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Law Summary

Does the Missouri Safe Schools Act Pass the Test? Expelling Disruptive Students to Keep Missouri's Schools Safe

I. INTRODUCTION

*Every school day thousands of America's children find themselves threatened—in playground arguments that may escalate into fistfights, or confrontations with lethal weapons that may end in death or permanent injury. Many stay home rather than face the possibility of violence. We have got to turn that around, and we can. . . . We cannot retreat.*¹ President William J. Clinton (1995).

Since this 1995 speech by then President Clinton, the occurrence of violent crimes in American schools has decreased.² Nevertheless, the magnitude of the recent violence on school grounds throughout the nation is shocking. On March 5, 2001, fifteen-year-old Charles Andrews Williams opened fire in a boys' restroom, killing two students and injuring thirteen others at Santana High School in Santee, California.³ On February 29, 2000, a six-year-old boy fatally shot a classmate in their first-grade classroom in Mount Morris Township, Michigan.⁴ On April 20, 1999, eighteen-year-old Eric Harris and seventeen-year-old Dylan Klebold, dressed in black trench coats and heavily armed, slew twelve peers and a teacher, and injured twenty-three others before turning their guns on themselves at Columbine High School in Littleton, Colorado.⁵

1. Robert C. Cloud, *Federal, State, and Local Responses to Public School Violence*, 120 Educ. L. Rep. (West) 877, 894 (Nov. 1997) (quoting President William J. Clinton, Speech at the National Education Association's Summit on Safe Schools at the Century Plaza Hotel and Towers (Apr. 8, 1995)).

2. PHILLIP KAUFMAN ET AL., U.S. DEP'TS OF EDUCATION & JUSTICE, INDICATORS OF SCHOOL CRIME & SAFETY 6 (1999).

3. Scott Bowles, *Two Shot Dead at School* (Mar. 8, 2001), at <http://www.usatoday.com/news/nation/2001-03-06-school-usat.htm> (last visited Jan. 21, 2002).

4. Associated Press, *Recent Shootings at U.S. Schools* (Mar. 8, 2001), at <http://www.usatoday.com/news/nation/2001-03-05-shootlist.htm> (last visited Jan. 21, 2002).

5. *Id.*

Unfortunately, this list of recent school shootings goes on and on.⁶ In addition to these tragic shootings, 202,000 non-fatal, serious violent crimes and 1.7 million thefts occurred at schools across the nation in 1997.⁷

Although the recent school shootings recounted above did not occur in Missouri schools, the state's schools are not immune from such violent crimes.⁸ Partly in response to the rape and murder of Christine Smetzer, which was committed by a fellow student at McCluer North High School in Florissant, Missouri,⁹ the Missouri General Assembly enacted the Missouri Safe Schools Act in 1996.¹⁰ By enacting the Missouri Safe Schools Act, the legislature and the governor intended to "send the message to every classroom and every school that Missouri is not going to tolerate violent and disruptive students."¹¹ One of the provisions of the Missouri Safe Schools Act, Missouri Revised Statutes Section 167.161, allows schools to suspend or expel students for disruptive behavior.¹² Related Section 167.171.4, which is the focus of this Law Summary, allows school boards to make effective in their districts suspensions or expulsions from other school districts.¹³ The Missouri Court of Appeals for the Eastern District of Missouri interpreted this Section in *Hamrick ex rel. Hamrick v. Affton School District Board of Education*,¹⁴ in which the court addressed the

6. *See id.*

7. KAUFMAN ET AL., *supra* note 2, at 6, 23.

8. During the 1996-97 academic year, 6,093 students were expelled from public schools for bringing firearms to school. Samuel Autman, *Educator Suggests Ways to Stem Violence by Schoolschildren; Youths Need Problem-Solving Skills, She Says; Caring Communities Are Key*, ST. LOUIS POST-DISPATCH, May, 24, 1999, at A10. Of those students, 381 students were expelled from Missouri public schools. *Id.* During the 1995-96 academic year, 6,276 students were expelled from public schools for bringing firearms and other weapons to school. Dale Singer, *Nixon Again Urges Measure Setting Up Gun-Free Zones Within 1,000 Feet of Schools*, ST. LOUIS POST-DISPATCH, Dec. 3, 1997, at A16. That year, 308 students were expelled from Missouri public schools. *Id.* In addition, "[t]he case load referred to the juvenile courts has more than doubled from 1983 to 1992." Stanley Matthew Burgess, Comment, *Missouri's Safe Schools Act: An Attempt to Ensure a Safe Education Opportunity*, 66 UMKC L. REV. 603, 604-05 (1998).

9. Joe Holleman, *Youth Arrested in School Murder*, ST. LOUIS POST-DISPATCH, Jan. 26, 1995, at A6, available at 1995 WL 329638. For a discussion of the rape and murder of Christine Smetzer, see *infra* notes 26-32 and accompanying text.

10. *See* MO. REV. STAT. §§ 160.261, 162.680, .091, 167.020, .023, .115, .117, .161, .171, .164, .335, 170.260, 195.017, .214, .246, .248, 304.076, 565.070, 574.085, 575.090 (2000).

11. Press Release, Office of the Governor, Carnahan Signs Safe Schools Legislation (June 14, 1996) (on file with Missouri Law Review).

