NOTE

Unconditional Acceptance: The Supreme Court of Missouri’s Interpretation of Missouri Revised Statutes Section 167.131

* B.S., Truman State University, 2002; J.D. Candidate, University of Missouri School of Law, 2012; Managing Editor, Missouri Law Review, 2011-12. I would like to thank the members of the Missouri Law Review for their many rounds of helpful edits. I am grateful to my husband, Ben, for his constant encouragement and support in both the writing of this Note and all of my endeavors.

I. INTRODUCTION

The unaccredited St. Louis Public School District had an average daily attendance of approximately 23,550 students in 2009,¹ more than ten times the average attendance of the neighboring Clayton School District.² In Turner v. School District of Clayton,³ the Supreme Court of Missouri faced the novel issue of interpreting Missouri Revised Statutes section 167.131 as it related to children who resided in the currently unaccredited St. Louis Public School District but wished to attend schools in the accredited Clayton School District.⁴ After determining that the unaccredited district was responsible for the tuition of students who attended accredited schools, the majority concluded that under section 167.131, when a child of an unaccredited school district chooses to transfer to an accredited district in the same or adjoining county, the school to which the child transfers must accept the child.⁵

³ Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo. 2010) (en banc) (per curiam).
⁴ Id. at 662; see MO. REV. STAT. § 167.131 (2000).
⁵ Turner, 318 S.W.3d at 669.
tion of section 167.131 removes any discretion that the district may have had in accepting the transfer child.6 Ultimately, the accredited district is forced to accept any student who transfers from an unaccredited district.

*Turner*’s impact on the accredited school districts of both the St. Louis metro area and the State of Missouri as a whole is severe, harsh, and unexpected.7 Both the surrounding accredited districts and parents of students in unaccredited districts are frustrated with the lack of clarification as to what the ruling actually means and how it will be put into practice.8 The practical results of the majority’s interpretation will have major impacts on the areas of funding, transportation, and safety, to name a few.9 The court’s holding in *Turner* – that accredited districts must accept students from adjoining unaccredited districts – was a reading of the plain meaning of the language of the statute.10 That reading has opened the door for a multitude of consequences which could not possibly have been intended by the legislature, indicating a need for the legislature to review and reassess the language of section 167.131.

II. FACTS AND HOLDING

Jane Turner, Susan Bruker, Gina Breitenfeld, and William Drendel were parents of school age children who lived within the City of St. Louis and within the borders of the transitional school district.11 The parents all shared in the decision to send their children to schools in the Clayton School District in St. Louis County, which adjoins the City of St. Louis.12 The children attended schools in Clayton under personal tuition agreements, which their parents negotiated with Clayton for the 2007-2008 school year prior to the St. Louis Public School District’s June 2007 loss of accreditation.13

After the loss of accreditation, one of the parents requested that Clayton bill the Transitional School District for the 2007-2008 tuition pursuant to section 167.131.14 Clayton chose not to request payment from the transitional

---

6. *Id.*
7. *See infra* Parts V.A-C.
8. *See infra* Part V.D.
9. *See infra* Parts V.A-B.E.
11. *Id.* at 663. The Transitional School District is the name given to the school district of the City of St. Louis, which lost its status as an accredited school district through the State of Missouri in 2007. Bd. of Educ. of the City of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 5-6 (Mo. 2008) (en banc).
14. *Id.* MO. REV. STAT. § 167.131 is titled “District Not Accredited Shall Pay Tuition and Transportation When – Amount Charged” and states:
school district, and the parents filed suit against Clayton, the transitional school district, and the Board of Education for the City of St. Louis.15

The parents sought a declaratory judgment that the Transitional School District was responsible for the payment of their children’s tuition to Clayton because the Transitional School District was no longer accredited by the State of Missouri.16 In their separate motions to dismiss or in the alternative motions for summary judgment, Clayton and the Transitional School District argued that section 167.131 did not apply to the instant situation.17 Clayton asserted that the Safe Schools Act gave the district discretion as to which non-resident students it would admit from unaccredited school districts.18 Furthermore, Clayton argued that because it had not admitted the children pursuant to section 167.131, the parents’ claims were foreclosed.19

The St. Louis Circuit Court determined that section 167.131 was not applicable to the parents’ situation and that there was “no legal basis” for the parents’ request for declaratory judgment.20 The court then entered final

1. 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 of education to classify schools as established in section 161.092, RSMo, shall pay the tuition of and provide transportation consistent with the provisions of section 167.241, RSMo, for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county.

2. The rate of tuition to be charged by the district attended and paid by the sending district is the per pupil cost of maintaining the district’s grade level grouping which includes the school attended. The cost of maintaining a grade level grouping shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers’ wages, incidental purposes, debt service, maintenance and replacements. The term “debt service”, as used in this section, means expenditures for the retirement of bonded indebtedness and expenditures for interest on bonded indebtedness. Per pupil cost of the grade level grouping shall be determined by dividing the cost of maintaining the grade level grouping by the average daily pupil attendance. If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. Subject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.


15. Turner, 318 S.W.3d at 663.
16. Id. The parents’ petition was later amended with a request for restitution for the tuition previously paid to Clayton. Id.
17. Id.
18. Id.
19. Id.
The Missouri Court of Appeals for the Eastern District determined that section 167.131 was not relevant to the situation because the parents were contractually obligated to pay the tuition under the agreement they had signed with Clayton, precluding any other party from doing so. The court of appeals determined that it would affirm the judgment of the trial court, but due to the significance of the issues involved, it chose to transfer the case to the Supreme Court of Missouri.

Upon its review, the Supreme Court of Missouri determined that section 167.131 did apply to the factual situation of the parents. The court found that under the plain meaning of section 167.131 the parents were entitled to have the Clayton tuition paid by the transitional school district. The court further clarified that despite the Safe Schools Act, section 167.131 did not grant the accredited school districts any discretion as to which students they would admit.

III. LEGAL BACKGROUND

While all Missouri children are entitled to a free public education, historically they have not been able to choose at will where that public education will take place. With the passage of the Missouri Safe Schools Act and section 167.020, the Missouri legislature sought to provide a safe learning environment for children through procedures which govern the acceptance of students transferring from one public school to another. Other transfer restrictions on students of St. Louis City public schools have been put into place as a result of the settlement of Liddell v. Board of Education, a desegregation lawsuit. After the St. Louis Public School District’s most recent loss of accreditation in 2007, the desire of students to transfer to accredited schools outside of the district under section 167.131 has emerged, culminating in the Supreme Court of Missouri’s Turner decision. In order to reach

21. Id. at *13.
22. Id.
23. Id. at *14.
24. There was no dispute that the St. Louis Public School District was without accreditation from the Missouri State Board of Education (State Board) and the parents and children lived in the City of St. Louis but had chosen to attend a school in an adjoining county that was accredited by the State Board. Turner, 318 S.W.3d at 665.
25. Id. The court declined to follow the argument of the Transitional School District that section 167.131 was only meant to apply in a situation when individual schools lost accreditation, not to an entire “district-wide loss of accreditation.” Id.
26. Id. at 668-69.
27. See infra Part III.B.
28. See infra Part III.A.
29. See infra Part III.
30. See infra Parts III.D-E.
their respective determinations on the meaning and interpretation of section 167.131, both the majority and the dissent employed multiple methods of statutory interpretation.  

