (See Exhibit 18 attached), the power to collect and use the desegregation sales tax will remain vested with the SLPS Board. The TSD presented a sales tax to the voters of the City of St. Louis on February 2, 1999. Under section 162.1100.2 the sales tax, which was approved by City of St. Louis voters, was “assigned to the SLPS Board after dissolution or termination of the transitional district.” See also Exhibit 18 at 34. Thus, upon the dissolution of the TSD by the State Board of Education in 1999 the power to receive the proceeds of the sales tax and the increased state aid attributable to the SLPS pursuant to Senate Bill 781 and the phase-in period of Senate Bill 287 was and continues to be vested in the SLPS Board.

Many other powers which were granted to the Board of Education after August 28, 1998 remain with the SLPS Board of Education. Some of these powers were contained in statutory provisions that were first enacted after August 28, 1998. Other powers were granted to the Board in a previous version of a statute that was subsequently repealed and reenacted by the General Assembly in order to amend the statutory section.

Powers vested in the Board since August 28, 1998 include, but are not limited to:

- Establish a written policy of discipline
- Sponsor a charter school
- File objections with a proposed sponsor of a charter school or with the state board of education if a charter is granted
- Adopt an emergency preparedness plan to address the use of school resources in the case of a natural disaster or community emergency
- Provide special educational services for handicapped children three years of age or more residing in the district
- Prepare an estimate of the amount of money to be raised by taxation for the ensuing school year, the rate required to produce the amount, and the rate necessary to sustain the school or schools of the district for the ensuing school year, to meet principal and interest on the bonded debt of the district and to provide the funds to meet other legitimate district purposes, and determine what part of the total authorized rate shall be used to provide revenue for each of the funds
- Transfer any portion of the unrestricted balance remaining in the incidental fund to the teachers' fund
- Invest funds in the teachers', incidental, capital projects or debt service fund not needed within a reasonable period of time for the purpose for which the money was received
- Hold hearings to determine whether a request for a waiver of residency requirement should be granted, and grant or reject such waiver requests

- File a civil action to recover from a parent or guardian the costs of school attendance for any pupil who was enrolled in the district and whose parent or guardian filed false information to satisfy residency requirements
- Require a parent or guardian to provide a sworn statement indicating whether a student has ever been expelled at another school
- Adopt a resolution to lower the compulsory attendance age to sixteen years
- Authorize summary suspension of pupils by principals for period not to exceed ten school days and by a superintendent for period not to exceed 180 school days, and to hear appeals of such summary suspension
- Provide transportation to and from school for any public school pupil not otherwise eligible for transportation under the provisions of state law, prescribe reasonable rules and regulations as to eligibility for transportation if the parents or guardian of the pupil agree in writing to pay the actual cost of transporting the pupil, and establish the cost of the transportation and the time or times and method of payment
- Authorize a school nurse to maintain an adequate supply of prefilled auto syringes of epinephrine
- Place teachers on leave of absence as part of reduction in force due to decrease in student enrollment, school district reorganization or the financial condition of the school
- Contract with and employ legally qualified probationary teachers, notify probationary teachers in writing of unsatisfactory work and terminate probationary teachers
- Appoint the superintendent of schools
- Hold hearings with regard to the removal of permanent teachers for cause, and vote to remove such teachers following such hearing
- Appoint four trustees to the board of trustees of the teacher and school employee retirement system
- Determine content of the district's instruction in human sexuality and ensure that all instruction in human sexuality is appropriate to the age of the students receiving such instruction
- Include service-learning as part of any course contributing to the satisfaction of credits necessary for high school graduation and provide

support for the use of service-learning as an instructional strategy at any grade level

- Require schools to observe Veterans Day and determine activities to constitute observance
- Purchase and loan free textbooks for all children who are enrolled in grades kindergarten through twelve in the public schools of the district
- Prepare annually a calendar for the school term, specifying the opening date and providing a minimum term of at least one hundred seventy-four days and one thousand forty-four hours of actual pupil attendance
- Purchase apparatus, equipment and furnishings for its school and operations by entering into lease purchase agreements with vendors
- Define the scope of the district audit, select an independent auditor and insure implementation of audit recommendations
- Provide for proper accounting of pupil transportation data and require school bus operators to conduct and prepare record of the daily pre-trip inspection for each school bus
- If District contains a priority school, the Board shall submit a school improvement plan for each priority school to DESE
- Board dissatisfied with classification designation may challenge by appealing to Commissioner of Education
- Collection and expenditure of ad valorem property taxes, including debt service levies
- Collection and expenditure of Desegregation Sales Tax
- Power to enforce, exercise control over and implement the Desegregation Settlement Agreement
- Power to enforce all contracts between the Board of Education and all third parties entered into since August 28, 1998.