12. *See* MO. REV. STAT. § 167.161 (2000).

13. *See* MO. REV. STAT. § 167.171.4 (2000).

14. 13 S.W.3d 678 (Mo. Ct. App. 2000).

question whether an expulsion from a parochial or other non-public school can be made effective in a public school.¹⁵ The court narrowly construed the Missouri Safe Schools Act to require a public school to admit for enrollment a student who had been expelled from a non-public school, even though the student would have been expelled from the public school based on his acts of property damage, burglary, and stealing.¹⁶

Shortly after the court ruled in *Hamrick*, the Missouri General Assembly amended the dispositive language of Section 167.171.4.¹⁷ It is now clear that public school districts in Missouri can deny enrollment to students suspended or expelled from both public and non-public schools. This Law Summary discusses whether the statutory change furthers the goals of the Missouri Safe Schools Act and whether legislation is a sufficient mechanism for effectuating safety in Missouri's schools.

II. LEGAL BACKGROUND

In 1994, Congress declared Goal Seven of the National Education Goals: “[b]y the year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.”¹⁸ In addition, Congress enacted the federal Safe Schools Act of 1994¹⁹ to “help local school systems . . . by ensuring that all schools are safe and free of violence.”²⁰ The Safe Schools Act of 1994 established a grant program²¹ to support local schools’ efforts to reduce violence, promote safety, and achieve Goal Seven.²²

In addition to the federal Safe Schools Act, many state legislatures have enacted Safe Schools Acts that require safe and peaceful schools, and guarantee

15. *See id.* at 680.

16. *Id.* at 681.

17. For the language of the amended statute, see *infra* note 50.

18. 20 U.S.C. § 5812(7) (1994).

19. 20 U.S.C. §§ 5961-5986 (1994).

20. 20 U.S.C. § 5961 (1994).

21. For example, in 1995, nineteen school districts, including schools in Chicago, San Diego, and Wayne County, Michigan, received \$18 million in grant funding. *School Violence Alert—\$18M in Safe Schools Grants Awarded*, EDUC. DEP’T NEWS (L.R.P. Publications), May 1995. These funds could be used for “conflict resolution and peer mediation programs, counseling for crime victims, training for school personnel, parent involvement in prevention efforts, and planning for comprehensive, long-term violence prevention strategies. Up to 5 percent of a grant may be used for metal detectors or security personnel.” *Id.*

22. 20 U.S.C. § 5961 (1994); Cloud, *supra* note 1, at 894.

students' constitutional rights to a healthful school environment.²³ These state laws include similar provisions: discipline policy review committees, student codes of conduct, penalties for non-compliance with codes of conduct, suspension and expulsion guidelines, and imposition of legal responsibility on school administrators.²⁴ While some of these state legislatures likely established their Safe Schools Acts to receive federal grant money,²⁵ Missouri was prompted, at least in part, by a particular, violent attack in one of its schools.

On January 24, 1995, freshman Christine Smetzer ("Christine") left her fifth-period class at McCluer North High School and proceeded to the restroom.²⁶ She did not return to that class, and she never made it to her sixth-period class.²⁷ At the end of the school day, another student found Christine's battered body wedged between a wall and a commode.²⁸ Evidence indicated that Christine had been severely beaten and raped, and that her assailant had attempted to drown her by flushing the toilet while holding her head in it.²⁹ In February 1998, a St. Louis County Circuit Court convicted a fifteen-year-old fellow student for the beating, rape, and drowning of Christine Smetzer.³⁰ The convicted teenager, who had "behavioral problems," had transferred to Christine's high school the day before the murder following his suspension from

23. See, e.g., ALA. CODE § 16-1-24.2 (2001); ARK. CODE ANN. § 6-15-1301 (Michie 1999); CAL. EDUC. CODE § 32228 (West Supp. 2002); CONN. GEN. STAT. ANN. PA No. 99-259 (West 2000); FLA. STAT. ANN. § 229.8347 (West Supp. 2002); GA. CODE ANN. § 20-2-1185 (1996 & Supp. 2000); MICH. COMP. LAWS ANN. § 380.1308 (West Supp. 2001).

24. See Cloud, *supra* note 1, at 881.

25. See generally Alexander Volokh, *A Brief Guide to School-Violence Prevention*, 2 J.L. & FAM. STUD. 99, 103 (2000) ("Much school-violence legislation consists of targeting grant money to politically favored programs, thereby encouraging these activities at the expense of other alternatives."). As an analogous example, the Missouri General Assembly passed a law that lowered Missouri's legal blood-alcohol content from 0.10 percent to 0.08 percent, only when the loss of federal highway funds was imminent. See, e.g., Associated Press, *Holden Signs New Drunken Driving Law*, JEFFERSON CITY NEWS TRIBUNE, June 12, 2001, available at <http://newtribune.com>; Associated Press, *Panel Sends DWI Bill to Senate for Debate*, JEFFERSON CITY NEWS TRIBUNE, Feb. 1, 2001, available at <http://newtribune.com>.

26. Joe Holleman, *Youth Arrested in School Murder*, ST. LOUIS POST-DISPATCH, Jan. 26, 1995, at A6, available at 1995 WL 3296381.