A. The Safe Schools Act and Missouri Revised Statues Section 167.020

Following an onslaught of violence in American high schools and more specifically the death of a high school freshman in Missouri, the Missouri legislature chose to enact the Safe Schools Act in 1996 in an effort “to ensure that Missouri’s public schools are a safe place for students to learn and achieve.” Under the Act, students wishing to transfer to a different public school within the same district or in another district are required to prove residency within the district or request and obtain a waiver of the residency requirement. By waiving the residency requirement, section 167.020 allows students who can demonstrate hardship or good cause to transfer to a nearby accredited district. If there is any reason to suspect that the transferring student would cause an immediate danger to other students or faculty at the new school, the superintendent may conduct a hearing within five days of the registration request to determine whether to accept the student. If the transferring student requests a waiver of any of the requirements of section 167.020.2, the district board of the new school shall hold a hearing as soon as possible but not more than forty-five days after the request for waiver was made, or the waiver will be granted by default. The board has the discretion to approve or reject the waiver request. If the waiver is ap-

31. See infra Part III.F.
32. On January 24, 1995, Christine Smetzer, a freshman at McCluer North High School in St. Louis, was brutally raped and murdered in one of the bathrooms of the school while taking a restroom break from class. Cathi M. Kraetzer, Law Summary, Does the Missouri Safe Schools Act Pass the Test? Expelling Disruptive Students to Keep Missouri’s Schools Safe, 67 MO. L. REV. 123, 126 (2002); see Stanley Matthew Burgess, Comment, Missouri’s Safe Schools Act: An Attempt to Ensure a Safe Education Opportunity, 66 UMKC L. REV. 603, 603 (1998). Christine did not know the student who murdered her; he had just transferred to McCluer North the day before. Burgess, supra, at 603. He had been arrested at his prior high school after being found in the women’s restroom, but McCluer North failed to verify any permanent records from his prior high school, thus allowing a disturbed young man entry into what should have been a safe place for Christine. Id.
34. MO. REV. STAT. § 167.020.2(1)-(2) (Supp. 2010).
35. Id. § 167.020.3.
36. Id. § 167.020.2(2).
37. Id. § 167.020.3.
38. Id.
proved, the transferring student may register. If the waiver is rejected, the student has the opportunity to appeal the decision to the circuit court of the district’s county.

Within two business days of a student’s enrollment at a new school, the school official who enrolled the student must request records from the previous school. The school official must also request the disciplinary records of the transferring student from all schools that the transferring student attended in the previous twelve months, as required by section 106.261.9. The student’s previous schools must respond to the request for disciplinary records within five days of its receipt.

B. The Right to a Free Public Education

The Missouri Constitution entitles anyone under the age of twenty-one to a free public education, stating that:

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.

39. See id.
40. Id. Section 167.020.4 also provides that anyone who knowingly submits false information in regards to subsection 2 of the statute is guilty of a misdemeanor, whereas section 2 pertains to the transferring student as a potential dangerous threat to students and teachers at the new school. Id. § 167.020.2-.4.
41. Id. § 167.020.7.
42. Id. Section 160.261.9 states:
Each school board shall define in its discipline policy acts of violence and any other acts that constitute a serious violation of that policy. “Acts of violence” as defined by school boards shall include but not be limited to exertion of physical force by a student with the intent to do serious bodily harm to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. School districts shall for each student enrolled in the school district compile and maintain records of any serious violation of the district’s discipline policy. Such records shall be made available to teachers and other school district employees with a need to know while acting within the scope of their assigned duties, and shall be provided as required in section 167.020, RSMo, to any school district in which the student subsequently attempts to enroll.

43. MO. REV. STAT. § 160.261.9 (Supp. 2010).
44. MO. CONST. art. IX, § 1(a).
While all persons under the age of twenty-one may be entitled to a free public education, that does not mean that the education can take place at the student’s school of choice. The U.S. District Court for the Eastern District of Missouri decided just such an issue in Washington v. Ladue School District Board of Education. In Washington, a student who presumably did not meet the residency requirements of section 167.020 was removed from a classroom and dropped from the district rolls. The student claimed that this action violated his civil rights and requested a temporary restraining order and preliminary injunction. Upon reviewing the facts of the case, the court held that while “every child is indeed entitled to a free public education, nowhere in the Constitution nor in any statute of the State of Missouri is a child entitled to choose, at whim, the location of that education.” The court noted that a specific purpose of section 167.020 was to determine which school children are to attend. The court also enunciated the potential problems with granting a preliminary restraining order or injunction and the issues that would be created by allowing children to choose which public schools they would attend.

The court was concerned that a temporary restraining order or preliminary injunction against the district would create a massive influx of applications to attend school within the district based on the “dubious grounds” of previously living in the district or possibly moving there in the future. If students could choose their school without residency restrictions, “the structure of the public school system of the State would collapse into chaos, thereby resulting in an actual deprivation of the right to a free public education.” The court reasoned that many schools, like those in the Ladue district, would not be able to accommodate the sheer volume of students who wished to attend, while other schools would likely be unable to continue to function due to a reduction in attendance. The court made it clear that the right to free public education is a fundamental right of the children of the United States

46. Id.
47. Id. at 1056. The court was unable to definitively state where the plaintiff lived because his counsel avoided answering that question. Id. at 1058 n.4.
48. Id. at 1055-56.
49. Id. at 1058.
50. Id. The court also stated that it was confident that the plaintiff would be readmitted to the Ladue School District if he were able to prove his residency within the district; however, he was unable to do that. Id. at n.5.
51. Id. at 1058.
52. Id.
53. Id.
54. Id.
and Missouri; however, the school where that education takes place is restricted by section 167.020 and in turn by the student’s residency.55

C. Senate Bill 781 and Missouri Revised Statutes Sections 162.1060 and 162.1100

As an essential part of negotiating the settlement of desegregation claims in Missouri in the late 1990s, Senate Bill 781 (“SB 781”) was approved by the Missouri legislature and signed by Governor Mel Carnahan in 1996.56 SB 781 allocated conditional funding to the St. Louis Public School District so long as the federal district court entered a final judgment on the desegregation settlement by March 15, 1999.57 The bill also required that St. Louis voters approve a sales or property tax increase to provide $20 million for the school district.58 Both conditions were met, and portions of SB 781 were codified as sections 162.1060 and 162.1100.59

Section 162.1060 created the “Metropolitan Schools Achieving Value in Transfer Corporation” to execute the urban voluntary school transfer program to the City of St. Louis.60 Under the urban voluntary school transfer program, eligible black students who lived in the city could choose to transfer to schools in St. Louis County, and white students from St. Louis County could choose to transfer to city magnet schools.61 The corporation’s board of directors was responsible for the transportation of the voluntary transfer students as well as the payment of the students’ tuition to the schools that they were attending.62 To enter the voluntary transfer program, students would need to meet criteria designated by the board of directors, with preference given to those students already participating in a transfer program.63 State aid for the students who participated in the transfer program would be paid to the transfer corporation.64 The transfer corporation would then distribute the aid to the school district where the student attends classes, not the district where the student resided.65

55. Id.
57. Id. at 1154.
58. Id.
60. MO. REV. STAT. § 162.1060.1 (2000).
62. MO. REV. STAT. § 162.1060.2(1).
63. Id.
64. Id. § 162.1060.3(1)-(2).
65. Id. § 162.1060.3(2).
While section 162.1060 focuses on the voluntary transfer of students from urban to suburban areas, section 162.1100 establishes a transitional school district for the City of St. Louis in the event that the district loses its accreditation from the State Board. A chief executive office will be appointed and “any powers granted to any existing school board . . . shall be vested with the special administrative board of the Transitional School District. . . .” Termination of a transitional school district can be made at any time by the State Board so long as the Board determines that the purposes for which a transitional school district was established have been met. The State Board can also reestablish a transitional school district at any time upon a determination that “it is necessary . . . to accomplish the purposes established in this section.” Upon a decision by the State Board to terminate or reestablish the transitional school district, the board must provide notice to the governor and general assembly and the decision shall go into effect thirty days later. The Transitional School District for the City of St. Louis was most recently reestablished in 2007 after the St. Louis Public School District lost accreditation.

