

Summary of SC90236, *Jane Turner, et al. v. School District of Clayton, et al.*

Appeal from the St. Louis County circuit court, Judge David Lee Vincent III
Argued and submitted Nov. 3, 2009; opinion issued July 16, 2010

Attorneys: The parents were represented by Elkin L. Kistner and Sean M. Elam of Jones, Bick, Kistner & Jones PC in St. Louis, (314) 571-6823; the Clayton school district was represented by Mark J. Bremer and D. Leo Human of Kohn, Shands, Elbert, Gianouliakis & Giljum LLP in St. Louis, (314) 241-3963; and the transitional school district was represented by Richard B. Walsh Jr. and Evan Z. Reid of Lewis, Rice & Fingersh LC in St. Louis, (314) 444-7600.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Parents living in the St. Louis transitional school district who sent their children to school in a neighboring school district appeal summary judgment in favor of the school districts finding that a particular tuition statute did not apply to the transitional district and that the parents, and not the transitional district, were responsible for paying the children's tuition. In a per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri reverses the trial court's decision and remands (sends back) the case for further proceedings. The judges unanimously hold that the particular tuition statute applies to the transitional district but that the parents are required to pay their children's tuition for any school years covered by their tuition agreements with the neighboring district. Four of the judges hold that the neighboring school district is required to admit children living within the transitional district. In a dissenting opinion, Judge Patricia Breckenridge would hold that a different statute gives the neighboring district discretion whether to admit such children and, therefore, would affirm the judgment in the neighboring district's favor.

Facts: In June 2007, four parents who live within the St. Louis city transitional school district boundaries entered into tuition agreements with the Clayton school district to send their children to the Clayton schools during the 2007-2008 school year. The transitional school district subsequently lost its state accreditation. In response, one parent sent a letter to the Clayton school board asking it to charge the transitional school district for her children's tuition pursuant to section 167.131, RSMo 2000, instead of her pursuant to the tuition agreement. The Clayton district declined to seek payment from the transitional school district. The four parents sued the transitional school district, the Clayton school district and the St. Louis city board of education seeking a declaratory judgment that, because the transitional district lost accreditation, the transitional district was required to pay the children's tuition to attend school in the Clayton district. They also sought restitution for tuition they already had paid. The circuit court granted the school districts' motions for summary judgment. The parents appeal.

REVERSED AND REMANDED.

Court en banc holds: (1) Section 167.131, RSMo 2000, applies to the transitional school district. The statute states that the boards of unaccredited schools "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 adjoining county” and that “each pupil shall be free to attend the public school of his or her choice.” Here, it is uncontested that the St. Louis transitional school district lost its accreditation with the state board of education, that the plaintiff parents and their children live in St. Louis city, and that the children attend accredited schools in the Clayton school district in adjoining St. Louis County. There is nothing in the statute’s language indicating it was intended to apply only when a particular school – and not an entire district, as is the case here – loses accreditation. Under section 167.131, a school district is obligated to pay tuition if the district “does not maintain an accredited school.” Because the entire St. Louis district lost its accreditation, it maintains no accredited schools and, as such, it is subject to this statute. Further, it is of no consequence that certain schools in the St. Louis district are accredited by a private group; the statute speaks to districts that do not maintain accredited schools “pursuant to the authority of the state board of education.” Because the district lost its accreditation with the state education board in 2007, it is unaccredited for purposes of section 167.131.

(2) Section 167.131 does not conflict with the provisions of Senate Bill No. 781 – including sections 162.1060 and 162.1100, RSMo – which went into effect after the state settled the St. Louis desegregation case. Section 162.1060 provides that a public corporation overseeing the urban voluntary school transfer program funds the voluntary transfer of students between schools in St. Louis city and St. Louis County to promote desegregation of the city’s schools. Section 162.1100 directs how the St. Louis city school district is governed in the event it loses state accreditation. The Clayton and St. Louis districts here fail to show that the legislature, by enacting SB 781, intended to exclude the city district from the application of section 167.131. Conversely, nothing in the language of SB 781 expressly exempts the transitional school district from application of section 167.131, and there are no textual inconsistencies between the statutes that preclude the provisions of SB 781 and section 167.131 from operating concurrently. At most, there is some tension between the two in that applying 167.131 to the transitional district makes implementing SB 781 more difficult, but this is an insufficient basis for finding that the legislature intended SB 781 to repeal by implication the application of section 167.131 to the city’s school district. The legislature could have but did not provide such an exemption, and as such, this Court must enforce the law as it is written.

(3) Section 167.131 requires the Clayton district to admit children from the transitional school district. Although section 167.020, RSMo Supp. 2009, provides that a student must obtain a waiver of the residency requirement before attending a district other than the one in which the student lives, this statute is a general statute that, where a conflict exists, must yield to a statute dealing with the same subject matter in a more specific way. Here, section 167.131.2 is a specific statute that specifically permits a student living in the boundaries of an unaccredited school to attend an accredited school of the student’s choosing, provided the accredited school is in the same or an adjoining county. The statute then requires the chosen accredited school to accept the pupil. Previously, this statute provided that “no school shall be required to admit any pupil,” section 167.131.2, RSMo 1986, but the legislature subsequently removed this discretionary language, specifically taking away the receiving school’s discretion to deny admission under the circumstances of this case.

(4) The parents are not entitled to restitution for the tuition they paid to the Clayton school district for the years covered by a tuition agreement. The parents obtained admission of their

children to Clayton schools pursuant to section 167.151.1, RSMo Supp. 2009, by entering into personal tuition agreements. Under the terms of these agreements, the parents agreed to pay their children's tuition and the Clayton district only was obligated to allow the children to attend so long as their parents paid their tuition. The agreements contained no contingency permitting the parents to stop paying their children's tuition if the St. Louis school district lost its accreditation. The terms of their contract are unambiguous and must be enforced as such. Further, there was no failure of consideration; the parents received the benefit of the bargain they struck because the Clayton district provided the education for their children for which they were paying.

Opinion concurring in part and dissenting in part by Judge Breckenridge: The author agrees that section 167.131 applies to the St. Louis transitional school district, that the parents are required to pay their children's tuition for any school years covered by the tuition agreements and that the parents are not entitled to restitution of tuition paid under those agreements. But she would hold that the Clayton school district is not compelled to admit the children and that, instead, section 167.020 gives the Clayton school district the discretion as to whether to admit the children. Because the Court's interpretation of section 167.131 brings that statute into conflict with section 167.020, the Court should attempt to harmonize the two provisions. Section 167.020, adopted in 1996 as part of the state's safe schools act, uses the word "may" rather than "shall" when referring to the grant or denial of a waiver for admission of a nonresident pupil. Further, this section provides exemptions from the waiver requirement for students wishing to attend school pursuant to section 167.121 and 167.151 but not for students wishing to attend pursuant to section 167.131. Accordingly, a school district like Clayton has discretion pursuant to section 167.020 in deciding whether to admit a pupil seeking admission under section 167.131. These two statutes can be harmonized by giving effect to the phrase "[s]ubject to the limitations of this section" contained in the final sentence of section 167.131.2. Read in its entirety and in context with section 167.020, section 167.131 provides that while each pupil is free to choose the school the pupil desires to attend, that choice is limited by the requirement that the pupil be admitted to the chosen school, which includes obtaining a discretionary waiver from the receiving district. This interpretation is consistent with policy statements issued by the state's department of elementary and secondary education and avoids the absurd result in which an unlimited number of students from St. Louis city could attend the Clayton school district even if it meant the district exceeded its capacity or it had difficulty collecting tuition payments from the transitional school district.