27. *Id.*

28. *Id.*

29. William C. Lhotka, *Taylor Is Guilty of Rape, Murder; Teen Attacked, Drowned Girl in High School Restroom; Life in Prison Is Only Option*, ST. LOUIS POST-DISPATCH, Feb. 15, 1998, at A1, available at 1998 WL 3320153.

30. *Id.*

another school in the district.³¹ In fact, the permanent school record of Christine's attacker indicated that he had been suspended from his previous school for being caught in the girls' restroom.³²

Also in 1995, Missouri's Speaker of the House appointed a committee to study the plausibility of recommendations for safe schools, which were made by the previous House of Representatives.³³ In addition, then Governor Mel Carnahan made passage of the Missouri Safe Schools Act a 1996 election-year priority.³⁴ As a result, partly in response to the rape and murder of Christine Smetzer and partly to effectuate a safe learning environment for the state's schools, the Missouri General Assembly enacted the Missouri Safe Schools Act³⁵ in 1996. Specifically, this law deals with the following areas of a school district's operation: student admission and enrollment, residency issues, policy development, suspensions and expulsions, reporting requirements, and record-keeping.³⁶ Furthermore, the Act created the class D felony of assault on school property, when a person injures another person while on school property.³⁷ In

31. Holleman, *supra* note 26.

32. William C. Lhotka, *Trial Set in Slaying at School; Judge Finds Defendant Mentally Competent*, ST. LOUIS POST-DISPATCH, July 9, 1997, at B1, available at 1997 WL 3352871.

33. Burgess, *supra* note 8, at 606-07. This House Interim Committee on Safe Schools and Alternative Education held six hearings throughout the state to hear comments from "school administrators, judges, police officials, juvenile officers, PTA directors, parents and students." Burgess, *supra* note 8, at 606. The Committee's findings and recommendations included: (1) schools must be safe; (2) alternative education programs would benefit suspended students and society; (3) schools should exhaust all other discipline options before suspending students; and (4) school districts should maintain student disciplinary records and provide those records to districts in which suspended students attempt to enroll. Burgess, *supra* note 8, at 606-07.

34. Burgess, *supra* note 8, at 606-07.

35. See MO. REV. STAT. §§ 160.261, 162.680, .091, 167.020, .023, .115, .117, .161, .171, .164, .335, 170.260, 195.017, .214, .246, .248, 304.076, 565.070, 574.085, 575.090 (2000).

36. Susan Anderson, *The Safe Schools Act Protects Missouri Students*, 55 J. MO. B. 264, 264 (1999).

37. *Id.* MO. REV. STAT. § 565.075 states:

1. A person commits the crime of assault while on school property if the person:

- (1) Knowingly causes physical injury to another person; or
- (2) With criminal negligence, causes physical injury to another person by means of a deadly weapon; or
- (3) Recklessly engages in conduct which creates a grave risk of death or serious physical injury to another person; and the act described under subdivision (1), (2) or (3) of this subsection occurred on school or school district property, or in a vehicle that at the time of the act was in

1997, the legislature enacted amendments to the Missouri Safe Schools Act, regarding reporting requirements for third-degree assaults on school property.³⁸

Sections 167.161 and 167.171 of the Missouri Safe Schools Act allow school districts to suspend and expel students for disruptive behavior.³⁹ Specifically, Section 167.161 provides for the suspension or expulsion of disruptive students and outlines procedural requirements that a school board must follow to suspend or expel students.⁴⁰ Section 167.171 also outlines procedural requirements for suspending or expelling students, but, in addition, this Section requires that a student be denied readmission to “a regular program” if the student has been charged or convicted of a crime, including murder, forcible rape, and first-degree robbery.⁴¹ Section 167.171.4 allows school boards to make effective in their districts suspensions or expulsions from other school districts.⁴² Each of these Sections requires due process for the students in the form of notice and a hearing before the school board.⁴³ In addition, the suspension or expulsion of a student does not relieve the state of its responsibility, or the student’s parents of their responsibility, to educate the student.⁴⁴ Pursuant to the statute, the state board of education has established a grant program to provide assistance to schools in providing alternative education services for those students who are not allowed in regular classroom programs.⁴⁵

Very few cases exist in which Missouri courts have been forced to interpret provisions of Section 167.171. The cases that have addressed this Section generally have dealt with the due process requirements, rather than Section

the service of a school or school district, or arose as a result of a school or school district-sponsored activity.

2. Assault while on school property is a class D felony.

MO. REV. STAT. § 565.075 (2000). For the elements of the crime of assault that does not occur on school property, see, for example, MO. REV. STAT. §§ 565.050, .070 (2000).

38. Anderson, *supra* note 36, at 264.

39. See MO. REV. STAT. §§ 167.161, .171 (2000). Students can be expelled for “conduct which is prejudicial to good order and discipline in the schools or which tends to impair the morale or good conduct of the pupils.” MO. REV. STAT. § 167.161.1 (2000). In addition, schools immediately can remove a student who “poses a threat of harm to such pupil or others, as evidenced by the prior conduct of such pupil.” MO. REV. STAT. § 167.161.1 (2000). Students who have been convicted, indicted, or charged with such crimes as first-degree murder, forcible rape, first-degree robbery, drug distribution, or arson are not to be readmitted to the regular classroom setting. MO. REV. STAT. § 167.171.3 (2000).

