

MODERN-DAY APARTHEID IN MISSOURI: HOW *MASSEY V. NORMANDY SCHOOLS COLLABORATIVE* OVERLOOKS DE FACTO SEGREGATION CREATED BY MISSOURI'S SCHOOL ACCREDITATION CLASSIFICATION SYSTEM

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INTRODUCTION

In June 2016, the Missouri Court of Appeals, Eastern District, decided *Massey v. Normandy Schools Collaborative*,¹ the latest legal battle over Missouri's School Transfer Statute.² This statute gives Missouri students who attend a school within an unaccredited district the option to transfer into a school within an accredited district at the complete expense of the unaccredited school district.³

The *Massey* litigation was brought by parents and guardians of students who transferred to accredited schools while Normandy School District was labeled as unaccredited.⁴ The Missouri Department of Elementary and Secondary Education (Missouri DESE) labeled Normandy School District as unaccredited in 2013, which meant that "students from the mostly poor,

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1. 492 S.W.3d 189 (Mo. Ct. App. 2016).

2. MO. REV. STAT. § 167.131(1) (2016).

3. *Id.* "The board of education of each district in this state that does not maintain an accredited school pursuant to the authority of the state board . . . shall pay the tuition of and provide transportation . . . for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county . . ." *Id.*

4. "Normandy School District" has been referred to as "Normandy Schools Collaborative" since the Missouri Board of Education took over Normandy School District in the summer of 2014. Elisa Crouch, *Missouri Appeals Court Upholds Transfer Rights of Normandy Students*, ST. LOUIS POST-DISPATCH (June 7, 2016), http://www.stltoday.com/news/local/education/missouri-appeals-court-upholds-transfer-rights-of-normandy-students/article_6d32ed59-2b44-545b-a7ea-27517ee31422.html [<https://perma.cc/A2PK-7X6C>]. For the purposes of this Note, "Normandy School District" and "Normandy" will be used to refer to Normandy Schools Collaborative.

black district in north St. Louis County would be attending [schools like] Francis Howell's mostly white schools."⁵

Likely after realizing that labeling Normandy School District as unaccredited triggered the Missouri School Transfer Statute, and effectively forced racial and socioeconomic desegregation in certain Missouri public schools, the Missouri DESE reclassified Normandy from unaccredited to "state oversight district."⁶ Since the Missouri School Transfer statute is only triggered by an unaccredited classification, Missouri DESE's reclassification of Normandy as a state-oversight district ended any legal obligation for accredited schools to accept transfer students from Normandy.⁷ In the *Massey* litigation, Normandy parents sought declaratory and injunctive relief to allow their children to stay in the higher-performing schools to which their children transferred while Normandy was labeled as unaccredited.⁸

Ultimately, the *Massey* court unanimously ruled in favor of the Normandy parents and held that the Missouri DESE exceeded its authority when it changed Normandy from an unaccredited district to a state-oversight district.⁹ The *Massey* court found that the Missouri DESE attempted to "instantaneously remove all the protections of the accreditation statutes and rules" and found that the Missouri DESE should have followed proper statutory rulemaking procedures before changing Normandy's status from an unaccredited to a state-oversight district.¹⁰ The court saw through the Missouri DESE's attempt to bar Normandy children from transferring to higher-performing schools.

Though the *Massey* court ruled in favor of the Normandy children's right to transfer from their unaccredited district to accredited districts, the court's

5. Jessica Bock, *Francis Howell Officials Say 'No' to Normandy Students*, ST. LOUIS POST-DISPATCH (June 21, 2014), http://www.stltoday.com/news/local/education/francis-howell-officials-say-no-to-normandy-students/article_fad2b8bd-3631-5b51-9c58-e31ccf5d2a22.html [<https://perma.cc/WMX9-TJKU>].

6. See *Massey*, 492 S.W.3d 189; Bock, *supra* note 5 (explaining that the state school board cut off all new student transfers out of Normandy when it voted to reclassify Normandy's accreditation status).

7. Bock, *supra* note 5. "Normandy will carry no accreditation when it becomes a new, state-run district called the Normandy Schools Collaborative The new classification removes the legal requirement for higher performing school districts to accept transfer students from those schools." *Id.*

8. *Massey*, 492 S.W.3d at 191.

9. *Id.* at 200.

10. *Id.* at 202.

opinion fails to address fundamental problems that plague Missouri's school accreditation system at a foundational level. Specifically, the *Massey* court fails to address the detrimental effects of a "provisionally accredited" classification for a school district. The *Massey* court glosses over Normandy School District's history as a provisionally accredited district from 2008 through 2012 and notes that Normandy School District did not meet certain school achievement results throughout that time, yet Normandy still held a provisionally accredited status.¹¹ Normandy's nominal status as a provisionally accredited district did not reflect its actual operation as a district that seemed to be failing in all other respects.¹²

Of the four classifications that the Missouri DESE can give a Missouri public school district, a provisionally accredited status is arguably the most problematic.¹³ The provisionally accredited classification effectively creates and promotes modern-day apartheid throughout Missouri public schools. While students who attend a school within an unaccredited district

11. The court notes that "[f]rom 2008 through 2012, none of the Missouri School Improvement Program's student achievement results for mathematics and communication arts (i.e., English) were met in the Normandy School District," based on Normandy's Missouri Assessment Program scores throughout that time. "A district must meet at least one [Missouri Assessment Program] standard to be 'provisionally accredited.'" Normandy School District was classified as such from 2008 through 2012 without having met these standards. *Id.* at 191.

12. *Id.*; see also AM. BAR ASS'N, FERGUSON'S FAULT LINES: THE RACE QUAKE THAT ROCKED A NATION 99 (Kimberly J. Norwood ed., 2016) [hereinafter Norwood] (explaining that "Normandy Schools were, for all intents and purposes, technically unaccredited"). Furthermore, a 2015 article from the St. Louis Post-Dispatch revealed that little learning went on in certain classrooms at Normandy High School. The article revealed that some students at Normandy High School were sleeping, texting, and practicing dance moves during class. Though their teacher was inside the classroom the entire class period, the teacher did not teach a lesson or prevent students from sleeping, texting, or dancing. Elisa Crouch, *A Senior Year Mostly Lost for a Normandy Honor Student*, ST. LOUIS POST-DISPATCH (May 4, 2015), http://www.stltoday.com/news/local/education/a-senior-year-mostly-lost-for-a-normandy-honor-student/article_ce759a06-a979-53b6-99bd-c87a430dc339.html [https://perma.cc/BA9Z-6Q7H].

