

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

THE SCHOOL DISTRICT OF KANSAS CITY,)
MISSOURI, et al.,)

Plaintiffs,)

v.)

MISSOURI BOARD OF FUND)
COMMISSIONERS, et al.,)

Defendants,)

MISSOURI CHARTER PUBLIC)
SCHOOL ASSOCIATION, et al.,)

Intervenors.)

Case No. 05AC-CC00389

FILED
AUG 15 2011
BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

MEMORANDUM, ORDER AND JUDGMENT

I. INTRODUCTION

This case comes before the Court on cross motions for summary judgment. This case arises from a dispute between the School District of Kansas City, Missouri (“KCMSD”) and certain taxpayers against the State of Missouri (the “State”) and certain departments and agencies of the State responsible for administering State funding to public school districts and charter schools. Plaintiffs allege that, from April 2005 until June 2006, the State forced KCMSD to divert certain of its local property tax revenues to charter schools in violation of a settlement agreement entered into between KCMSD and the State in 1996 (the “Settlement Agreement”) that resulted in the State’s dismissal from a federal desegregation lawsuit filed jointly against KCMSD and the State.

Specifically, KCMSD alleges that, by forcing KCMSD to divert certain of its local tax revenues to charter schools, the State violated provisions in the Settlement Agreement that required the State to maintain KCMSD’s financial “status quo” until such time as KCMSD

completed payments on desegregation bonds and which prohibited the State from indirectly reclaiming a lump sum payment that the State gave in consideration for the Settlement Agreement. Under various theories, KCMSD seeks a judgment requiring the State to refund \$6,162,011.00 of KCMSD's local tax revenues that the State required KCMSD to divert to the charter schools. KCMSD also asserts a claim for money had and received against a group of Intervenor charter schools that received the local tax revenues, and seeks judgments against them totaling \$5,082,253.00.¹

In the spring of 2010, KCMSD, the State, and the Intervenors all filed competing motions for summary judgment seeking to dispose of KCMSD's claims. The focus of that briefing centered on whether orders and judgments issued by federal courts in the desegregation litigation establish that the State's conduct violated the Settlement Agreement and that it was improper for the charter schools to receive the diverted funds. After considering the extensive briefs and exhibits submitted by the parties, and the pertinent federal orders which *do* establish the State's conduct violated the Settlement Agreement, the Court concludes that KCMSD's motion for summary judgment should be granted in part and that the State and Intervenors' respective motions for summary judgment should be denied.

II. SUMMARY JUDGMENT STANDARD

Summary judgment should be granted when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *See* Mo. R. Civ. P. 74.04(6). A genuine issue of material fact is a dispute that is real and not merely argumentative, imaginary, or frivolous. *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 382 (Mo. 1993) (en banc).

¹ The remaining \$1,079,758.00 was received by other charter schools that are not parties to this case.

III. FACTUAL BACKGROUND

In support of their respective motions, the parties have supplied the Court with extensive statements of uncontroverted material facts and responses thereto. Generally speaking, while the parties quibble with each other's respective characterization or description of historical facts, the *material* facts pertinent to this case are not genuinely disputed and are supported by official public records and other objective evidence the contents of which cannot be questioned. The Court finds that these undisputed, material facts are as follows:

A. The Parties

Plaintiff KCMSD is a public governmental body established and organized under the Missouri Revised Statutes that is located in Jackson County, Missouri. Plaintiffs Charles Briscoe, Richard Sexton, and Dr. Julia H. Hill are taxpayers residing in Jackson County, Missouri within the boundaries of KCMSD.

Defendant, the State, is a sovereign governmental entity. The Board of Fund Commissioners is a state governmental agency established pursuant to the Missouri Revised Statutes. Jay Nixon, Peter Kinder, Chris Koster, Thomas A. Schweich, Clint Zweifel, and Kelvin Simmons are currently the individual members of the Board of Fund Commissioners, and are sued by KCMSD in their official capacities. Defendant, the Missouri State Board of Education (the "Board of Education"), is a governmental agency established pursuant to the Missouri Constitution and Missouri Revised Statutes. The Department of Elementary and Secondary Education ("DESE") is a governmental agency established pursuant to the Missouri Revised Statutes and is responsible for overseeing public school districts and charter schools in the State. Defendant Chris Nicastro is currently the Commissioner of Education and head administrator of DESE, and is sued by KCMSD in her official capacity.