D. St. Louis Public School District’s Current Loss of Accreditation

Since 1994, the St. Louis Public School District has failed to achieve anything more than minimally acceptable performance levels. After the July 2006 resignation of yet another superintendent, the Missouri Commissioner of Education stepped in and appointed an Advisory Committee “to advise him, the [S]tate [B]oard, and the community” about the problems fac-

66. MO. REV. STAT. § 162.1100 (Supp. 2010).
67. Id. § 162.1100.3.
69. MO. REV. STAT. § 162.1100.12.
70. Id.
71. Id.
72. Bd. of Educ. of the City of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 6 (Mo. 2008) (en banc).
73. Id. at 5.
74. This was the fifth resignation in three years. Smith, supra note 56, at 1145.
ing the St. Louis Public School District. The Advisory Committee reviewed a number of issues including school district performance, financial status, concerns of parents, and the 1999 desegregation agreement, issuing a final report in December 2006.

Following the report, the State Board chose to follow the recommendation of the Advisory Committee and reestablished the Transitional School District in February 2007. One month later, the State Board met to consider the issue of accreditation. In that meeting, the State Board considered the Advisory Committee report as well as financial, performance, and accreditation information about the district. The Department of Elementary and Secondary Education provided its evaluation of the district as well as supporting documentation for its determination that the State Board should unaccredit the district. The loss of accreditation became official on June 15, 2007, and the Special Administrative Board of the Transitional School District took over. The city board challenged the determination on multiple grounds but was unsuccessful. The St. Louis Public School District remains unaccredited today, and the Special Administrative Board of the Transitional School District remains in power.

E. Missouri Revised Statutes Section 167.131

Section 167.131 outlines the tuition payment guidelines for a transfer student from an unaccredited school district, as well as the mode of acceptance of that transfer student at another public school. When a school district fails to maintain an accredited school as established by the State Board in section 161.092, that district is required to pay the tuition of the transferring student. The failing district must also provide transportation for transferring students so long as they attend an accredited school in another

76. Id.
77. Id.
78. Id. In order to remain accredited, a school district must meet standards set by the State Board. MO. REV. STAT. § 161.092(9) (Supp. 2010).
80. Id.
81. Id.
82. Id. at 6, 18.
85. Id. § 167.131.1.
district in the same or a bordering county.86 Tuition is charged to the unaccredited district for the “per pupil cost of maintaining the district’s grade level grouping.”87

The most controversial part of section 167.131 pertains to the last line of subparagraph 2, which states that “[s]ubject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.”88 Section 167.151 gives the school board discretion to accept students who are not entitled to a free education within the district.89 Section 167.131 seems to carve out an exception to section 167.151 by allowing students to transfer from unaccredited districts to the accredited district of their choice. It is difficult to contemplate that the legislature intended for some students not entitled to a free education within a district to be able to transfer to the school of their choice while others are not allowed that luxury.

F. Statutory Interpretation

When there are discrepancies as to the meaning of a statute, courts may employ a number of different construction principles to determine the intentions of the legislature. In most cases, the problem is not which principle of interpretation is applicable but which principle to apply.90 The cardinal rule when interpreting a statute is to determine the intention of the legislature from the plain and ordinary meaning of the words of the statute.91

If two statutes seem at odds, both are enforced even if they are not in complete agreement.92 Statutes which are not at odds on their face but seem to conflict when read together must be harmonized if possible and both given effect.93 When interpreting statutes, courts assume that the legislature knows the law,94 which prohibits courts from reading language into statutes.95 Courts also make the presumption that the legislature intended to give meaning to every word of the statute and that no language in the statute is excess or

86. Id.
87. Id. § 167.131.2.
88. Id.
89. MO. REV. STAT. § 167.151.1 (Supp. 2010).
91. State ex rel. Unnerstall v. Berkemeyer, 298 S.W.3d 513, 519 (Mo. 2009) (en banc).
92. StopAquila.org v. City of Peculiar, 208 S.W.3d 895, 905 (Mo. 2006) (en banc).
94. State ex rel. Broadway-Washington Assocs., Ltd. v. Manners, 186 S.W.3d 272, 275 (Mo. 2006) (en banc).
95. State ex rel. Mercantile Nat. Bank at Dallas v. Rooney, 402 S.W.2d 354, 362 (Mo. 1966) (en banc).
superfluous. Generally, the use of the word “may” within a statute is permissive, while the use of the word “shall” mandates an action. Still another canon of statutory interpretation is that of reductio ad absurdum, meaning that the logical consequence of an argument should not be an absurd one. Courts also employ the canon of expressio unius est exclusio alterius, “the express mention of one thing implies the exclusion of another.” Finally, when interpreting a statute, courts give great weight to the interpretation and construction given to the statute by the agency that enforces it. While courts may use any or all of these methods of interpretation, they must always keep in mind the purpose of determining the intent of the legislature in enacting the statute.

IV. INSTANT DECISION

In Turner v. School District of Clayton, the Supreme Court of Missouri reversed the decision of the St. Louis County Circuit Court in its interpretation of Missouri Revised Statutes section 167.131 and remanded the case. In an opinion drafted by Chief Justice William Ray Price, all of the judges agreed that section 167.131 requires the Transitional School District to pay the tuition of students who choose to attend an accredited school in an adjoining district. The judges were also in agreement that the parents of those students are required to pay the tuition for the time period covered by negotiated tuition agreements. The dissent, drafted by Judge Patricia Breckenridge and joined by Judge Mary Rhodes Russell and Judge Laura Denvir Stith, departed from the majority on the issue of whether the district to which the student chooses to transfer has any discretion in accepting the student.

96. Hyde Park Hous. P’ship v. Dir. of Revenue, 850 S.W.2d 82, 84 (Mo. 1993) (en banc).
97. State ex inf. McKittrick v. Wymore, 119 S.W.2d 941, 944 (Mo. 1938) (en banc).
98. BLACK’S LAW DICTIONARY 1392 (9th ed. 2009).
99. See Harrison v. MFA Mut. Ins. Co., 607 S.W.2d 137, 146 (Mo. 1980) (en banc); Sullivan, supra note 90, at 122.
100. Linton v. Mo. Veterinary Med. Bd., 988 S.W.2d 513, 517 (Mo. 1999) (en banc).
101. See Sullivan, supra note 90, at 120.
103. Id. at 663.
104. Id. at 670 (Breckenridge, J., concurring in part and dissenting in part).
105. Id.
A. The Majority Opinion

On appeal from the circuit court’s grant of summary judgment in favor of the defendants, the parents and children claimed that the plain language of section 167.131 required that the unaccredited Transitional School District pay the tuition of students who were attending accredited schools in Clayton under negotiated tuition agreements. The standard of review for the grant of a motion for summary judgment is de novo.