40. See MO. REV. STAT. § 167.161 (2000).

41. See MO. REV. STAT. § 167.171 (2000).

42. See MO. REV. STAT. § 167.171.4 (1994 & Supp. 1999) (amended 2000).

43. See MO. REV. STAT. §§ 167.161, .171.2 (2000).

44. See MO. REV. STAT. § 167.164 (2000).

45. See MO. REV. STAT. § 167.335 (2000).

167.171.4, which allows school districts to make effective in their districts suspensions or expulsions from other districts.⁴⁶

III. RECENT DEVELOPMENTS

For the first time, in *Hamrick*, the Missouri Court of Appeals for the Eastern District of Missouri interpreted the language used in Section 167.171.4.⁴⁷ Specifically, the court addressed the issue whether a public school board could make effective the expulsion of a parochial school student in its district and, therefore, deny that student enrollment, when the student would have been expelled from the public school district based on his acts of vandalism and theft.⁴⁸ The court held that the school district in which a student is attempting to enroll only may give effect to an expulsion from another public school district—not an expulsion from a non-public, or parochial, school.⁴⁹ Shortly after the court ruled in *Hamrick*, the Missouri General Assembly amended the language in Section 167.171.4 upon which the court had based its ruling.⁵⁰

46. See, e.g., *Sykes v. Sweeney*, 638 F. Supp. 274 (E.D. Mo. 1986); *Reasoner ex rel. Reasoner v. Meyer*, 766 S.W.2d 161 (Mo. Ct. App. 1989).

47. At the time of the *Hamrick* decision, Section 167.171.4 provided:

If a pupil is attempting to enroll in a school district during a suspension or expulsion from another school district, a conference with the superintendent or the superintendent's designee may be held at the request of the parent, court-appointed legal guardian, someone acting as a parent as defined by rule in the case of a special education student, or the pupil to consider if the conduct of the pupil would have resulted in a suspension or expulsion in the district in which the pupil is enrolling. Upon a determination by the superintendent or the superintendent's designee that such conduct would have resulted in a suspension or expulsion in the district in which the pupil is enrolling or attempting to enroll, the school district may make such suspension or expulsion from another district effective in the district in which the pupil is enrolling or attempting to enroll. Upon a determination by the superintendent or the superintendent's designee that such conduct would not have resulted in a suspension or expulsion in the district in which the student is enrolling or attempting to enroll, the school district shall not make such suspension or expulsion effective in its district in which the student is enrolling or attempting to enroll.

MO. REV. STAT. § 167.171.4 (1994 & Supp. 1999) (amended 2000) (emphasis added).

48. *Hamrick ex rel. Hamrick v. Affton Sch. Dist. Bd. of Educ.*, 13 S.W.3d 678, 681 (Mo. Ct. App. 2000).

49. *Id.*

50. Section 167.171.4 now provides:

If a pupil is attempting to enroll in a school district during a suspension or expulsion from another in-state or out-of-state school district including a private, charter or parochial school or school district, a conference with the

According to the newly amended language of Section 167.171.4, the “arbitrary and capricious” result reached by the school board in *Hamrick* should not occur in the future.⁵¹

A. *The Facts and Procedural History of Hamrick*

In December 1997 and January 1998, thirteen-year-old Jonathon Hamrick (“Jonathon”) committed acts of burglary, stealing, and property damage on the premises of his school, a Catholic elementary school operated by Seven Holy Founders Parish (“parochial school”).⁵² Jonathon committed these acts with another person, a student enrolled in the Affton School District.⁵³ On February 1, 1998, the parochial school expelled Jonathon.⁵⁴

After his expulsion from the parochial school, Jonathon requested enrollment in the public school district in which he resided, Affton School District.⁵⁵ In September 1998, the Affton School District Board of Education (“the Board”) held a hearing to determine whether Jonathon would be permitted to enroll.⁵⁶ After the hearing, the Board informed Jonathon that it was denying him enrollment in the Affton School District based on the following findings:

superintendent or the superintendent’s designee may be held at the request of the parent, court-appointed legal guardian, someone acting as a parent as defined by rule in the case of a special education student, or the pupil to consider if the conduct of the pupil would have resulted in a suspension or expulsion in the district in which the pupil is enrolling. Upon a determination by the superintendent or the superintendent’s designee that such conduct would have resulted in a suspension or expulsion in the district in which the pupil is enrolling or attempting to enroll, the school district may make such suspension or expulsion from another school or district effective in the district in which the pupil is enrolling or attempting to enroll. Upon a determination by the superintendent or the superintendent’s designee that such conduct would not have resulted in a suspension or expulsion in the district in which the student is enrolling or attempting to enroll, the school district shall not make such suspension or expulsion effective in its district in which the student is enrolling or attempting to enroll.

MO. REV. STAT. § 167.171.4 (2000) (emphasis added).

51. *Hamrick*, 13 S.W.3d at 682 (Russell, J., concurring).

52. *Id.* at 679.

53. *Id.* For a discussion of the Board’s decision relating to this other student, see *infra* notes 82-88 and accompanying text.

54. *Hamrick*, 13 S.W.3d at 679.