Intervenors are a group of fourteen charter schools authorized to operate pursuant to the Missouri Revised Statutes, Chapter 160. The fourteen charter school Intervenors are: Genesis School, Inc. (“Genesis”); University Academy (“University”); Sparrow Community Development Corporation (d/b/a Lee A. Tolbert Community Academy) (“Sparrow”); BSDS, Inc. (d/b/a Brookside Day and Charter School) (“Brookside”); Benjamin Banneker Charter Academy of Technology (“Banneker”); Gordon Parks Elementary School (“Gordon Parks”); Scuola Vita Nuova (“SVN”); Academie Lafayette (“Lafayette”); Della Lamb Community Services (“Della Lamb”); Academy of Kansas City, Inc. (“Academy”); Guadalupe Centers, Inc. (d/b/a Alta Vista Charter School) (“Alta Vista”); Westport Allen Village School (“Allen Village”); Derrick Thomas Academy Charter School, Inc. (“Derrick Thomas”); and Urban Community Leadership Academy (“UCLA”). At all times pertinent to the claims in this lawsuit, the Intervenors operated as charter schools within the geographic boundaries of KCMSD.

B. The Desegregation Litigation

KCMSD and the State were defendants in federal desegregation litigation regarding KCMSD, *Jenkins v. Kansas City, Missouri School District, et al.*, Case No. 77-0420-CV-W, filed in the United States District Court for the Western District of Missouri. The federal district court in the desegregation litigation ruled that KCMSD and the State were responsible for the constitutional violations and the resulting costs for implementing a remedial plan.

As a part of the desegregation litigation, the federal district court ordered KCMSD to take certain actions to remedy the vestiges of discrimination and segregation. For example, the federal district court ordered KCMSD to undertake substantial capital improvements of the buildings within KCMSD. The federal district court also ordered KCMSD to provide and maintain specific educational programs in order to make progress toward closing the achievement gap between white and black students.

During the course of the desegregation litigation, the federal district court determined that KCMSD had insufficient revenues to finance its share of the remedial plan and that certain State laws prevented KCMSD from raising the necessary funds. The federal district court therefore mandated that KCMSD: (1) increase its property tax rate through fiscal year 1991-1992 to \$4.00 per \$100 of assessed valuation, and (2) issue capital improvement bonds in the total amount of \$150,000,000 to be retired within 20 years from the date of issue. The federal district court further “earmarked the proceeds of the property tax increase for retirement of capital improvement bonds, with any excess to be used to fund other desegregation costs.” *Jenkins v. Kansas City, Missouri School District*, Eighth Circuit Opinion (8/19/1988), at 26, 855 F.2d 1295, 1309 (8th Cir. 1988). In 1993, the federal district court authorized KCMSD to issue an additional \$160 million in desegregation bonds.

C. The Federal District Court-Approved Settlement Agreement and the State’s Dismissal From the Desegregation Litigation

In 1996, KCMSD and the State entered into the Settlement Agreement which, as discussed below, ultimately resulted in the State being dismissed from the desegregation litigation. Pursuant to the Settlement Agreement, KCMSD agreed to accept “desegregation revenues” from the State for fiscal years, 1997, 1998, and 1999 in the form of three lump-sum payments totaling \$314 million.² Settlement Agreement ¶ 2(a). In exchange for the lump-sum payments totaling \$314 million, KCMSD agreed that the State “shall not be required to make any

² When drafted, the Settlement Agreement provided for \$314 million in lump-sum payments. Before the Settlement Agreement was approved, the federal district court issued a separate order increasing certain other of the State’s funding obligations. Thereafter, the State acknowledged that the \$314 million would be increased to \$320 million. *Jenkins v. State of Missouri*, Federal District Court Order (3/25/1997), at 37, 959 F. Supp. at 1169 (explaining the increase from \$314 million to \$320 million). For clarity, throughout this opinion, the Court refers to the amount of the lump sum payment as \$314 million, the amount set forth in the language of the Settlement Agreement itself.

further payments to or on behalf of the School District for years subsequent to fiscal year 1999,” and “the payment by the State of [\$314 million] shall complete the State’s obligations to fund or otherwise provide for desegregation remedies.” *See id.* ¶ 3.

The parties agreed that the purpose of the \$314 million in lump-sum payments was to “provide the KCMSD with a source of funds not only for the next three years, but for future years.” *See id.* ¶ 5. Additionally, the parties acknowledged that KCMSD’s local tax levy had by then been increased by the federal district court to \$4.96 per \$100 of assessed valuation and agreed to “jointly support existing court-ordered financing, except for any orders requiring State financing other than the State payments set forth in the Agreement, until such time that the District is declared unitary, after action by the Court, or the voters change the rate.” *See id.* ¶ 8. In exchange for the State’s various obligations under the Settlement Agreement, KCMSD also agreed to support the State’s motion requesting that the federal district court dismiss the State from the desegregation litigation, after the State fulfilled its obligations under the Settlement Agreement. *See id.* ¶ 7.