13. The Missouri Department of Secondary Education places Missouri public school districts into one of four accreditation classifications: (1) accredited with distinction, (2) accredited, (3) provisionally accredited, and (4) unaccredited. MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., COMPREHENSIVE GUIDE TO THE MISSOURI SCHOOL IMPROVEMENT PROGRAM (2017) [hereinafter MSIP 5], https://dese.mo.gov/sites/default/files/MSIP_5_2017_Comprehensive_Guide_0.pdf [https://perma.cc/Y923-X52H]. According to the Missouri DESE's website, MSIP began in 1990 and entered into its fifth version in 2013. MSIP 6, MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., <https://dese.mo.gov/quality-schools/mo-school-improvement-program/msip-6> [https://perma.cc/8FJB-L6CD]. The Missouri DESE is preparing to enter into the sixth version of MSIP but has not yet switched from MSIP 5 to MSIP 6. *Id.* Regardless, MSIP 6's proposals do not seem to change the "Accredited," "Provisionally Accredited," and "Unaccredited" classification system for Missouri public school districts. *Id.*

have the option of transferring to a school in an accredited district pursuant to the Missouri Transfer Statute—albeit at a burdensome cost to their unaccredited district—students who belong to a provisionally accredited district do not have this option.¹⁴ Thus, students who attend provisionally accredited school districts are effectively stuck in an educational limbo; their school is not nominally unaccredited, which would allow them to transfer, but it is failing in all other respects.¹⁵

Most of Missouri’s underperforming school districts encompass mostly black students, and most of Missouri’s high-performing districts cater to mostly affluent white students.¹⁶ Thus, a provisionally accredited classification can have the effect of keeping black students stuck in their underperforming schools by barring the integration that is triggered by an unaccredited classification per Missouri’s School Transfer Statute. Therefore, Missouri’s school accreditation system effectively creates a modern-day apartheid school system that exists over half a century since segregation in public schools was outlawed by the Supreme Court with the 1953 and 1955 *Brown v. Board of Education* decisions.¹⁷

Instead of using the provisionally accredited classifications to ensure that minority students who attend schools in underperforming districts do not transfer to accredited districts in mostly white neighborhoods,¹⁸ the Missouri DESE should allocate funds for tangible change in the school districts that need help. For example, the Missouri DESE could consider providing underperforming schools with funds to hire teachers who are experienced and diverse and to implement stereotype training and/or sensitivity training for new teachers.

14. MO. REV. STAT. § 167.131(1) (2016); *see also infra* Section I.B.

15. *See supra* text accompanying note 12.

16. “By 1978, Normandy Schools had the second-highest percentage of Black students in the St. Louis metropolitan area. [St. Louis Public School District] had—and still has—the highest percentage [of Black students] in the area. . . . [Accredited school districts such as] Clayton and Ladue are both affluent and virtually all-White school districts.” Norwood, *supra* note 12, at 98.

17. *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483 (1954); *Brown v. Bd. of Educ. (Brown II)*, 294 U.S. 753 (1955).

18. The current system of school classifications, the Missouri School Improvement Plan version 5 (“MSIP 5”), offers standards for the Missouri DESE to follow in order to determine the correct classification for a school district. The MSIP does not offer state-provided funds and does not offer a state-provided plan or procedure for helping provisionally accredited or unaccredited school districts to improve their status to accredited. *See generally* MSIP 5, *supra* note 13; *infra* Part III.

Part I of this Note examines the legal history of public-school segregation in the United States and in Missouri, overviews a brief history of South African Apartheid and the Bantu Education Act of 1953, and discusses the history of the term “apartheid schools” as used in the modern-day United States. Part II analyzes the parallels between the implicit discriminatory effects of the Missouri School Accreditation System and the explicit discriminatory motives behind the Bantu Education Act of 1953 during South African Apartheid. Part III offers proposals for the Missouri Department of Elementary and Secondary Education to improve and rectify the negative effects of the Missouri School Accreditation System.

I. HISTORY

A. Segregation and Education in the United States

Racial segregation has a deep history in the United States stemming from the ideology that blacks are an inferior race. This ideology led to the enslavement of Africans and their descendants from the 1600s through the end of the 1800s, which led to the Jim Crow laws of southern states in the 1900s. Implicit biases about black Americans still exist today due to this four-hundred-plus-year period of oppression.¹⁹ A close look at the rhetoric utilized by U.S. courts in legal opinions concerning the constitutionality of segregation laws will help to reveal that U.S. legal rhetoric regarding segregation has evolved from promoting explicit racist legislation and policies to creating an appearance of racial equality that acts as a legal shield for de facto school segregation.

19. For example, an article from the *St. Louis Post-Dispatch* revealed reactions from Francis Howell parents in 2013, when Francis Howell parents first learned that the then-unaccredited Normandy School District would be sending buses of Normandy children to the Francis Howell School District. Jessica Block, *Francis Howell Parents Vent Anger, Concerns About Potential Transfers*, ST. LOUIS POST-DISPATCH (July 12, 2013), http://www.stltoday.com/news/local/education/francis-howell-parents-vent-anger-concerns-about-potential-transfers/article_68c7e3e9-6d26-5965-ab16-36180655e2c0.html [https://perma.cc/8DL5-CQTM]. Francis Howell parents openly expressed their concerns that were seemingly based on negative stereotypes of black Americans. *Id.* One Francis Howell parent told the Francis Howell School Board that “[w]e’re talking about violent behavior coming in” and demanded that the Board put metal detectors in schools to prepare for Normandy students. *Id.* The Francis Howell parent told the Board that “she moved to St. Charles County for good schools—now she was worried about her children getting stabbed, robbed or given drugs” by children from Normandy. *Id.*

In 1857, the United States Supreme Court held that Dred Scott, a former Missouri slave, was not a citizen of the United States.²⁰ The *Dred Scott* Court held that blacks “were not intended to be included, under the word ‘citizen’ in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.”²¹

Almost four decades later, the United States Supreme Court analyzed the breadth of protection for black Americans under the Fourteenth Amendment²² against demeaning Jim Crow laws in *Plessy v. Ferguson*.²³ Plessy claimed that his being forced to sit in the “colored” section of a train was a violation of the Fourteenth Amendment, which prohibits legislation by the States that treats citizens of the United States unequally.²⁴ While the Supreme Court found that the object of the Fourteenth Amendment “was undoubtedly to enforce absolute equality of the races before the law,” the Court reasoned that “laws permitting, and even requiring, [separation of the races] . . . do not necessarily imply the inferiority of either race to the other” and held that the segregation statute at issue in *Plessy* was a reasonable regulation to preserve public order.²⁵ Interestingly, the *Plessy* Court used education as an example of racial segregation that “do[es] not necessarily imply inferiority.”²⁶

After the birth of this separate-but-equal doctrine from *Plessy*, the United States Supreme Court re-examined the constitutionality of segregation in

20. *Dred Scott v. Sandford*, 60 U.S. 393, 404 (1857).