55. *Id.*

56. *Id.*

[I]f Jonathon had committed the same acts of property damage, burglary and stealing, in the Affton School District, which he committed at Seven Holy Founders, he would have been expelled from the Affton School District. Based upon this finding, the Affton Board of Education is making the expulsion from Seven Holy Founders effective in the Affton School District.⁵⁷

Jonathon, by and through his next friend, Janet Hamrick, brought an action in the Circuit Court of St. Louis County, seeking review of the Board's decision to deny him enrollment.⁵⁸ The circuit court upheld the Board's decision, finding that the decision "was supported by competent and substantial evidence."⁵⁹

Jonathon appealed to the Missouri Court of Appeals for the Eastern District of Missouri, claiming that the Board erred in applying Section 167.171.4 of the Missouri Safe Schools Act when it denied him enrollment in the Affton School District.⁶⁰ In his first point, Jonathon argued that the statute did not apply to him because he was expelled from a non-public school, not from a "school district" within the plain and ordinary meaning of the statute.⁶¹

In addressing Jonathon's first point on appeal, the court began by explaining that it must review the findings and conclusions of the Board, an administrative agency, rather than the judgment of the circuit court.⁶² The court then explained that the primary rule of statutory construction required the court "to ascertain the intent of the legislature by considering the plain and ordinary meaning of the words used in the statute."⁶³ The court added that it should avoid unjust, absurd, or unreasonable interpretations of a statute.⁶⁴

57. *Id.* at 680.

58. *Id.* at 679-80.

59. *Id.* at 680.

60. *Id.*

61. *Id.* In pertinent part, Section 167.171.4 provided:

If a pupil is attempting to enroll in a school district during a suspension or expulsion *from another school district*, a conference . . . may be held . . . to consider if the conduct of the pupil would have resulted in a suspension or expulsion in the district in which the pupil is enrolling . . . the school district may make such suspension or expulsion from another district effective in the district in which the pupil is enrolling or attempting to enroll.

MO. REV. STAT. § 167.171.4 (1994 & Supp. 1999) (amended 2000) (emphasis added).

62. *Hamrick*, 13 S.W.3d at 680. The court explained that it would affirm the Board's decision unless the decision was not supported by substantial evidence, was against the weight of the evidence, or was an erroneous application of the law. *Id.*

63. *Id.*

64. *Id.*

To determine the intent of the legislature, the court first looked to Chapter 167 of the Missouri Revised Statutes, the chapter containing Section 167.171.4, for a definition of “school district,” but it found none.⁶⁵ It then looked to Title XI of the Missouri Revised Statutes, which provides definitions of terms contained in Chapter 167.⁶⁶ Under the definition in Title XI, “school district . . . may include seven-director, urban, and metropolitan school districts.”⁶⁷ Based on the proposition that the use of “may” in this definition implies alternatives other than the three types of districts specifically mentioned, the Board claimed that the statute includes non-public schools within the definition of “school district.”⁶⁸ The Board further argued that the intent of the legislature to include non-public schools was made clear by its failure to use the word “public” before “school district” in Section 167.171.4.⁶⁹

The court, however, rejected both of the Board’s arguments. The court refused to read language into Section 167.171.4, explaining that “[w]hen statutory language is clear, courts must give effect to the language as written.”⁷⁰ The court, therefore, looked to both the dictionary definition of “school district”⁷¹ and the Missouri case law definition of “school district”⁷² to determine the plain and ordinary meaning of the term. Based on these definitions, the court

65. *Id.*

66. *Id.* Title XI of the Missouri Revised Statutes is titled “Education and Libraries” and includes Chapters 160-86. Section 160.011 contains general definitions that are applicable to the entire Title, including Chapter 167. See MO. REV. STAT. § 160.011 (2000).

67. *Hamrick*, 13 S.W.3d at 680 (quoting MO. REV. STAT. § 160.011(1) (1994 & Supp. 1998)).

68. *Id.*

69. *Id.*

70. *Id.* at 681 (quoting *State ex rel. Baumruk v. Belt*, 964 S.W.2d 443, 446 (Mo. 1998)).

71. According to the court: “Webster’s Third New International Dictionary (1981) defines school district as ‘an area within a state sometimes coinciding with a township but having its own board and power of taxation and serving as the smallest unit for administration of a public-school system.’” *Id.* (emphasis added).

72. In *Kansas City v. School District of Kansas City*, 201 S.W.2d 930, 933 (Mo. 1947), the Missouri Supreme Court defined “school district” as “a ‘public corporation’ forming an integral part of the State and constituting that instrumentality of the State utilized by the State in discharging its constitutionally invoked governmental function of imparting knowledge to the State’s youth.” *Hamrick*, 13 S.W.3d at 681 (emphasis added). Although the *Kansas City* case did not involve the interpretation of “school district” as used in Chapter 167 or Title XI, the *Hamrick* court found this definition “instructive.” *Id.*

determined that the legislature intended “school district” within Section 167.171.4 to pertain only to public schools.⁷³

The court offered further justification for its interpretation of the legislature’s intent.⁷⁴ First, the court explained that requiring the first expulsion to be from a public school ensured that the expulsion was conducted in conformity with Section 167.161, which contains due process guarantees.⁷⁵ Second, the court noted that if the legislature had intended Section 167.171.4 to apply to non-public schools, it could have used the phrase “another school” instead of “another school district” in the statute.⁷⁶ Because the court interpreted the legislature’s use of “school district” to exclude non-public schools, the court held that the school district in which the student is attempting to enroll only may give effect to an expulsion from another public school district and not an expulsion from a non-public school.⁷⁷ According to the *Hamrick* court, the Board should not have denied Jonathon enrollment.