The parents first claimed that the circuit court erred in granting summary judgment in favor of the Transitional School District because the plain language of section 167.131 clearly applies to the transitional school district. The parents also maintained that the transitional district should be required to pay the tuition of their children. The parents argued that section 167.131 applies to them because the Transitional School District was unaccredited, the children and parents lived in the City of St. Louis, and the children attended schools in another accredited school district.

The Transitional School District argued that section 167.131 applies only in situations where a single school loses accreditation, not an entire district, basing its claim on the legislative history of the statute. The Transitional School District also argued that section 167.131 should not apply because some of its schools were accredited by a private organization.

The court dismissed both of the district’s arguments and stated that if the intent of the legislature could be obtained from the plain meaning of the statute, then it was unnecessary to consider legislative history. Regarding accreditation by a private organization, the court determined that section 167.131 applies to districts that maintain unaccredited schools under the State Board’s authority.

The parents next asserted there was no conflict between the language of section 167.131 and SB 781. The parents also claimed that the circuit

106. Id. at 663 (majority opinion).
107. Id. at 664 (citing ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. 1993) (en banc)).
108. Id.
109. Id. See supra note 14 for the language of Section 167.131.
110. Turner, 318 S.W.3d at 665.
111. Id.
112. Id.
113. Id.
114. Id.
115. Id. at 665-66. Section 167.131 allows students of unaccredited districts to transfer to accredited districts, while SB 781 governs the transfer of students from the St. Louis Public School District to schools in St. Louis County in accordance with the settlement of the St. Louis desegregation case. Id. Sections 162.1060 and 162.1100 codified portions of SB 781. Id. at 666 n.4. Section 162.1060 establishes the “urban voluntary school transfer program” to aid in the desegregation of St. Louis City
court erred in granting summary judgment on the basis of a conflict between the two.\textsuperscript{116} The district argued in response that the funding provisions of section 167.131\textsuperscript{117} were in conflict with section 162.1060\textsuperscript{118} and that section 167.131 undercut the purpose of section 162.1060 by taking students away from the voluntary desegregation program.\textsuperscript{119} In regard to section 162.1100, the district claimed that if section 167.131 were applied to the City of St. Louis, many students would choose to attend county schools, resulting in decreased funding for the city.\textsuperscript{120}

The court noted that the districts failed to provide any evidence that SB 781 was meant to exclude the St. Louis Public School District from section 167.131, as the language of the statute did not demonstrate an exemption.\textsuperscript{121} There were no “textual inconsistencies” between the statutes that would prevent them from being enforced together.\textsuperscript{122} The court determined that section 167.131 was not repealed by implication for the St. Louis Public School District, reasoning that even if tension exists between two statutes, both are enforceable unless “irreconcilably inconsistent.”\textsuperscript{123} According to the court, the minimal tension existing between SB 781 and section 167.131 only made it slightly more difficult to apply SB 781.\textsuperscript{124} Also, the court found that the legislature had the power to specifically exclude the Transitional School District from section 167.131 and did not do so.\textsuperscript{125} Additionally, the court stated that it only had the power to “enforce the law as it is written” resulting in a concurrent application of section 167.131 and SB 781.\textsuperscript{126}

Clayton argued that it was not required to admit students transferring under section 167.131 because section 167.020 gave it discretion to choose which students to admit and reject.\textsuperscript{127} The court reasoned that the meaning of

\textsuperscript{116} Id. at 665-66.
\textsuperscript{117} Section 167.131 requires the unaccredited district to pay the cost of attendance for students who chose to transfer. \textit{MO. REV. STAT.} § 167.131.1 (2000).
\textsuperscript{118} Section 162.1060 states that the cost of attendance for students attending other schools under the urban voluntary transfer program are to be paid by the corporation that oversees the program. \textit{MO. REV. STAT.} § 162.1060.2(1) (2000).
\textsuperscript{119} \textit{Turner}, 318 S.W.3d at 666-67.
\textsuperscript{120} Id. at 667.
\textsuperscript{121} Id.
\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Id. at 668.
\textsuperscript{126} Id.
\textsuperscript{127} Id. The pertinent language of 167.131 states that “each pupil shall be free to attend the public school of his or her choice.” \textit{MO. REV. STAT.} § 167.131.2 (2000). Section 167.020 requires a waiver of the residence requirement in order to admit a student not living in the school district. \textit{MO. REV. STAT.} § 167.020.2(2) (Supp. 2010).
section 167.131 was plain on its face and did not require the aid of statutory interpretation, hence a reading of section 167.131 in pari materia was unnecessary.\textsuperscript{128} According to the court, the clear language of section 167.131 eliminated the need for its harmonization with section 167.020.\textsuperscript{129} The court stated that the legislature’s use of “shall” instead of “may” in section 167.131 – referring to a student’s choice to transfer to an accredited school – demonstrated the clear intent to require school districts like Clayton to accept students transferring from unaccredited school districts.\textsuperscript{130} Based on the plain and ordinary language of “shall” and not “may” in section 167.131, the court held that an accredited school in another or adjoining district was required to admit a student transferring from an unaccredited school.\textsuperscript{131}

Finally, the court examined the parents’ claim that the Transitional School District should be responsible for the payment of the prior tuition under the tuition agreements that the parents negotiated directly with Clayton.\textsuperscript{132} The court rejected the parents’ claims that the tuition agreements were not supported by consideration.\textsuperscript{133} In making the tuition agreements, the parents bargained for a Clayton education in return for tuition, which is exactly what they received.\textsuperscript{134} According to the court, the tuition agreement included no provision that eliminated the obligation of the parents to pay Clayton if the city school district lost its accreditation.\textsuperscript{135} The court determined that Clayton was not required to obtain payment from the Transitional School District for the period of time after the St. Louis Public School District was unaccredited, because the tuition agreement still governed.\textsuperscript{136} The court also found that the parents were not entitled to restitution for the tuition paid in prior years, as it was outside of the scope of the tuition agreements signed by the parents.\textsuperscript{137}

The court found that because the school district where the students resided was unaccredited, section 167.131 allowed the students to attend an accredited school of an adjoining district, with the tuition to be paid by the unaccredited school district.\textsuperscript{138} Finally, the court determined that section 167.131 provided that the accredited district to which the students of unaccredited districts choose to transfer has no discretion and must accept the transfer students.\textsuperscript{139}

\begin{flushright}
128. Turner, 318 S.W.3d at 668.
129. Id. at 668-69.
130. See id. at 668-69.
131. Id. at 669.
132. Id. at 669-70.
133. Id. at 670.
134. Id.
135. Id.
136. Id.
137. Id. at 669-70.
138. Id. at 664.
139. Id.
\end{flushright}
B. The Dissent

The dissent disagreed with the majority’s conclusion that section 167.131 does not give Clayton discretion in admitting students transferring from an unaccredited school in an adjoining county. 140 The crux of the dissent’s position was that the majority’s plain-meaning interpretation of section 167.131 brought it into conflict with section 167.020, which requires the court to “attempt to harmonize them.” 141