21. *Id.* “But why are the African race, born in the State, not permitted to share in one of the highest duties of the citizen? The answer is obvious; he is not, by the institutions and laws of the State, numbered among its people. He forms no part of the sovereignty of the State . . .” *Id.* at 415.

22. The Fourteenth Amendment provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

23. 163 U.S. 537 (1896).

24. *Id.* at 542.

25. *Id.* at 544, 550.

26. *Id.* at 544. “[T]he most common instance of this [separation of the races] is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.” *Id.*

education in the 1954 *Brown I* decision²⁷ and the subsequent 1955 *Brown II* decision.²⁸ In *Brown I*, the plaintiffs were black American children who sought to obtain “admission to the public schools of their community on a nonsegregated basis”²⁹—similar to the Normandy students and parents in the 2016 *Massey* litigation. The *Brown I* plaintiffs brought their claim under the Equal Protection Clause of the Fourteenth Amendment and argued that racial segregation of public schools was a violation of their rights as U.S. citizens.³⁰ The *Brown I* Court recognized that “education is perhaps the most important function of state and local governments” and found that separating children from others similar in age and qualifications “solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”³¹ The *Brown I* Court held that, in the field of public education, the doctrine of separate-but-equal inherently means unequal.³²

The implementation of a nationwide desegregation scheme proved to be much more difficult than writing a judicial opinion. Following the *Brown I* decision, it became clear that most segregated school districts and certain southern politicians had no intention of following the Supreme Court’s *Brown I* ruling.³³ This led to the issue in *Brown II* in 1955 where the Supreme Court revisited the initial *Brown I* decision in order to determine the manner of relief for the *Brown I* plaintiffs and others similarly situated.³⁴

In *Brown II*, the Supreme Court gave instructions to lower courts concerning methods to determine whether a school or school district had properly complied with *Brown I*.³⁵ The *Brown II* Court guided lower courts to “consider whether the action of school authorities constitute[d] *good faith* implementation of the governing constitutional principles” by taking into

27. *Brown I*, 347 U.S. 483 (1954).

28. *Brown II*, 349 U.S. 294 (1955).

29. *Brown I*, 347 U.S. at 487.

30. *Id.* at 488.

31. *Id.* at 494.

32. *Id.* at 495.

33. For example, following *Brown*, nineteen senators and seventy-seven congressmen from formerly Confederate states signed the “Southern Manifesto,” which was an attempt to maintain white supremacy after *Brown I* and *Brown II*. See generally Justin Driver, *Supremacies and the Southern Manifesto*, 92 TEX. L. REV. 1053 (2014).

34. *Brown II*, 349 U.S. 294, 298 (1955).

35. *Id.* at 299–300.

account “the public interest in the elimination of such obstacles in a systematic and effective manner.”³⁶ If a defendant school district pleaded to a lower court for more time to desegregate, the Supreme Court placed the burden on defendant school districts to prove that additional time was necessary for the school to desegregate and to prove that the additional time would be “consistent with good faith compliance at the earliest practicable date.”³⁷ The *Brown II* Court instructed lower courts to enter orders and decrees “necessary and proper” to admit plaintiffs on a racially nondiscriminatory basis into public schools “with all deliberate speed,”³⁸ thus seemingly ending the battle for desegregation in United States public schools.

In the aftermath of *Brown I* and *II*, segregated schools and school districts still operated as such. For example, in the early 1970s, a Michigan federal district court in *Milliken I* found that a school system in the city of Detroit was illegally segregated and issued an order that required Detroit to submit and implement a multidistrict metropolitan desegregation plan.³⁹ The U.S. Supreme Court heard the case on appeal in 1974.⁴⁰

Another example of schools refusing to desegregate after *Brown I* and *II* and of how the Supreme Court’s rhetoric began to turn into a legal shield for de facto segregation is the 1991 case *Board of Education of Oklahoma City Public Schools v. Dowell*.⁴¹ In *Dowell*, the Supreme Court overturned a lower court’s order for a school board to stop the implementation of a re-segregation plan.⁴² Notably, the Supreme Court in *Dowell* held that in determining whether to dissolve a desegregation decree, a court need only consider whether the school district has complied with the decree *in good faith* and whether discrimination has been eliminated *to the extent practicable*.⁴³

While explicit racial segregation is no longer legal or culturally appropriate, extreme racial isolation in many facets of society still exist for

36. *Id.* (emphasis added).

37. *Id.* at 300.

38. *Id.* at 301.

39. *See Bradley v. Milliken (Milliken I)*, 484 F.2d 215 (6th Cir. 1973), *rev'd* 418 U.S. 717 (1974).

40. *Milliken v. Bradley (Milliken II)*, 418 U.S. 717 (1974); *see also infra* Part II.

41. *Bd. of Educ. v. Dowell*, 498 U.S. 237 (1991); *see also infra* Part II.

42. *Dowell*, 498 U.S. at 237; *see also infra* Part II.

43. *Dowell*, 498 U.S. at 249–50.

black Americans today, particularly in public education.⁴⁴ Indeed, in 2016 the Government Accountability Office released a report that found “the percentage of all K–12 public schools that had high percentages of poor and black or Hispanic students grew from 9 to 16 percent” from the 2000–01 to the 2013–14 school years.⁴⁵ Many Americans attribute the current isolation of races in residential, educational, and other aspects of society to preference or to a natural outcome of civil rights laws that have not had enough time to work.⁴⁶ In reality, de facto racial segregation within the United States is maintained through institutional arrangements, such as Missouri’s school accreditation classification system.

B. Missouri Education Policies

The statute that gives the Missouri DESE the power to create an accreditation classification system for Missouri Public Schools was enacted in 1931.⁴⁷ An amendment in 1993 included the opportunity for students of unaccredited school districts to transfer to accredited school districts.⁴⁸ Interestingly, Missouri legislature representatives added the Transfer Statute caveat, which provides that the unaccredited district must pay tuition for any student who chooses to transfer to an accredited district, thinking that the Transfer Statute would never get triggered.⁴⁹ The caveat was “meant

44. See generally DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993) [hereinafter DOUGLAS].

45. U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-345, K–12 EDUCATION: BETTER USE OF INFORMATION COULD HELP AGENCIES IDENTIFY DISPARITIES AND ADDRESS RACIAL DISCRIMINATION 2 (2016), <http://www.gao.gov/products/GAO-16-345> [<https://perma.cc/V225-UJK2>].