8. The creation of the TSD by the State Board, its action in finding SLPS unaccredited, and recommending a CEO of the TSD to effect the operation of Section

162.1100 is inconsistent with the terms of its agreement with the Board and has the effect of impeding or preventing the Board from carrying out its contractual obligations with the State Board and the other parties and signatories to the Desegregation Settlement.

That Agreement states in part:

“3. The Transitional District shall have no responsibility or authority to carry out any such programs or policies unless otherwise determined by the City Board;” (See Exhibit 18 at 34)

No such determination has been made by the SLPS Board. While the Agreement allows the reestablishment of the Transitional District, the agreement made by DESE and the State Board remains in effect.

9. Section 162.1100 RSMo violates other provisions of the Missouri Constitution.

The statute violates the source of power provision of the Missouri Constitution which provides that “all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only . . . .” Mo. Const. art. I, § 1. In interpreting this provision in the context of elections of city council members the Missouri Supreme Court has stated that:

As a matter of logic voters selecting their representatives to sit on a municipal legislative body are entitled to the same equal protection in the exercise of their right of suffrage as that enjoyed by voters on the state level selecting their state senators and representatives in the state and national legislative bodies . . . .

Armentrout v. Schooler, 409 S.W.2d 138, 143 (Mo. 1966). Under the TSD statute, officials elected by the voters in the City of St. Louis are immediately divested of many of their powers and replaced by an unelected governing body. The TSD statute directly impedes on the will of the voters of the City of St. Louis and therefore violates this constitutional provision.

Section 162.1100 violates the equal protection clauses of the Missouri Constitution. See Mo. Const. art I, § 2. In reviewing the accreditation of SLPS the State has demanded information from the SLPS that is not required of other similarly situated districts in violation of this provision. Further, neither Section 162.1100 nor any other statute provides for the establishment of a TSD in any other school district to immediately assume control of Board of Education functions upon a finding of unaccreditation.

The statute also violates the provision of the Missouri Constitution which provides “[t]hat the people of this state have the inherent, sole and exclusive right to regulate the internal government and police thereof . . . .” Mo. Const. art. I, § 3. This



provision has generally been cited for the principal that the police power is a fundamental political power reserved to the people by the Constitution. See, e.g., Section 162.1100 violates this provision by stripping St. Louis residents of their constitutional right to have their elected representatives govern their local school district without their consent.

Article I, Section 13 of the Missouri Constitution prohibits the legislature from making any law impairing the obligation of contracts. Mo. Const. art. I, § 13. Section 162.1100 violates this prohibition because it purports to vest many of the SLPS Board's powers in the TSD, thereby interfering with the Board's ability to continue to act under existing contracts, including the Desegregation Settlement Agreement.

Article I, Section 14 of the Missouri Constitution, the "open courts" provision provides that "the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character . . . ." Mo. Const. art. I, § 14. A violation of the open courts clause is established upon a showing that: (1) a party has a recognized cause of action; (2) the cause of action is being restricted; and (3) the restriction is arbitrary or unreasonable. Snodgrass v. Martin & Bayley, 204 S.W.3d 638 (Mo. 2006). The TSD statute violates the open courts provision because the appointment of the TSD arbitrarily and unreasonably attempts to preempt the Board of Education from exercising its right to judicial review of the State Board's decision to declare the SLPS unaccredited.

The TSD Statute also violates the Missouri Constitution's prohibition on unreasonable seizure of property. See Mo. Const. art. I, § 15. The relevant inquiry where a violation of this provision is claimed is whether a seizure of property by the state is reasonable. State v. Kriley, 976 S.W.2d 16 (Mo. Ct. App. 1998). Through the TSD statute, the state has unreasonably seized local property held by the SLPS Board and transferred the right to hold such property to the TSD, thereby violating Article I, Section 15.

Article I, Section 25 of the Missouri Constitution guarantees “[t]hat all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mo. Const. art I, § 25. The Missouri Supreme Court has recognized the importance of this right under the Missouri Constitution, noting: “That every citizen should be given both the right and the opportunity to vote is a matter of public interest . . . .” State v. Day-Brite Lighting, 240 S.W.2d 886, 892 (Mo. 1951). The right to vote is fundamental under the state constitution. Weinschenk v. State, 203 S.W.3d 201, 211 (Mo. 2006). Thus, where the legislature places a heavy burden on the right to vote, the Missouri Constitution requires that the burden be justified by a compelling interest and that the statute be narrowly tailored or necessary to accomplish the statutory goals. Id. The TSD Statute vests the statutory powers of an elected board in an appointed board, and thereby arbitrarily deprives voters in the City of St. Louis their constitutional rights under Article I, Section 25.