Chief Judge Mary Rhodes Russell concurred with the majority in result only. In her concurrence, she argued that the Board was correct in its application of the Missouri Safe Schools Act but found that its decision to expel Jonathon was arbitrary and unreasonable.⁷⁸

First, the concurrence addressed the recent “plethora of violent acts within our schools” and explained that enactment of the Missouri Safe Schools Act was an “obvious attempt by the Missouri General Assembly to protect our young people and school personnel.”⁷⁹ Concluding that the intent behind the Missouri Safe Schools Act was to protect public schools, the concurrence stated that “it would make no sense” for public schools to be able to deny enrollment to students expelled only from other public schools.⁸⁰ The concurrence concluded

73. *Id.*

74. *Id.*

75. *Id.* In pertinent part, Section 167.161 provides: “[t]he school board of any district, after notice to parents or others having custodial care and a hearing upon charges preferred, may suspend or expel a pupil for conduct which is prejudicial to good order and discipline in the schools or which tends to impair the morale or good conduct of the pupils.” MO. REV. STAT. § 167.161.1 (2000).

76. *Hamrick*, 13 S.W.3d at 681.

77. *Id.* Finding that the Board erred in its application of Section 167.171.4 in denying Jonathon enrollment in the Affton School District, the court granted Jonathon’s first point on appeal. The court did not address Jonathon’s second point on appeal—that the Board’s decision to deny him enrollment was arbitrary and capricious in light of its failure to expel his accomplice, who remained enrolled as a student in the Affton School District. *Id.*

78. *Id.* (Russell, J., concurring).

79. *Id.* (Russell, J., concurring).

80. *Id.* at 682 (Russell, J., concurring).

that the Board correctly had applied Section 167.171.4 in denying Jonathon enrollment, as the Board had determined that Jonathon's conduct would have resulted in expulsion from its district.⁸¹

The concurrence, however, concluded that the Board's decision to deny Jonathon enrollment was arbitrary, capricious, and unreasonable based on its failure to expel Jonathon's accomplice, who was enrolled in the Affton School District at the time these youngsters committed acts of property damage, burglary, and stealing.⁸² The Board contended that it was not allowed to suspend or expel Jonathon's accomplice for these acts because they were not committed on Affton school grounds.⁸³ The concurrence, however, found that the Board's interpretation of the statute was in error on this issue.⁸⁴ It pointed to Section 167.161.1, which provides that a student can be suspended or expelled for "conduct which is prejudicial to good order and discipline . . . or which tends to impair the morale or good conduct of the pupils."⁸⁵ In addition, the concurrence referred to Affton's Student Discipline Guidelines, which provided for expulsion for acts that "result in violence to another's person or property."⁸⁶ The concurrence argued that neither Section 167.161.1 nor Affton's Student Discipline Guidelines placed any geographical limitation on a student's conduct.⁸⁷ The concurrence, therefore, concluded that, in light of the Board's failure to expel Jonathon's accomplice, the Board's decision to deny Jonathon enrollment was arbitrary and unreasonable.⁸⁸

81. *Id.* (Russell, J., concurring).

82. *Id.* (Russell, J., concurring).

83. *Id.* (Russell, J., concurring).

84. *Id.* (Russell, J., concurring).

85. *Id.* (Russell, J., concurring) (quoting MO. REV. STAT. § 167.161.1 (1994 & Supp. 1998)).

86. *Id.* (Russell, J., concurring).

87. *Id.* (Russell, J., concurring).

88. *Id.* at 682-83 (Russell, J., concurring).

B. Legislation

Only a few months after the court ruled in *Hamrick*, the Missouri General Assembly enacted Senate Bill 944, which amended Section 167.171.4.⁸⁹ In pertinent part, the statute now reads:

If a pupil is attempting to enroll in a school district during a suspension or expulsion from *another in-state or out-of-state school district including a private, charter or parochial school or school district*, . . . a conference . . . may be held . . . to consider if the conduct of the pupil would have resulted in a suspension or expulsion in the district in which the pupil is enrolling. Upon a determination . . . that such conduct would have resulted in a suspension or expulsion in the district in which the pupil is enrolling or attempting to enroll, the school district may make such suspension or expulsion from another school or district effective in the district in which the pupil is enrolling or attempting to enroll. . . .⁹⁰

As a result, it is now clear that a school board may deny enrollment to a student expelled from either a public or a non-public school, if the disruptive or violent conduct would have resulted in expulsion from its school district.⁹¹

IV. DISCUSSION

Through the enactment of the Missouri Safe Schools Act, the Missouri General Assembly intended to send Missouri schools, citizens, and courts the message that violent and disruptive students would not be tolerated.⁹² One of the statute's provisions allows school districts to expel such violent and disruptive

89. The Missouri General Assembly also amended Section 167.171.3, to read: No school board shall readmit or enroll a pupil properly suspended for more than ten consecutive school days for an act of school violence as defined in subsection 2 of section 160.261, RSMo, *regardless of whether or not such act was committed at a public school or at a private school in this state*, provided that such act shall have resulted in the suspension or expulsion of such pupil in the case of a private school

MO. REV. STAT. § 167.171.3 (2000) (emphasis added).