The dissent reasoned that section 167.020 was enacted in 1996 as a part of the Safe Schools Act. 142 According to the dissent, the Safe Schools Act described situations in which schools were required to accept transfer students versus when the schools were allowed discretion. 143 The dissent concluded that in order to transfer to a new school, students were required to either prove that they resided within the school district or obtain a waiver of the residency requirement. 144 The dissent noted that the pertinent language of section 167.020 stated that the district “may grant the request for a waiver of any requirement of subsection 2” or “may also reject the request for a waiver in which case the pupil shall not be allowed to register.” 145 The dissent determined that the legislature’s use of “may” instead of “shall” demonstrated that the district was not required to grant a waiver of the residency requirement to a transferring student. 146 According to the dissent, this discretion was limited, as the student denied a waiver could turn to the courts for judicial review of the denial. 147

Under the dissent’s interpretation, students attending a public school at the discretion of the accepting district in return for tuition pursuant to either section 167.121, a transportation hardship, or section 167.151 were expressly excluded from the residency waiver requirement of section 167.020. 148 Because section 167.131 and its guidelines for students of unaccredited districts were not mentioned in section 167.020.6, the dissent concluded that students enrolling under section 167.131 were not to be excluded from the requirements of section 167.020 and were required to apply to the board for a waiver of the residency requirement. 149 The dissent’s interpretation provided that

140. Id. at 670 (Breckenridge, J., concurring in part and dissenting in part).
141. Id. at 671 (quoting S. Metro. Fire Prot. Dist. v. City of Lee’s Summit, 278 S.W.3d 659, 666 (Mo. 2009) (en banc)).
142. Id.
143. Id.; see MO. REV. STAT. § 167.020.2-.3 (Supp. 2010).
144. MO. REV. STAT. § 167.020.2.
145. Turner, 318 S.W.3d at 672 (Breckenridge, J., concurring in part and dissenting in part).
146. Id.
147. MO. REV. STAT. § 167.020.3.
148. Id. § 167.020.6.
149. Turner, 318 S.W.3d at 672-73 (Breckenridge, J., concurring in part and dissenting in part).
students intending to transfer to accredited schools in an adjoining district must obtain a residency waiver as required under section 167.020.3. The dissent noted that the majority’s interpretation of section 167.131 was in conflict with the above plain reading of section 167.020, thus requiring the two statutes to be harmonized.

In harmonizing the two statutes, the dissent focused upon the last sentence of section 167.131.2, which states that “[s]ubject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.” When the dissent gave effect to every word in the sentence, it concluded that the majority failed to focus on “the limitations of [the] section.” The dissent found a limitation in 167.131.1 that required the transferring student to “attend” an accredited school in another district in order for that student’s tuition to be paid by the unaccredited district. The dissent stressed that when read in its entirety, section 167.131 stated 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 and attend the school of the pupil’s choice.” The dissent’s reading then required consideration of section 167.020 because it set forth the requirements for admission of nonresidents. When the dissent harmonized section 167.131 with section 167.020, it was clear that a student was free to attend the school of his or her choice only after being admitted to that school at the school’s discretion through the waiver process. Because section 167.131 can be read in harmony with section 167.020, the dissent found that the majority misplaced its reliance on section 167.131 as the more specific statute.

The dissent said its interpretation also correlated with interpretations by the Department of Elementary and Secondary Education (DESE). The dissent stressed that because DESE is the “agency charged with administering the educational laws of [Missouri] that pertain to elementary and secondary education,” its interpretation of section 167.131 is given “great weight.”

150. Id. at 673.
151. Id.
153. Turner, 318 S.W.3d at 673 (Breckenridge, J., concurring in part and dissenting in part).
154. Id.
155. Id.
156. Id.
157. Id. at 673-74.
158. “The rule of construction that a more specific statute governs over a more general statute to the extent of any inconsistency between the two . . . traditionally applies only in situations in which the two statutory provisions being construed cannot be harmonized.” Id. at 674.
159. Id.
160. Id. at 674-75. “The interpretation and construction of a statute by an agency charged with its administration is entitled to great weight.” Linton v. Mo. Veterinary
DESE interpreted section 167.131 to mean “[a]ccredited districts . . . may accept or reject transfer pupils from an unaccredited district,” which was clearly in line with the interpretation of the dissent.161

Finally, the dissent focused on the “absurd” consequences that would result from the majority’s interpretation of section 167.131.162 Under the majority’s interpretation, the accredited districts are required to accept the transfer students.163 The majority’s interpretation creates the possibility that the entire St. Louis Public School District could transfer to Clayton, and there would be no means to stop this influx.164 The dissent noted that it was absurd to think that the legislature intended for this kind of influx from unaccredited school districts when there was no way that the districts to which these students transfer would be able to accommodate enormous increases in their student body.165 The dissent went on to describe population statistics that aided in this conclusion.166 After harmonizing sections 167.131 and 167.020, noting the specific exclusion of section 167.131 from section 167.020, and emphasizing the absurd consequences of the majority’s reading of section 167.131, the dissent stated that it would affirm the trial court judgment and not require Clayton to admit the students.167

V. COMMENT

The St. Louis Public School District is the largest in the state, with average enrollment for 2009 of over 23,000 students.168 Based on the majority’s interpretation of section 167.131 in Turner, all 23,000 of those children can choose to transfer to the accredited school district of their choice in an adjoining county. The districts to which the students transfer have no discretion in choosing whether to admit the transfer students. Considering the wide range of significant impacts that the majority’s interpretation of section 167.131 will have on school districts in the St. Louis area and State of Missouri as a whole, the fairly short discussion of requiring Clayton to admit transfer students from unaccredited districts seems inadequate.169 The majority’s almost tunnel-vision focus on the plain language of section 167.131 precludes any other possible reading of section 167.131 and fails to thoroughly consider the

Med. Bd., 988 S.W.2d 513, 517 (Mo. 1999) (en banc) (quoting Foremost-McKesson, Inc. v. Davis, 488 S.W.2d 193, 197 (Mo. 1972) (en banc)).

161. Turner, 318 S.W.3d at 674 (Breckenridge, J., concurring in part and dissenting in part).
162. Id. at 675.
163. Id.
164. Id.
165. Id.
166. Id.
167. Id. at 676.
168. See MODESE - ST. LOUIS, supra note 1.
169. See Turner, 318 S.W.3d at 668-70.
practical results that will come from the decision. In contrast, the dissent thoroughly discusses section 167.131 in its entirety and harmonizes it with section 167.020, while demonstrating the absurd consequences resulting from the majority’s interpretation.\textsuperscript{170}

A focus on these absurd consequences fuels the discussion of the dissent. It would be nearly impossible to adequately describe all of the implications of the majority’s decision, but the most significant seem to be in the areas of school funding, transportation, capacity, enforcement, safety, and the right to a free public education. This section addresses these consequences in turn. As a result of the court’s decision, the legislature should make changes to section 167.131 considering the level of uncertainty in the school districts where transitional district students may transfer.\textsuperscript{171}

\textit{A. School Funding}

The unaccredited districts will have to contend with the major problem of funding the transfers. Under the court’s holding, the unaccredited district is required to pay tuition to the accredited district attended by the student.\textsuperscript{172} While the entire court agreed on this point,\textsuperscript{173} the severity of its impact is abundantly clear when viewed in light of the majority’s interpretation that transfer schools have no discretion in admissions. Tuition is more expensive for a transfer student from an unaccredited district than that for a transfer student under other conditions.\textsuperscript{174} If transfer students from unaccredited districts can transfer to the school of their choosing, it is likely that many will take advantage of that opportunity, putting the Transitional School District on the hook for a potentially astronomical tuition bill.\textsuperscript{175} This leads to a question of how the transitional district would ever be able to cover the costs of the tuition payments to other schools and manage to regain its accreditation as its funding decreases and costs increase.\textsuperscript{176}

\textsuperscript{170} See \textit{id.} at 676 (Breckenridge, J., concurring in part and dissenting in part).