The TSD Statute also violates the separation of powers doctrine of Article II, Section 1 of the Missouri Constitution. That doctrine “proscribe[s] the exercise of powers or duties constitutionally assigned to one department by either of the two others.” Chastain v. Chastain, 932 S.W.2d 396, 398 (Mo. 1996). The constitutional mandate is violated if one branch of government impermissibly interferes with another’s performance of its constitutionally assigned power. State Auditor v. Joint Committee on Legislative Research, 956 S.W.2d 228, 231 (Mo. 1997).

Section 162.631 RSMo provides that the circuit court of the City of St. Louis has jurisdiction over the SLPS Board of Education and its officers to require them to account for their official conduct in the management and disposition of the funds, property and business to their charge, and that it has the authority to suspend a member or officer and to restrain any alienation of property of the public schools by members or officers of the Board. That section also provides that the Circuit Court’s jurisdiction shall be exercised upon petition filed by or at the instance of a Board of Education member or officer or at the instance of any ten citizens of the City. Id. By enacting the TSD Statute and vesting many of the powers of the SLPS Board in the TSD, an entity not covered by Section 162.631, the legislature has impermissibly interfered with the judiciary’s performance of its constitutionally assigned powers, thereby violating the separation of powers doctrine.

Article IX, Section 2(a) of the Missouri Constitution provides that “[t]he supervision of instruction in the public schools shall be vested in a state board of education . . . .” Mo. Const. art IX, § 2(a). Section 162.1100 allows the State Board to

exceed its power under the Missouri Constitution by authorizing the State Board to nominate members to the Board of the TSD to govern the district. This statutory grant of authority is unconstitutional under Article IX, Section 2(a).

The TSD Statute purports to take away the SLPS Board of some of its authority to tax and will alter taxation amounts established by the Missouri Constitution, in violation of Article X, Sections 10(a), 11(b) and 15. Article X, Section 10(a) of the Missouri Constitution provides: “Except as provided in this constitution, the general assembly shall not impose taxes on counties or other political subdivision or upon the inhabitants or property thereof for municipal, county or other corporate purposes.” Mo. Const. art. X, § 10(a). The term “other political subdivision” as used in Article X “shall be construed to include townships, cities, towns villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax.” Mo. Const. art X, § 15. This provision refers to and prohibits the imposition of a tax by the state for the performance of local functions. Three Rivers Junior College Dist. of Poplar Bluff v. Statler, 421 S.W.2d 235 (Mo. 1967); State ex rel. Priest v. Gunn, 326 S.W.2d 314 (Mo. 1959).

In addition, Article X, Section 11(b) sets tax limits for various types of political subdivisions. That section provides, in part, that “[a]ny tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates: . . . [f]or school districts formed of cities and towns,

including the school district of the city of St. Louis—two dollars and seventy-five cents on the hundred dollars assessed valuation . . . .” Mo. Const. art X, § 11(b).

The Hancock Amendment, Article X, Section 21 of the Missouri Constitution, states:

The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

The appointment of the TSD attempts to strip the Board of Education of some, but not all of its powers, while stripping the board of most of its resources, in violation of Article X, Section 21 of the Missouri Constitution. The TSD statute also requires the appointment of a CEO to the TSD, a paid employee, without a corresponding appropriation to pay that salary. Furthermore, State Regulation 5 CSR 50.345-100(6) will make the SLPS liable for tuition and transportation of students transferring to another district, without a corresponding appropriation to fund these additional costs.

Finally, the appointment of a new CEO to replace the superintendent pursuant to Section 162.1100.2(2) will interfere with and cause the SLPS Board to breach its contract with the current Superintendent. The appointment of the TSD and transfer of the SLPS Board's powers may also cause the Board to breach many of its existing contracts. Thus, the actions of the legislature and the State Board of Education tortiously interfere with the SLPS Board's contracts, in violation of state common law tort principals.

10. Finally SLPS and the Board note that the unaccreditation is not yet effective and the legislature is now out of session. The vesting of power of the TSD under the statutory scheme purports to occur upon the appointment of a CEO after SLPS is determined unaccredited. The State Board's clear intent is for that to occur sometime on or after June 15, 2007. However, the Governor's appointee has not been confirmed by the Senate, has no authority and therefore does not trigger the statute. An interim appointment by the governor while the legislature is not in session will not trigger the transfer of power until the legislature reconvenes next year and confirms the interim appointment.

Therefore, with all the uncertainty, in the interest of the children and recognizing the current progress being made in SLPS, DESE and the State Board should reconsider the current unaccredited status of SLPS and grant some other status such as you have done for Wellston.