46. DOUGLAS, *supra* note 44, at 1.

Because of racial segregation, a significant share of black America is condemned to experience a social environment where poverty and joblessness are the norm, where a majority of children are born out of wedlock, where most families are on welfare, where educational failure prevails, and where social and physical deterioration abound. Through prolonged exposure to such an environment, black chances for social and economic success are drastically reduced.

Id. at 2.

47. MO. REV. STAT. § 161.092 (2018); see also Norwood, *supra* note 12, at 101.

48. Norwood, *supra* note 12, at 101.

49. *Id.* “Interestingly, the sponsor of the transfer law never imagined it would actually be triggered. The statutory terms were to be used as a stick to force struggling districts to improve. ‘It was meant to be harsh. It was a wake-up call to clean up your situation and get it fixed.’” *Id.*

to be harsh” in order to incentivize the unaccredited district to improve and make strides towards accreditation.⁵⁰

Title XI, section 161.092(9), of the Missouri Revised Statutes gives the Missouri DESE the power to “[c]lassify the public schools of the state, . . . establish requirements for the schools of each class, and formulate rules governing the inspection and accreditation of schools”⁵¹ Pursuant to this power, the Missouri DESE utilizes four classifications for Missouri public school districts: (1) accredited with distinction, (2) accredited, (3) provisionally accredited, and (4) unaccredited.⁵²

Accredited with distinction and accredited school districts are “high-performing” and are “recognized as models of excellence.”⁵³ A school district’s “[s]tatus, progress, and growth . . . are used to calculate a comprehensive score used to determine the accreditation level of a school district.”⁵⁴ This includes data from academic achievement scores and graduation rates.⁵⁵ Students who attend schools within provisionally accredited and unaccredited districts are mostly from a lower socioeconomic status and of a minority race.⁵⁶

If the Missouri DESE classifies a Missouri public school district as unaccredited, then an interesting chain of events occurs. First, Title XI, section 167.131(1), of the Missouri Revised Statutes kicks in.⁵⁷ This statute gives students who are enrolled in a school within an unaccredited district the option to transfer to a school within an accredited school district.⁵⁸

Second, if a student opts to transfer from an unaccredited school district, then that unaccredited district bears the burden of “pay[ing] the tuition of and provid[ing] transportation . . . for each pupil resident therein who attends an accredited school in another district or an adjoining county.”⁵⁹

50. *Id.*

51. MO. REV. STAT. § 161.092(9) (2014).

52. MSIP 5, *supra* note 13, at 60.

53. *See id.* at 2.

54. *Id.* at 5.

55. *Id.*

56. *See* Norwood, *supra* note 12, at 98.

57. MO. REV. STAT. § 167.131 is commonly referred to as the “School Transfer Law.” *See, e.g.,* Elisa Crouch, *Missouri’s School Transfer Law Back in Court*, ST. LOUIS POST-DISPATCH (Feb. 9 2016), https://www.stltoday.com/news/local/crime-and-courts/missouri-s-school-transfer-law-back-in-court/article_05c2e08e-8bac-57e8-84eb-664278a927d0.html [<https://perma.cc/TZ5Z-JA7D>].

58. MO. REV. STAT. § 167.131(1) (2016).

59. *Id.*

Notably, while labeled as an unaccredited district, Normandy School District paid \$11,034 in tuition for each transfer student that opted to transfer to Francis Howell School District for the 2013–14 school year.⁶⁰ This totaled to about \$3.4 million in revenue that transferred from unaccredited Normandy to accredited Francis Howell.⁶¹

The ultimate effect of an unaccredited classification is that minority students who attend schools in unaccredited districts are given a chance to transfer from their failing home districts to the thriving school districts that cater to students from higher socioeconomic backgrounds. Thus, the Missouri Transfer Statute, if triggered, effectively desegregates certain Missouri public school districts.⁶²

On the other hand, if the Missouri DESE classifies a Missouri public school district as provisionally accredited, no such chain of events occurs. The provisionally accredited district is left with a low accreditation score, no option for their students to transfer to a higher performing school in an accredited district, and no apparent monetary assistance from the Missouri DESE.⁶³

A district receives provisionally accredited status by earning a score of 50 percent or higher on the Missouri DESE's Annual Performance Report, while accreditation status requires a 70 percent or higher performance report score.⁶⁴ Theoretically, provisionally accredited districts are not too far away from reaching the 70 percent necessary to gain accredited status and should be able to get back on track for a higher accreditation score. In practice, the provisionally accredited status has been given to school districts such as Normandy School District, which was seemingly failing while nominally provisionally accredited.⁶⁵

60. Bock, *supra* note 5.

61. *Id.*

62. *Id.*

63. See *supra* note 18 and accompanying text; *infra* Part III.

64. See MSIP 5, *supra* note 13, at 60.

65. *Massey v. Normandy Schs. Collaborative*, 492 S.W.3d 189, 191 (Mo. Ct. App. 2016); see Norwood, *supra* note 12.

C. The Massey Litigation

The Missouri DESE triggered the School Transfer Statute for students of Normandy School District when the DESE classified Normandy as unaccredited in 2013.⁶⁶ This meant that “students from the mostly poor, black district in north St. Louis County would be attending [schools like] Francis Howell’s mostly white schools.”⁶⁷

The *Massey* litigation was brought by parents and guardians of students who had transferred to better schools while Normandy School District was labeled as unaccredited.⁶⁸ The Normandy parents took issue with the fact that, after the Missouri DESE gave Normandy unaccredited status and after children from Normandy began to transfer to higher-performing schools, the DESE changed Normandy’s status from an unaccredited district to a classification that the DESE termed “state-oversight district”.⁶⁹ This status change, according to the Missouri DESE, meant that the Missouri School Transfer Statute no longer allowed Normandy children to transfer to accredited schools since Normandy was no longer nominally unaccredited.⁷⁰ Ultimately, the *Massey* court unanimously ruled in favor of the Normandy parents and held that the Missouri DESE exceeded its authority when it changed Normandy from unaccredited to a state-oversight district.⁷¹ The *Massey* court seemed to see through the DESE’s attempt to bar Normandy children from transferring to higher-performing schools.

D. Bantu Education Act of 1953 During South African Apartheid

South Africa’s apartheid era has a similar history of racial segregation to the United States. Racial segregation in South Africa likely began with the initial notion of white supremacy that stemmed from European colonization and the subsequent implementation of slavery in the Cape during the

66. On September 18, 2012, the Missouri DESE classified the Normandy School District as unaccredited, as of January 1, 2013. *Massey*, 492 S.W.3d at 191.