\textsuperscript{172} Turner, 318 S.W.3d at 664.

\textsuperscript{173} Id. at 670 (Breckenridge, J., concurring in part and dissenting in part).


\textsuperscript{175} See Tuition Tab, supra note 174.

\textsuperscript{176} Id.
Another issue is the ability of the transferee districts to collect the tuition due from an unaccredited district. Clayton previously encountered this problem after the Wellston School District’s loss of accreditation. Clayton accepted Wellston students and billed the Wellston district for their tuition but faced difficulty in obtaining payment. As a debt collector, Clayton had already seen the potential for problems with section 167.131.1 and wanted to avoid a repeat of the situation. Unfortunately for Clayton and the rest of the accredited school districts in Missouri, the majority’s interpretation has done nothing but magnify the potential for more payment collection problems.

B. Transportation

Problems with funding for unaccredited districts easily spill over into the transportation requirements of section 167.131. This issue is evident in the transitional school district. In a recent newspaper article, Superintendent of Schools Kelvin Adams spoke about the district’s problems in effectively providing transportation for its students. The district’s transportation budget was decreased by nearly $7,000,000 from the 2009-2010 school year to the 2010-2011 school year. This decrease required the district to eliminate more than 100 bus routes and 3,000 stops. The district is trying to find ways to cut transportation costs without affecting attendance rates. It has even half-jokingly considered reimbursing parents for bringing their children to school instead of relying on bus transportation. Because section 167.131 requires the unaccredited district to provide transportation to students attending schools in accredited districts, it is clear that the majority’s interpretation will only exacerbate the transportation problems.

177. *Turner*, 318 S.W.3d at 675 n.4 (Breckenridge, J., concurring in part and dissenting in part).
178. See *id*.
179. *Id.* at 675.
180. Unaccredited schools are required to “provide transportation consistent with the provisions of section 167.241 . . . for each pupil resident therein who attends an accredited school in another district of the same or adjoining county.” MO. REV. STAT. § 167.131.1 (2000).
182. *Id*.
183. *Id*.
184. *Id*.
185. *Id*.
The students’ choice to attend magnet schools within the district is a prime cause of the transportation funding problem. For example, magnet schools, like any accredited school under the majority’s interpretation, have no boundaries within the St. Louis Public School District. Students from all over the district attend the magnet schools and more than eighty percent of them utilize bus transportation, requiring multiple buses to service the same neighborhoods. This would almost certainly be a similar situation to that of students who live in the unaccredited district and attend schools in accredited districts. Because of the lack of funding for student transportation, it is likely that only those students who have parents with cars or alternate means of getting to school, besides district-supplied bus service, would even be able to take advantage of section 167.131.

C. Capacity

Clearly, the ability of accredited districts in the same or adjoining counties to accept an influx of students from unaccredited districts is a huge concern. As the dissent stated, the majority’s interpretation requires that the accredited districts accept students from the unaccredited district even if the number of students wishing to transfer exceeds capacity. After the opinion of the court was issued in mid-July, Clayton filed a motion for rehearing, which was supported by amicus briefs from the Attorney General of the State of Missouri, Special School District, Missouri School Boards’ Association, Voluntary Interdistrict Choice Corporation, Riverview Gardens

187. See Transporting Students, supra note 181.
188. Id.
189. Id.
190. Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660, 675 (Mo. 2010) (en banc) (Breckenridge, J., concurring in part and dissenting in part) (per curiam).
192. The Special School District is responsible for the education of children with disabilities who live in St. Louis County. Amicus Special Sch. Dist. of St. Louis County’s Suggestions in Support of Sch. Dist. of Clayton’s Motion for Rehearing or, Alternatively to Modify at 1, Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo. 2010) (No. SC90236), available at http://www.clayton.k12.mo.us/clayton/lib/clayton/_shared/pdf/Turner/SSD_SuggestionsInSupport.PDF. Its brief focused on the impact of the Turner decision on those children with disabilities who reside within an unaccredited school district, which is beyond the scope of this Note. Id.
193. The brief submitted by the Missouri School Boards’ Association, on behalf of the public schools of Missouri, focused on the statewide impact of the Turner deci-
School District,195 and Cooperating School Districts of Greater St. Louis ("CSD").196

In its brief, CSD included affidavits from twenty-five of the school districts potentially affected by the *Turner* decision.197 Each district's affidavit

194. The Voluntary Interdistrict Choice Corporation is the corporation created by the decision in *Liddell v. Board of Education* in order to assist in the transfer of black students from St. Louis City schools to St. Louis County schools and white students from St. Louis County schools to St. Louis City magnet schools. Amicus Curiae Voluntary Interdistrict Choice Corp.’s Suggestions in Support of Respondent/Defendants’ Post-Disposition Motions for Rehearing or, Alternatively, to Modify at 1-2, Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo. 2010) (No. SC90236), available at http://www.clayton.k12.mo.us/clayton/lib/clayton/_shared/pdf/Turner/VICC_SuggestionsInSupport.pdf. The brief focused on the impact that the *Turner* decision will have on the settlement derived from the *Liddell* case, which is outside the scope of this Note. *Id.*

195. The Riverview Gardens School District is currently the only other unaccredited school district in Missouri. See *Accreditation Classification*, Mo. DEP’T OF ELEMENTARY AND SECONDARY EDUC., 14 (Dec. 2010), http://dese.mo.gov/div/improve/sia/msip/documents/qs-si-msip-accreditationclassification12142010_000.pdf; Amicus Curiae Riverview Gardens Sch. Dist.’s Suggestions in Support of Defendants/Respondents’ Motions for Rehearing or, Alternatively, to Modify at 1, Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo. 2010) (No. SC90236), available at http://www.clayton.k12.mo.us/clayton/lib/clayton/_shared/pdf/Turner/RGSD_SuggestionsInSupport.pdf. The brief submitted by the district focused on the impact of the *Turner* decision as the district tries to regain accreditation as well as the district’s reliance on the DESE interpretation of 167.131, which provided that acceptance of transfer students in an accredited district was discretionary. *Id.* at 1-2.