90. MO. REV. STAT. § 167.171.4 (2000) (emphasis added).

91. In other words, under the new statutory language, the Board in *Hamrick* would be allowed to make Jonathon's expulsion from the parochial school effective in its district.

92. Press Release, Office of the Governor, Carnahan Signs Safe Schools Legislation (June 14, 1996) (on file with Missouri Law Review).

students.⁹³ A related statute allows school boards to give effect in their districts to expulsions of students from other districts.⁹⁴ Chief Judge Russell, therefore, was correct when she wrote in *Hamrick* that “it would make no sense” if the statute allowed public school districts only to deny enrollment to students expelled from other public schools.⁹⁵ To keep schools truly safe, school districts should be allowed to deny enrollment to disruptive and violent students expelled from school—whether public or private. And, apparently the Missouri General Assembly agrees wholeheartedly with that statement. Only four months after the court ruled in *Hamrick*, the legislature amended the language of the statute to ensure that expelled students could be denied enrollment in public schools, regardless of the type of school from which they were expelled. It is now clear that the Missouri Safe Schools Act will better effectuate the goals set forth by the federal and state legislatures by ensuring that school boards have the necessary tools to remove all violent and disruptive students from the regular classroom setting.⁹⁶

Even though the amendment to the Missouri Safe Schools Act allows school boards to keep all disruptive students out of the regular classroom setting, the safety of Missouri schools is still dependent on school boards’ discretion. The facts of *Hamrick* illustrate this issue—the non-uniform application of the provisions of the Missouri Safe Schools Act.⁹⁷ As highlighted by the

93. See MO. REV. STAT. § 167.161 (2000).

94. See MO. REV. STAT. § 167.171.4 (1994 & Supp. 1999) (amended 2000).

95. Did the majority in *Hamrick* get it wrong? The majority was likely correct in its strict application of the plain meaning rule. Based on the dictionary and case law definitions of “school district” cited by the court, the term does have a “public school” connotation. *Hamrick ex rel. Hamrick v. Affton Sch. Dist. Bd. of Educ.*, 13 S.W.3d 678, 680 (Mo. Ct. App. 2000).

Recall, however, that the majority intended to avoid statutory interpretation with *unjust, absurd, or unreasonable* results. *Id.* at 680. The Board’s decision and the court’s subsequent ratification of that decision—to deny Jonathon enrollment, but not to expel his accomplice, when both boys had committed the same acts—unequally applied the law. The results, therefore, were unjust.

96. There is one competing policy interest that must be stated here—the goal of having well-educated students. This policy is as important as school safety, but it should be noted that the Missouri Safe Schools Act provides that suspended or expelled students must be educated in an alternative setting. In other words, the responsibility of the state to educate its students is not relieved by its expulsion of a student. See MO. REV. STAT. § 167.164 (2000). A discussion of the effectiveness of alternative schooling is beyond the scope of this Law Summary.

97. In addition to the misapplication in *Hamrick*, some believe that school boards across the nation base their expulsion decisions on the race of the students involved. See, e.g., Associated Press, *Black Students Are Expelled More Often, District Admits; But Officials in Decatur, Ill., Say Punishments Are Fair*, ST. LOUIS POST-DISPATCH, Dec. 28,

concurrence, Jonathon's accomplice was a student enrolled in the Affton School District at the time these youngsters committed acts of vandalism and stealing at Jonathon's parochial school.⁹⁸ The Board, however, refused to expel the accomplice, arguing that it did not have the authority to do so because the acts were not committed on Affton property.⁹⁹ The expulsion provision, however, allows school districts to expel students for "conduct which is prejudicial to good order and discipline in the schools."¹⁰⁰ The provision makes no reference to geography. The result in *Hamrick* was that two boys who committed the same violent acts were treated differently by the Board. This misapplication of the law by the Board highlights the need for uniformity in application of the Missouri Safe Schools Act, if there is any chance of completely effectuating the goal of protecting Missouri's schools from violent and disruptive students.

Although the amendment to Section 167.171.4 ensures that school boards can keep all disruptive students out of the regular classroom setting, the amendment does not solve the misapplication problem outlined above. Using the facts of *Hamrick*, but applying the new statute, the Board now legally could deny enrollment to Jonathon for his violent acts.¹⁰¹ The Board, however, still would not have to expel Jonathon's accomplice for his similar acts because the *Hamrick* majority did not address Jonathon's second point on appeal—that the Board's decision to deny him enrollment was arbitrary and unreasonable in light of its failure to expel his accomplice, who remained enrolled in the Affton School District.¹⁰² To ensure that Missouri school boards apply the expulsion provisions in a uniform manner, a court must address this second point raised in *Hamrick*.