67. See Bock, *supra* note 5.

68. *Massey*, 492 S.W.3d at 191.

69. See *id.* at 197.

70. See generally *supra* Introduction.

71. *Massey*, 492 S.W.3d at 200. The *Massey* court stated that “progress and academic achievement must actually occur before an upgraded accreditation status can be achieved.” *Id.* at 199.

1650s.⁷² By the 1800s, the growing influence of human rights contributed to the amelioration of slavery in South Africa.⁷³ By December 1834, slavery was abolished in the Cape Colony by British colonizers who had taken over the Cape from the Dutch, which led to the “Great Trek” of Dutch-speaking colonists from the Cape to the interior of South Africa.⁷⁴

Eventually, colonists who settled throughout the interior of South Africa developed the Afrikaans language.⁷⁵ These early “pioneers” became an important element in Afrikaner nationalism.⁷⁶ Afrikaner nationalism reached its peak by 1948 when the Afrikaner National Party won the national election in South Africa based on rhetoric that promoted racism and segregation under a regime referred to as *apartheid*.⁷⁷ *Apartheid* is an Afrikaans term that means *apartness*.⁷⁸ The political regime of apartheid initially called for separate and equal development of the different South African racial groups, but the implementation of apartheid laws forced the different racial groups to develop separately and grossly unequally.⁷⁹

72. See *History of Slavery and Early Colonization in South Africa*, S. AFR. HIST. ONLINE (June 2, 2011), <http://www.sahistory.org.za/article/history-slavery-and-early-colonisation-south-africa> [https://perma.cc/E94N-HHNNH]; *Slavery in South Africa*, S. AFR. HIST. ONLINE (Nov. 14, 2011), <http://www.sahistory.org.za/topic/slavery-south-africa> [https://perma.cc/H63K-NAJD] (explaining that more than thirty five thousand slaves had been imported into South Africa from India, Malaysia, and elsewhere; though these slaves were not native black South Africans, their presence as an inferior race was still important to the ideology of the supremacy of the white European race in South Africa).

73. “The growing influence of the concept of human rights at the beginning of the 19th century . . . contributed to the questioning of the practice of slavery.” *History of Slavery and Early Colonization in South Africa*, *supra* note 72. This source further notes examples of amelioration laws that were meant to improve the welfare of slaves in the Cape. For instance, “[s]laves were allowed to make legal marriages after 1824[,] . . . [s]laves were now taught Christianity, and the baptism of slaves was encouraged.” *Id.*

74. See *Slavery is Abolished at the Cape*, S. AFR. HIST. ONLINE (Mar. 16, 2011), <http://www.sahistory.org.za/dated-event/slavery-abolished-cape> [https://perma.cc/WB4X-UDKK]; see also *Great Trek 1835–1846*, S. AFR. HIST. ONLINE (Mar. 21, 2011), <http://www.sahistory.org.za/article/great-trek-1835-1846> [https://perma.cc/5NX2-KSYP].

75. *Afrikaans Language*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Afrikaans-language> [https://perma.cc/7ZG6-4JVG] (last visited June 29, 2019).

76. See *Great Trek 1835–1846*, *supra* note 74.

77. See *Unit 3. The Rise of Apartheid*, S. AFR.: OVERCOMING APARTHEID BUILDING DEMOCRACY, <http://overcomingapartheid.msu.edu/unit.php?id=65-24E-5> [https://perma.cc/4PD5-ZSTE].

78. See *A History of Apartheid in South Africa*, S. AFR. HIST. ONLINE (May 6, 2016) <http://www.sahistory.org.za/article/history-apartheid-south-africa> [https://perma.cc/VWY5-VAEG].

79. *Id.* Separate development was supposed to allow black South Africans to develop themselves by self-government, but the effect of the separate laws and the economic structure that kept black South

In 1953, the Afrikaans government extended its power over the separate and unequal development of black South Africans with the implementation of the Bantu⁸⁰ Education Act of 1953. This Act established an education system for Africans based upon a curriculum intended to produce manual laborers.⁸¹ Prior to the Bantu Education Act of 1953, most black South African schools were operated by missionaries and churches with monetary aid from the state.⁸² After the implementation of the Act, the Afrikaans government took control of black South African schools by means of the Bantu Education Department.⁸³ The Bantu Education Department's purpose was to keep Black South African schools separate from and inferior to white South African schools.⁸⁴ The Act also separated the financing of black South African education from general state spending by linking the financing to direct taxes paid by black South Africans.⁸⁵

The Bantu Education Act had the appearance of progressiveness because the Act separated educational institutions from religious institutions and transferred the control of education to the state. The Act purported to give control to the black South African people:

The aim [of the Bantu Education Act] was to inaugurate a new regime in the education of Africans . . . to take Bantu education out of the hands of the Churches and Missions .

Africans in certain menial jobs made this goal of self-sufficiency nearly impossible. *Id.*; see also *Group Areas Act of 1950*, S. AFR. HIST. ONLINE (Dec. 19, 2014), <http://www.sahistory.org.za/article/group-areas-act-1950> [https://perma.cc/RSU6-3K2A].

80. The term "Bantu" is a shortened version of "Abantu", which is the Zulu word for *people*. *Defining the Term "Bantu,"* S. AFR. HIST. ONLINE, (Mar. 20, 2011) <http://www.sahistory.org.za/article/defining-term-bantu> [https://perma.cc/PF4H-EUY7]. Bantu refers generally to those black South Africans who spoke a group of closely related languages. *Id.* Importantly, these Bantu-speaking peoples *are not* a homogeneous group of people. *Id.* In fact, the Bantu-speaking people are made up of more than one hundred million people who live in southern and central Africa, who speak about seven hundred languages and many dialects. *Id.* Today, the term "Bantu" is associated with apartheid and inferior treatment. *Id.*

81. Lepheana Alf Rakauoane, *Bantu Education: A Communication*, 20 LIBERATION 19, 20 (1956) (available at Digital Innovation South Africa Archive, <http://www.sahistory.org.za/archive/bantu-education-a-communication> [https://perma.cc/A3R5-T486]).

82. *Bantu Education and the Racist Compartmentalizing of Education*, S. AFR. HIST. ONLINE (Mar. 30, 2011), <http://www.sahistory.org.za/article/bantu-education-and-racist-compartmentalizing-education> [https://perma.cc/KL24-YQH4].