196. The Cooperating School Districts of Greater St. Louis is a voluntary, non-profit organization that provides an outlet for St. Louis-area and surrounding county school districts to “share resources, information and ideas to improve and enrich the educational programs within the member districts.” Amicus Curiae Listed Members of the Cooperating Sch. Dist. of Greater St. Louis’ Suggestions in Support of Defendants/Respondents’ Post-Disposition Motions for Rehearing or, Alternatively, to Modify at 1, Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo. 2010) (No. SC90236), available at http://www.clayton.k12.mo.us/clayton/lib/clayton/_shared/pdf/Turner/Coop_SuggestionsInSupport.pdf. As a representative of many of the districts affected by the *Turner* decision, CSD compiled affidavits from those districts and submitted them with its brief. *Id.*

197. The districts span four Missouri counties: St. Louis, Franklin, Jefferson, and St. Charles. *Id.* at ii. The Riverview Gardens school district, which is also unaccredited, is located in St. Louis County, which borders Franklin, Jefferson, and St. Charles counties. *Id.* at 4 n.3. Those twenty-five districts are Afton, Bayless, Brentwood,
stated that the district projects enrollment for the next school year as early as September of the prior year.198 This enrollment calculation is critical to the ability of each district to accurately project its budget for the next year.199 The brief stated that the court’s decision – that the districts had no discretion on whether to admit the transferring students – would severely impact both enrollment and budgets for each district,200 as they would be forced to accept transfer students without regard to whether they actually have capacity.201 The affidavits also described the capacity of most of the districts at the time submitted.202 Nearly every district reported being at capacity at one or more education levels or locations.203 Every district except Washington reported that it had been contacted by students of either the Transitional School District or Riverview Gardens interested in enrolling in their schools.204 How are these districts going to be able to support the additional students if they are already at capacity?

D. Enforcement

Aside from the problems of capacity, it is unclear how the students of the unaccredited districts will actually attend the accredited schools in neigh-

Ferguson-Florrisant, Fort Zumwalt, Francis Howell, Hancock, Jennings, Kirkwood, Ladue, Lindbergh, Maplewood, Mehlville, Meramec Valley, Normandy, Northwest, Orchard Farm, Parkway, Pattonville, Ritenour, Rockwood, University City, Washington, Webster Groves, and Windsor. Id. at ii.

198. See, e.g., id. at Exhibit AA.
199. Id. at 3.
200. See id. at Exhibits C-AA.
201. Id. at 1-2.
202. Afton (at capacity at all levels), Bayless (at capacity at all levels), Brentwood (at capacity at middle and high school levels), Ferguson-Florrisant (not at full capacity), Fort Zumwalt (at or near full capacity at all levels), Francis Howell (did not give information about capacity), Hancock (at capacity at all levels), Jennings (near capacity), Kirkwood (did not give information about capacity), Ladue (at or near capacity in elementary levels), Lindbergh (at capacity at all levels), Maplewood (at capacity at all levels), Mehlville (not at capacity), Meramec Valley (did not give information about capacity), Normandy (at capacity at the elementary level), Northwest (“staffed to meet at ratios of full capacity at all levels”), Orchard Farm (teaching staff is at full capacity at several schools), Parkway (“at full capacity levels based on our desired student-teacher ratio”), Pattonville (at capacity at the middle and high school levels, limited capacity at the elementary school level), Ritenour (at capacity at the middle and high school levels), Rockwood (specific schools at capacity), University City (at capacity at all levels), Washington (at capacity in most buildings, nearing capacity at several others), Webster Groves (at or near capacity at all levels and anticipating additional enrollment), and Windsor (at full capacity at K-12 levels). Id. at Exhibits C-AA.
203. Id.
204. Id.
boring districts. This uncertainty will likely result in additional court battles. On the School District of Clayton’s website, the Superintendent of Clayton Schools stated that “[w]e, like dozens of other school districts who could be impacted by this decision will vigorously defend our position in the best interest of our community.” The frequently-asked-questions page of the Ladue School District’s website includes a specific question about Turner and its impact on Ladue schools, which historically has not accepted nonresident students on a tuition basis.

As of the writing of this Note, the accredited districts affected by Turner have yet to accept any students under the court’s interpretation of section 167.131. A flier distributed to parents in the unaccredited Riverview Gardens School District told parents that they had a “RIGHT” to transfer their children to other accredited schools within St. Louis County. The facet of this ruling that is most worrisome as it currently stands is that it provides neither an exception for schools that do not wish to accept tuition students, nor any exemption when transferring students would result in overcrowded classrooms or school buildings. We will keep our parents and patrons apprised of any updates in the status of this case.


209. Id. (internal quotation marks omitted).


211. See Missouri Supreme Court, supra note 208.
bills in order to keep their district lines intact.\footnote{212}{Matthew D. Davis, ‘Jane Turner’ Verdict Is a Lot like Brown Education - Missouri Court Ruling for Unaccredited School Districts Will Leave a Troublesome, Lasting Legacy, ST. LOUIS POST-DISPATCH, Aug. 15, 2010, at A15.} One has to wonder just how much more money will need to be spent to obtain a definite resolution.

Since the court’s decision requires the accredited districts to accept all transfer students from unaccredited districts, the question arises as to how that applies to students who live in the unaccredited districts but were already attending other schools. As interpreted, it seems that section 167.131 would allow for any student in the unaccredited district to attend an accredited school regardless of whether they were attending a public school prior to the ruling.\footnote{213}{Districts, supra note 210.} The impact on private and parochial schools currently attended by students from unaccredited districts could be devastating, as they could face a similar kind of mass exodus as the unaccredited districts.\footnote{214}{Id.}

\section*{E. Safety}

By requiring accredited school districts to admit transfer students from unaccredited school districts, the majority’s interpretation of section 167.131 effectively nullifies the power of schools to enforce provisions of the Safe Schools Act. The purpose of the Act was to keep Missouri school children safe.\footnote{215}{See Burgess, supra note 32, at 604.} This purpose was to be attained by giving school districts discretion in choosing whether or not to accept transfer students, either inter- or intra-district.\footnote{216}{MO. REV. STAT. § 167.020.2-.3 (Supp. 2010).} The district also could conduct a hearing if a student was perceived as a safety threat.\footnote{217}{Id. § 167.020.2.} By removing the discretion of the accredited district to which the student transfers, the majority appears to have opened the door for the allowance of potentially violent students to attend accredited schools. Again, this absurd conclusion does not follow the intention of the legislature, as it potentially puts the resident students of an accredited school district in danger.

\section*{F. Right to a Free Public Education}

The majority’s interpretation implies that students of unaccredited schools are able to choose at whim which public school they will attend within the adjoining district.\footnote{218}{Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660, 671 (Mo. 2010) (en banc) (Breckenridge, J., concurring in part and dissenting in part) (per curiam).} By eliminating the discretion of the district to which the student is transferring, the majority has ultimately given the students of the unaccredited district the right to more than just the free public
education allowed by the Missouri Constitution. To a student attending an unaccredited school, the majority’s ruling opens the door to attend, for free, the public school of his choice in the district of his choice so long as he maintains a residence in an unaccredited district. Surely the goal of the legislature in enacting section 167.131 was not to persuade families to move to unaccredited school districts in order to take advantage of getting a free public education at a school of their choosing, but it is very easy to see just how that could happen.