Although the Missouri Safe Schools Act, as recently amended, better equips school districts to keep disruptive students out of Missouri's public schools, another question must be posed—is legislation a sufficient mechanism by which to effectuate safety in schools? Nationwide, it seems that, although school

1999, at B2 (discussing the two-year expulsions of six African-American students after a fight at a football game); Editorial, *Discipline in Black and White*, ST. LOUIS POST-DISPATCH, Jan. 17, 2000, at B6 ("In Missouri, where black students were just 16 percent of the public school enrollment in the 1997-1998 school year, they made up 36 percent of the out-of-school suspensions."). It is, of course, possible that more African-American students are involved in disruptive behavior in Missouri schools. It is also possible, however, that this is another example of non-uniform application of the suspension/expulsion provisions of the Missouri Safe Schools Act. An in-depth analysis of this issue, however, is beyond the scope of this Law Summary.

98. *Hamrick*, 13 S.W.3d at 682.

99. *Id.*

100. MO. REV. STAT. § 167.161 (2000) (emphasis added).

101. See generally MO. REV. STAT. § 167.171.4 (2000); *Hamrick*, 13 S.W.3d 678.

102. *Hamrick*, 13 S.W.3d at 681.

violence may be declining on the whole, the magnitude of the violence presently is worse than ever.¹⁰³ In addition, the states that have witnessed the most horrific episodes of recent school violence had Safe Schools Acts in effect when the violence occurred.¹⁰⁴ Furthermore, the Santee, California, shooting indicates that, even when a student discusses his or her violent plans with other students (and even adults), the violence may not be prevented.¹⁰⁵ Therefore, it seems that legislation, alone, may not be a sufficient mechanism for completely effectuating safety in Missouri's schools.¹⁰⁶

Nevertheless, the Missouri Safe Schools Act, with improved Section 167.171.4, is a step in the right direction. This Section provides justification for school boards to deny admission or enrollment to students who have been expelled from other districts. This means that disruptive and violent students

103. For a sampling of recent school violence and sources that contain additional accounts and statistics of school violence, see *supra* notes 2-7 and accompanying text.

104. On March 24, 1998, two boys opened fire from nearby woods on their middle school in Jonesboro, Arkansas, killing four girls and a teacher and wounding ten others. Associated Press, *Recent Shootings at U.S. Schools* (Mar. 8, 2001), at <http://www.usatoday.com/news/nation/2001-03-05-shootlist.htm>. Arkansas had enacted its Safe Schools Act in 1997. ARK. CODE ANN. § 6-15-1301 (Michie 1999). On May 20, 1999, fifteen-year-old T.J. Solomon opened fire at Heritage High School in Conyers, Georgia, wounding six students. Georgia had enacted its Safe Schools Act in 1994. GA. CODE ANN. § 20-2-1185 (1996 & Supp. 2000). The Safe Schools Acts in California and Michigan, where the violence described *supra* notes 3-4 and accompanying text occurred, had effective dates of July 1, 1999, and July 6, 1999, respectively. CAL. EDUC. CODE § 32228 (West Supp. 2002); MICH. COMP. LAWS ANN. § 380.1308 (West Supp. 2001).

105. Scott Bowles, *Two Shot Dead at School* (Mar. 8, 2001), at <http://www.usatoday.com/news/nation/2001-03-06-school-usat.htm> (“[Charles Andrews] Williams, the butt of jokes at Santana High School according to classmates, had told about 20 people over the weekend of his plans. Apparently nobody reported the threats.”).

106. See News Release, Missouri Department of Elementary and Secondary Education, Bartman Calls for Stern Measures—and More Community Involvement—to Prevent Disruption and Violence in Schools (July 26, 1999), available at <http://www.dese.state.mo.us/news/adminspeech.htm>. According to Commissioner of Education Robert Bartman:

Our schools are safe now. They are probably the safest place in town for any child to be. More security measures may be appropriate in some cases, but we have to recognize that no amount of metal detectors, surveillance cameras or armed guards can ever guarantee complete safety. Therefore, it is up to us—as students, parents, grandparents, educators, community leaders and citizens—to do all that we can to deter violence and prevent disruptions of the learning environment.

Id.

will be kept out of the regular classroom setting. This seems to be a good first step toward achieving the goal of safety in Missouri's schools.

V. CONCLUSION

In *Hamrick*, the court narrowly construed a Section of the Missouri Safe Schools Act to prevent a public school from denying enrollment to a student who had been expelled from a non-public school, even though the student would have been expelled from the public school based on his acts of property damage, burglary, and stealing. The Missouri General Assembly immediately responded with an amendment to the Section at issue to ensure that this would not be the result in future cases. The *Hamrick* facts, namely the inconsistent application of the expulsion provisions by the Board, should force school boards to review their policies for enforcing the Missouri Safe Schools Act. In addition, a Missouri court should address the fact that, in *Hamrick*, the Board's decision to deny Jonathon enrollment was arbitrary and unreasonable in light of its failure to expel his accomplice, who remained enrolled in the Affton School District. Such a stance would send a message to school boards that inconsistent application of the expulsion provisions will not be tolerated. Finally, the *Hamrick* ruling, as well as recent nationwide school violence, should spur the Missouri General Assembly to determine if the Safe Schools Act is a sufficient mechanism for effectuating the state's goal of protecting its public schools. There is still much work to be done in order to protect Missouri's public schools from violence, but the Missouri Safe Schools Act likely will pass the test.

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