83. *Id.*

84. *Id.*

85. *Id.*

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. . . and to place it in the hands of the Bantu people themselves, through committees or other tribal authorities working under the Department of Native Affairs.⁸⁶

Though the South African government purported the Act to be progressive, many black South Africans recognized that the Act was an attempt by their government to diminish the societal development of black South Africans:

The African people too are unhappy because . . . the purpose of the [Bantu Education Act] is to train the majority of African children for a position in life which has been assigned to them—an inferior status. [Black South Africans] hold that all children have the right to the fullest education of which they are capable of profiting, irrespective of the colour of their skins.⁸⁷

E. “Apartheid Schools”

The term “apartheid schools” is used to describe U.S. public schools that are made up of 99 percent or more black and/or non-white Hispanic students.⁸⁸ This term is not only an indicator of the racial demographic of a certain school but is also understood to mean that the “apartheid school” is likely a high-poverty one.⁸⁹ Today, de facto segregation remains a serious problem in some U.S. public schools. Indeed, the U.S. Government Accountability Office released a report that found, among other things, that “the percentage of all K–12 public schools that had high percentages of poor and Black or Hispanic students grew from 9 to 16 percent” from the 2000–01 to the 2013–14 school years.⁹⁰

86. H. W. Shepherd, *The South African Bantu Education Act*, 54 AFR. AFF. 138, 138 (1955).

87. *Id.* at 139.

88. See Lilly Workneh, *Study: NY Schools Most Segregated in the US, Labeling Some ‘Apartheid Schools’*, THE GRIO (Mar. 26, 2014), <https://thegrio.com/2014/03/26/study-ny-schools-most-segregated-in-the-us-labeling-some-apartheid-schools/> [<https://perma.cc/7GGS-7B7U>]; see also Emily Lieb, *How Segregated Schools Built Segregated Cities*, CITYLAB (Feb. 2, 2017), <https://www.citylab.com/equity/2017/02/how-segregated-schools-built-segregated-cities/515373/> [<https://perma.cc/2YE6-6HQ7>].

89. See generally DOUGLAS, *supra* note 44.

90. See U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 45.

II. ANALYSIS

Dred Scott, *Plessy*, *Brown I* and *II*, *Milliken I* and *II*, and *Dowell* all contribute to the illusion of racial equality in the United States, particularly as it pertains to public education. This illusion is further purported by the fact that the *Massey* court seemed to overlook the de facto segregation caused by the Missouri DESE's school accreditation classification system. Though Missouri's school accreditation classification system seems neutral on its face, in effect, the provisionally accredited classification promotes racial and socioeconomic segregation in public schools. Thus, this system effectively creates a modern-day apartheid in Missouri public education, comparable to the facially discriminatory South African Bantu Education Act of 1953.

The *Brown v. Board of Education* opinions declared the fundamental principle that racial discrimination in public education is unconstitutional.⁹¹ But a closer look at the rhetoric of both opinions suggests that *Brown I* and *II* merely give an illusion of promoting equality through nondiscriminatory education. The decisions were arguably a feeble attempt by the United States Supreme Court to rectify the negative effects of centuries of racial oppression.

In the aftermath of *Brown I* and *II*, segregated schools and school districts still operated as such, and the remedial power that *Brown II* purported to give to lower courts to enter decrees "necessary and proper" to admit children into public schools on a nondiscriminatory basis "with all deliberate speed"⁹² proved to be a farce as well. For example, in the 1974 *Milliken II* opinion, the United States Supreme Court held that it was improper for a lower court in Michigan to impose a multidistrict remedy to desegregate absent a finding that the school district boundary lines were established with the purpose of fostering racial segregation.⁹³ This ruling seemed to bar the lower court from entering a decree that was "necessary and proper" to desegregate schools. Arguably, *Milliken II* sent the message

91. *Brown II*, 349 U.S. 294, 298 (1955); *Brown I*, 347 U.S. 483, 493 (1954).

92. *Brown II*, 349 U.S. at 301.

93. *Milliken II*, 418 U.S. 717, 752 (1974).

to public school districts that unintentional de facto school segregation may be overlooked by courts.

Another example of the false authority that *Brown II* seemed to give to lower courts to enforce desegregation in public schools is the United States Supreme Court's 1991 decision in *Dowell*.⁹⁴ In *Dowell*, a school board in Oklahoma adopted a student reassignment plan, under which previously desegregated schools would return to one-race status in order to alleviate greater busing burdens on young black children caused by demographic changes.⁹⁵ The Supreme Court remanded the case to the District Court for the Western District of Oklahoma to address whether the school board had "complied in good faith with the [previously issued] desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated *to the extent practicable*."⁹⁶

Though the Supreme Court's language in *Dowell* seems consistent with *Brown II*'s allowance of a school district's good faith effort to desegregate, it is important to remember that *Brown II* ordered schools to desegregate "with all deliberate speed" in 1954.⁹⁷ Thus, it seems regressive for the Court to continue to support the arguably lower standard of "good faith effort to desegregate" thirty-seven years later in 1991. *Dowell* shows that the United States Supreme Court arguably utilizes rhetoric that purports to support equality and fairness, but in reality, allows de facto racial segregation to continue decades after separate-but-equal doctrine as it pertained to U.S. schools was held to be unconstitutional in *Brown I* and *Brown II*.

The *Massey* litigation is a prime example of the United States courts' evolution away from promoting explicit racist legislation and policies and towards promoting institutional arrangements that purport to support racial equality. The Normandy parents and children involved in *Massey* won that battle, but there is still a war to be fought for equal education throughout Missouri.

94. Bd. of Educ. v. Dowell, 498 U.S. 237 (1991).

95. *Id.* at 242. The *Dowell* Court noted that "[a]s more and more neighborhoods became integrated, more stand-alone schools were established, and young black students had to be bused farther from their inner-city homes to outlying white areas." *Id.* The *Dowell* Court further explained that in order to alleviate the busing "burden and to increase parental involvement," the Board adopted a reassignment plan which relied on neighborhood assignments for schools—effectively re-segregating the areas' public schools. *Id.*

96. *Id.* at 249-50 (emphasis added).

97. *Brown II*, 349 U.S. at 301.