While the thought of moving to an unaccredited district to receive an education in the accredited district of choice may seem outlandish, it is important to consider the reasons many people cite for buying a new home or moving. One of the most important considerations is the quality of the school district in which the new domicile is located. The quality of the schools in the St. Louis Public School District has traditionally discouraged families from moving into the City of St. Louis, or in the alternative, encouraged them to either move from the district prior to their children reaching school age or send their children to private school. The low cost of housing as compared to a school district like Clayton would only encourage families to remain within the City of St. Louis. The portion of every $100 of property tax attributed to schools is similar within the City of St. Louis and Clayton, with the City of St. Louis slightly higher. The major difference is in the sales price of homes within the communities, and thus the basis for property taxes. In 2006, the median sales price for a home in the neighborhoods of the City of St. Louis ranged from $15,000.00 to $236,500.00, while the median sales

219. MO. CONST. art. IX, § 1(a).
220. See Blanche Evans, Realty Viewpoint: Moms Rate Schools Third as the Reason for Moving, REALTY TIMES, Nov. 8, 2008, http://realtytimes.com/rtpages/20080408_realtyviewpoint.htm. Mothers surveyed about what would motivate them to move focused on schools and “were willing to trade longer commutes, hold off of [sic] job transfers and remain in crummier climates to avoid moving children once they enter school.” Id. Moves were usually within thirty miles of their previous residence and into what they thought of as a superior school district. Id.
221. A very pertinent example of this exodus can be seen in the 2010 census figures, which showed a loss of about 6,700 adults from the City of St. Louis and more than 22,000 people seventeen and younger. Doug Moore, Census Shows City Is “Hollowing Out” Urban Shift: St. Louis and St. Louis County Lose Residents to Outer Ring, ST. LOUIS POST-DISPATCH, Feb. 25, 2011, at A1. “For the city to thrive, people have to feel comfortable raising their kids [t]here.” Id. (internal quotation marks omitted).
price in Clayton was $660,000.00. If families could continue to live in the City of St. Louis and automatically send their children to adjoining accredited districts at no cost, it is certainly more likely that additional families would move to the City of St. Louis, and those currently living there with school-age children would stay.

Requiring acceptance of students from unaccredited districts would ultimately lead a portion of the residents of the City of St. Louis to want the district to remain unaccredited. So long as the district remains unaccredited, the parents can continue to send their children to the accredited school of their choice on the tab of the unaccredited district. No statute should intend this result. While there are many organizational and bureaucratic changes that must occur to return the district to accredited status, it would be extremely difficult to make that happen without the full support of the community.

**G. Legislative Changes**

The *Turner* decision has provided more questions than answers. All parties seek clarification on what the ruling means and are contemplating its effects. Currently, there are no definite answers, but the legislature can and should change that. Trial courts will have to enforce the *Turner* ruling, but it is up to the legislature to fix the statute. Senator Kurt Schaefer of Columbia, a member of the Senate Education Committee, has acknowledged that “legislative action may be warranted.”

224. Stefene Russell, *Neighborhoods: Where We Live*, ST. LOUIS MAGAZINE, Apr. 2006, at 116-17 available at http://www.stlmag.com/St-Louis-Magazine/SLM-Lists/Neighborhoods/neighborhoods-stlmag.pdf. While the costs of living in these districts vary widely, it is interesting to note that the cost spent per average daily attendance in each district is not that disparate. *Id.* In 2009, Clayton spent $17,078.00 and St. Louis City spent $16,489.00. See MODESE - CLAYTON, *supra* note 2; MODESE - ST. LOUIS, *supra* note 1.

225. A mother living in the city of St. Louis has put her home on the market in hopes of moving to Jefferson County to take advantage of the school system there. *Districts, supra* note 210. She made this choice after sending her daughter, a sophomore in high school, to a magnet school and later a parochial school. *Id.* While this result may be seen as a positive consequence of the decision, it is difficult to say that it was a consequence intended by the legislature in enacting section 167.131.


228. *Id.*
take in greater numbers of students, and “[y]ou can’t penalize a district for being successful.”

When faced with just some of the possible repercussions of the ruling, it is clear that the court’s plain-meaning interpretation provides for absurd consequences. One possible way to eliminate these absurd consequences would be for the legislature to amend section 167.131, changing the “shall” at issue to a “may,” thus giving the accredited districts discretion in admitting transfer students. This change would limit many of the absurd consequences such as over-crowding, safety concerns, and enforcement.

Two senate bills addressing the Turner ruling were proposed in the Missouri legislature during the spring 2011 session. Senate Bill 14, proposed by Senator David Pearce of Warrensburg, sought to require the State Board to establish criteria for admittance of students transferring from unaccredited districts to adjoining accredited districts. Amending section 167.131 to require guidelines on acceptance might be helpful to both parents and schools, but what those guidelines should look like is still undecided and will require additional input from parents, teachers, and school administration.

Senate Bill 129, proposed by Senator Jim Lembke of St. Louis City and County, sought to exempt any metropolitan school district under the control of a special administrative board from the requirements of section 167.131. This bill applied directly to the St. Louis Public School District, as it was currently under the control of a special administrative board. Exempting these districts would provide the special administrative board the opportunity to begin correcting problems within a failing district before a mass exodus of students makes that impossible. Both of these bills would have provided some of the clarification needed for schools and parents to move forward. Unfortunately, the legislature chose not to act on those bills before the end of the session leaving the affected families and schools in limbo.

229. Id. (internal quotation marks omitted).
231. Editorial, supra note 230.
232. See id.
234. Id.
235. See id.
236. Editorial, supra note 230.
237. See Holland & Crouch, supra note 226.
VI. CONCLUSION

Turner’s holding – that accredited school districts are required to accept children from adjoining unaccredited districts – will lead to a multitude of negative consequences: problems with funding, transportation, capacity, safety, enforcement issues, complications with the right to a free public education, and the possibility of people taking advantage of the ruling. While parents of the children from unaccredited districts are currently left in limbo, there will certainly be additional, costly adjudication on the issue, further taking funds away from Missouri public schools. Based on the court’s interpretation, it is clear that the time is ripe for the legislature to take action and amend the language of section 167.131.

As of the writing of this Note, the stay implemented by St. Louis County Circuit Judge David Lee Vincent, III has been lifted, and the trial process for Turner v. School District of Clayton has begun with a trial date currently set for January 23, 2012. On October 21, 2010, Judge Vincent denied the parents’ motion for declaratory judgment and stated that the Supreme Court of Missouri had generally remanded the case to the trial court. Judge Vincent noted that this general remand meant that the court was to “resolve all legal issues between the parties.” In reaching this resolution, the pleadings of the parties were open to amendment, which included affirmative defenses.

Since the Supreme Court of Missouri’s decision in June 2010, the parents’ lawyer has filed more than a half dozen writs and appeals, all with the same objective: to direct the parents’ tuition bills to Clayton. None of those have been granted, leading all parties to proceed toward trial. Only two of the six children enrolled in Clayton schools when the lawsuit began are still attending, and one of those two is scheduled to graduate from high school in 2011.

240. Court Order and Judgment, at 4.
241. Id.
242. Id.
243. Aftermath, supra note 207.
244. Id.
and another would like to, but it is not that simple. Clayton and nearly every other school district have an interest in the outcome of the case and therefore want it resolved in the courts. Clayton has ensured that will happen by filing a counterclaim against the remaining parents for the 2010-2011 tuition.

While the parents, Clayton, and the Transitional School District are currently without answers to many of their questions, it appears that resolution may not be indefinite. The trial process continues and the Missouri legislature’s session will begin shortly.

246. Id.
247. Id.
248. Id. Tuition for the 2010-2011 school year had been suspended by the courts until the case was resolved. Id.
249. Research for this Note concluded on September 20, 2011. There is no doubt that the issues addressed in this Note will be continual and ongoing.