The *Massey* court's opinion falls short in addressing fundamental problems that plague Missouri's school accreditation system at a foundational level. Specifically, the *Massey* court fails to address the detrimental effects of a provisionally accredited classification for a school district.⁹⁸ The *Massey* court glosses over Normandy School District's history as a provisionally accredited district from 2008 through 2012 and notes that Normandy School District did not meet certain school achievement results, yet Normandy still held a provisionally accredited status during that time.⁹⁹ Normandy's nominal status as a provisionally accredited district did not reflect its actual operation as a district that was failing in all other respects.¹⁰⁰ Thus, the *Massey* court did not recognize the de facto segregation that was created by Normandy School District's previous status as a provisionally accredited school district. The students who attended Normandy schools while the district was provisionally accredited before the *Massey* litigation were effectively stuck in an educational limbo—their district was not nominally unaccredited, which would allow them to transfer, but it was failing in all other respects.¹⁰¹

The parallels that exist between the explicit discriminatory motives of the Bantu Education Act of 1953 enacted during South African apartheid and the implicit discriminatory effects of Missouri's school accreditation classification system are important to recognize. The theme of self-sufficiency for the minority race in South Africa during Apartheid and in present-day Missouri is prominent. In South Africa, the Afrikaans government's purported goal was to promote self-sufficient black South African communities through the Bantu Education Act.¹⁰² In actuality, the South African Bantu Education Act of 1953 was designed to keep black South Africans at an educational disadvantage and to prepare black South African children for lives of menial labor.¹⁰³

98. See *supra* Sections I.B and I.C.

99. *Massey v. Normandy Schs. Collaborative*, 492 S.W.3d 189, 191 (Mo. Ct. App. 2016).

100. "From 2008 through 2012, none of the Missouri School Improvement Program's . . . student achievement results for mathematics and communication arts (i.e., English) were met in the Normandy School District." *Id.* at 191; see also *supra* text accompanying note 12.

101. See *supra* text accompanying note 11.

102. See generally *supra* Section I.D.

103. See generally *supra* Section I.D.

Similarly, the Missouri legislature never meant for a school district to actually receive an unaccredited classification, and to trigger the Missouri Transfer Statute.¹⁰⁴ The Missouri legislature thought that if the Transfer Statute were triggered, it would be a harsh incentive for unaccredited school districts to get it together.¹⁰⁵ Thus, the looming threat of an unaccredited classification for a provisionally accredited school district is meant to provoke provisionally accredited districts to pull themselves up by their own bootstraps.¹⁰⁶

To add insult to injury, both the minority community in South Africa and the minority community in Missouri were expected to use their own limited funds to support their underperforming schools, with no apparent monetary assistance from local government.¹⁰⁷ Thus, the theme of self-sufficiency for the minority race that existed during South African apartheid arguably exists for present-day Missouri public schools. This theme of self-sufficiency acts as a seemingly benign incentive for underperforming school districts to reach accreditation. In reality, the Missouri DESE's provisionally accredited classification is not benign, and it seems to be used by the DESE as a sword and shield against minority students who attend schools in underperforming districts.¹⁰⁸ The provisionally accredited classification is a shield because it keeps the Missouri Transfer Statute from being triggered, which does not allow certain students to transfer from their failing schools to schools in better districts, effectively segregating Missouri public schools by race and socioeconomic status.¹⁰⁹ The classification is also a sword because the provisionally accredited district is left with a low accreditation score, no option for their students to transfer to a higher-performing school

104. See *supra* text accompanying note 49.

105. See *supra* text accompanying note 49.

106. See *supra* text accompanying note 49; see, e.g., *supra* Section I.C (noting that while labeled as an unaccredited district, Normandy School District paid \$11,034 in tuition for each transfer student that opted to transfer to Francis Howell School District for the 2013-2014 school year—totaling about \$3.4 million in revenue from unaccredited Normandy to accredited Francis Howell).

107. See *Bantu Education and the Racist Compartmentalizing of Education*, *supra* note 82, at 1; see also *supra* text accompanying note 18 (noting that the MSIP 5 does not mention monetary assistance for provisionally accredited school districts).

108. See generally *supra* Section I.C.

109. See generally *supra* Section I.C.

in an accredited district, and no apparent financial support from the Missouri DESE.¹¹⁰

III. PROPOSAL

Instead of utilizing the provisionally accredited classification to keep minority students at an educational disadvantage, the Missouri DESE should inform underperforming schools of their statutory right to request assistance from the department.¹¹¹ In preparation for this assistance, the Missouri DESE should allocate monetary funds for tangible change in the school districts that need help reaching accredited status.

Title XI, section 160.045, of the Missouri Revised Statutes sets forth standards for teaching that are required of all Missouri public schools.¹¹² The statute states that “[t]eaching standards shall include, but not be limited to, the following . . .” before listing general standards for teaching such as

[s]tudents actively participate and are successful in the learning process; [v]arious forms of assessment are used to monitor and manage student learning; [t]he teacher is prepared and knowledgeable of the content and effectively maintains students’ on-task behavior; . . . [t]he teacher keeps current on instructional knowledge and seeks and explores changes in teaching behaviors that will improve student performance¹¹³

The standards for teaching also state that “[t]he [Missouri DESE] may provide assistance to public schools in developing these standards upon request.”¹¹⁴

110. See generally *supra* note 18 and accompanying text (noting that MSIP 5 does not mention monetary assistance for provisionally accredited school districts); see also *infra* Part III.

111. Section 160.045 of the Missouri Revised Statutes concerns standards of teaching required. MO. REV. STAT. § 160.045 (2009). The standards state that “each public school [in Missouri] shall develop standards for teaching no later than June 30, 2010. The standards should be applicable to all public schools, including public charter schools operated by the board of a school district.” *Id.* § 160.045(1).

112. See *supra* text accompanying note 111.

113. MO. REV. STAT. § 160.045(2) (2009).

114. *Id.* § 160.045(3) (2009).

Tangible change for provisionally accredited and unaccredited school districts could encompass any one of the standards for teaching listed in Title XI, section 160.045, particularly that “[t]he teacher keeps current on instructional knowledge and seeks and explores changes in teaching behaviors that will improve student performance.”¹¹⁵ This standard could include that the Missouri DESE provide underperforming schools with monetary funds in order to hire teachers who are experienced and diverse, to provide new teachers with stereotype training or sensitivity training so that they can better serve their students, and/or to create an accountability system for teachers to effectively prepare and carry out lesson plans.¹¹⁶

To be fair, the Missouri DESE has the Missouri School Improvement Program (MSIP) in place to “prepare every child for success in school and life.”¹¹⁷ The program explains how a school district should be classified based on factors such as test scores, attendance rates, and graduation rates.¹¹⁸ Though the MSIP provides a rubric for Missouri’s school classification system, the MSIP does not provide a state-sponsored plan of action for schools that are classified as provisionally accredited or as unaccredited.¹¹⁹ On the contrary, provisionally accredited or unaccredited districts are left to use their own limited funds and are left to create their own improvement plans, referred to as Comprehensive School Improvement Plans (CSIPs).¹²⁰

115. *Id.* § 160.045(2)(5) (2009).

116. Few of these standards seemed to be upheld in Normandy District schools during the time that the District was provisionally accredited in the years leading up to the *Massey* litigation. *See, e.g.*, Crouch, *supra* note 4.

117. MSIP 5, MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., <https://dese.mo.gov/quality-schools/mo-school-improvement-program/msip-5> [<https://perma.cc/SVL6-RVJZ>] (last visited August 22, 2019); *see supra* notes 13, 18.

118. *See supra* notes 13, 18.

119. *See supra* notes 13, 18; *supra* Section I.C (noting that while labeled as an unaccredited district, Normandy School District paid \$11,034 in tuition for each transfer student that opted to transfer to Francis Howell School District for the 2013-2014 school year; this totaled to about \$3.4 million in revenue from unaccredited Normandy to accredited Francis Howell).

120. MSIP 5, *supra* note 13, at 60. “DESE reviews each district’s accreditation status and the APR supporting data If data trends indicate that the district’s full accreditation is or may be in jeopardy, the district may be asked to submit its Comprehensive School Improvement Plan (CSIP) to DESE and assistance through the Regional School Improvement Team (RSIT) may be activated.” *Id.* An RSIT may be comprised of the district’s superintendent, school board member(s), and “other key stakeholders.” MO. DEP’T OF ELEMENTARY & SECONDARY EDUC., MISSOURI SCHOOL IMPROVEMENT PROGRAM: SUPPORT AND INTERVENTION (2017), <https://files.eric.ed.gov/fulltext/ED572308.pdf>

The concept of a CSIP seems promising. Indeed, Normandy School District's current CSIP seems to be a thorough administrative plan to improve test scores and attendance rates within the school district.¹²¹ Recently, certain Normandy schools have received support from accredited districts who have provided teachers and extra help to Normandy schools.¹²² In fact, some accredited school districts have offered to enroll Normandy children at discounted tuition rates.¹²³ This hard work and dedication led to Normandy School District's recent graduation from unaccredited to provisionally accredited.¹²⁴ While all of these things seem like a solution, they actually speak to fundamental problems with the Missouri school classification system. Normandy, as a previously unaccredited and now provisionally accredited district, has been and will continue to be forced to pull itself up by its own bootstraps, with no apparent financial assistance from the Missouri Department of Elementary and Secondary Education.¹²⁵

The Missouri school accreditation system's concept of self-sufficiency seems to provide a neutral system of checks and balances that purports to give underperforming districts like Normandy School District control over their own fate. Self-sufficiency in Normandy's context, though, seems to ignore the fact that Normandy is in such bad shape now because the Missouri DESE from 2008–12 classified Normandy as provisionally accredited even though the district was failing in all other respects.¹²⁶ Direct

[<https://perma.cc/4ENT-8F7S>]. The MSIP does not mention monetary support from the Missouri DESE for failing school districts; see MSIP 5, *supra* note 13.

121. Notably, though Normandy School District has published its CSIP for the 2016-2017 school year, there is no apparent record of such a plan for any other school year. Importantly, there is no record of such a plan during the school years that Normandy was labeled as provisionally accredited leading up to the *Massey* litigation. See generally NORMANDY SCHOOLS COLLABORATIVE ACCOUNTABILITY/STRATEGIC PLAN 2016-2017, NORMANDY SCHS. COLLABORATIVE (2017), <https://www.normandysc.org/site/handlers/filedownload.ashx?moduleinstanceid=113&dataid=1520&FileName=NSC%20CSIP%20SY%202016-17%20Rev%20472017.pdf> [<https://perma.cc/F529-PDZZ>].

122. Elisa Crouch, *St. Louis Area Districts Roll Up Their Sleeves in Normandy Schools*, ST. LOUIS POST-DISPATCH (Sept. 13, 2016), http://www.stltoday.com/news/local/education/st-louis-area-districts-roll-up-their-sleeves-in-normandy/article_8fc5fcf7-c13e-55d2-b85c-95e80a3f48ab.html [<https://perma.cc/GF4Y-REYT>].

123. *Id.*

124. Kristen Taketa, *Normandy Schools Get Good News—and Provisional Accreditation*, ST. LOUIS POST-DISPATCH (Dec. 1, 2017), http://www.stltoday.com/news/local/education/normandy-schools-get-good-news-and-provisional-accreditation/article_693d9b70-e821-5b76-9709-ca2e1c9d2901.html [<https://perma.cc/GXA7-YVUG>].

125. See generally *supra* Introduction; see also *supra* Section I.D.

126. See *supra* text accompanying note 11.

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intervention from the Missouri DESE in the form of funds allocated for the tangible changes listed above while Normandy was provisionally accredited from 2008–12 could have solved some of the problems that that the District has been forced to overcome recently. Missouri DESE intervention while Normandy was provisionally accredited could have saved Normandy School District the headache from becoming unaccredited, from triggering the School Transfer Statute, from spending millions of dollars on tuition for their students to transfer to accredited schools, and from being involved in numerous litigation battles.¹²⁷

In short, the Missouri DESE should allocate funds to underperforming school districts as soon as these districts become provisionally accredited. These funds should be allocated towards tangible change within underperforming districts, so that these districts may reach accreditation status without having to pull themselves up by their own bootstraps. The Missouri DESE should not have been allowed to classify Normandy School District as provisionally accredited from 2008 to 2012, when evidence reveals that the schools within Normandy were failing in most other respects.¹²⁸ Though this proposal may not end racial or socioeconomic segregation of Missouri public schools, it may give the students who attend underperforming school districts a chance to have the same or similar educational opportunities as their counterparts in accredited school districts.

CONCLUSION

On their faces, the Missouri public education policies at issue in this Note are neutral.¹²⁹ The policies seemingly provide a simple system of checks and balances for those Missouri public school districts that do not live up to certain standards set forth by the Missouri DESE.

In effect, the Missouri public education policies at issue in this Note promote racial and socioeconomic segregation and deprive Missouri children access to quality education. Thus, the effect of these Missouri public education policies is a modern-day apartheid school system that exists over half a century since segregation in public schools was outlawed

127. See generally *supra* Introduction; see also *supra* Section I.C.

128. See generally *supra* Sections I.B, I.C.

129. MO. REV. STAT. § 161.092 (2014); MO. REV. STAT. § 167.131 (2016).

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by the Supreme Court with the 1954 and 1955 *Brown v. Board of Education* decisions.¹³⁰

130. *Brown I*, 347 U.S. 483, 493 (1954); *Brown II*, 349 U.S. 294, 300 (1955).