The federal district court approved the Settlement Agreement in 1997. *Jenkins v. State of Missouri*, Federal District Court Order (3/25/1997), at 44, 959 F. Supp. 1151, 1178-79 (W.D. Mo. 1997). The United States Court of Appeals for the Eighth Circuit, in affirming the approval of the Settlement Agreement, specifically stated, “[s]ufficient funding is absolutely essential to the School District’s viability. All parties agree that the loss of the level of funding under the current levy would be catastrophic and would reduce the District’s funding to less than half the amount that has been available to the KCMSD for a number of years. Should this loss of funding occur, it would present a changed circumstance that could call for a reconsideration of

the agreement.” *Jenkins v. State of Missouri*, Eighth Circuit Opinion (8/12/1997), at 32, 122 F.3d 588, 603 (8th Cir. 1997).

On April 4, 1998, Missouri voters approved a constitutional amendment allowing KCMSD to maintain a local property tax levy “up to \$4.95.” *See* Mo. Const. Art. X, § 11(g). Thereafter, KCMSD’s local property tax levy decreased one cent from the court-ordered rate of \$4.96 per \$100 of assessed valuation, to \$4.95 per \$100 of assessed valuation. In 1999, the federal district court dismissed the State from the desegregation litigation. In 2002, the federal district court declared KCMSD “unitary with regard to facilities, budget, transportation, and racial balance,” and released KCMSD from court supervision in the desegregation litigation on August 13, 2003. *Jenkins v. State of Missouri*, Federal District Court Order (3/29/2002), at 22; *Jenkins v. State of Missouri*, Federal District Court Order (8/13/2003), at 30.

D. Enactment of the Charter Schools Act

On July 1, 1998, the Missouri Legislature passed the Charter Schools Act, Mo. Rev. Stat. §§ 160.400-160.420. The Act authorized the creation of charter schools in metropolitan and urban school districts that contain the majority of a population greater than three hundred fifty thousand (350,000) inhabitants. *See* Mo. Rev. Stat. § 160.400.2. Pursuant to the Act, a number of charter schools were established within the boundaries of KCMSD, including the Intervenor charter schools.

At all times relevant to this case, the Act provided that a “school district having one or more resident pupils attending a charter school shall pay to the charter school an annual amount equal to the product of the equalized, adjusted operating levy for school purposes for the pupils’ district of residence for the current year times the guaranteed tax base per eligible pupil ... times the number of the district’s resident pupils attending the charter school plus all other state aid attributable to such pupils....” *See* Mo. Rev. Stat. § 160.415.2(1) (2005). The Act also provided

“[t]he district of residence of a pupil attending a charter school shall also pay to the charter school any other federal or state aid that the district receives on account of such child.” *Id.* § 160.415.2(2) (2005).

Before 2005, the Act provided that “[t]he per-pupil amount paid by a school district to a charter school shall be reduced by the amount per pupil *determined by the state board of education* to be needed by the district in the current year for repayment of leasehold revenue bonds obligated pursuant to a federal desegregation action.” *See id.* § 160.415.2(5) (2005) (emphasis added). Any dispute between a school district and a charter school as to the amount owed to the charter school was required to be resolved by DESE. *Id.* § 160.415.3 (2005).

E. The Enactment of Mo. Rev. Stat. § 33.315 and Its Application to KCMSD

In April 2004 the Missouri legislature enacted § 33.315, which provides as follows:

The board of fund commissioners shall determine whether any governmental entity has sufficient fund balances to redeem leasehold bonds obligated under a federal desegregation action. If the board of fund commissioners determines that any governmental entity has sufficient fund balances to redeem or otherwise pay off such leasehold revenue bonds, the state board of education shall certify, under subdivision (5) of subsection 2 of section 160.415, RSMo, that no amount is needed by such governmental entity to repay such bonds.

See Mo. Rev. Stat. § 33.315.

In December 2004 and January 2005, an attorney representing a group of charter schools within the boundaries of KCMSD (including the Intervenor charter schools in this case) exchanged correspondence with KCMSD and DESE requesting information concerning KCMSD’s withholding a portion of local property tax revenues pursuant to Mo. Rev. Stat. § 160.415.2(5).

On January 19, 2005, an attorney representing the charter schools sent a letter to the Board of Fund Commissioners requesting that the Board of Fund Commissioners determine that KCMSD had sufficient fund balances to redeem the desegregation bonds. On February 7, 2005,

KCMSD formally invoked certain administrative dispute resolution procedures in Mo. Rev. Stat. § 160.415.3, which stated that:

Any dispute between the school district and a charter school as to the amount owing to the charter school shall be resolved by the department of elementary and secondary education, and the department's decision shall be the final administrative action for purpose of review pursuant to chapter 536, RSMo.

DESE independently investigated the issue of whether KCMSD had sufficient reserves to pay off the desegregation bonds and concluded in an April 6, 2005 Memorandum transmitted to the Board of Fund Commissioners, that "all of the current outstanding leasehold revenue bonds issued by KCMSD were obligated pursuant to a federal court desegregation action. Therefore, the amount of the outstanding revenue bonds on June 30, 2004 exceeds the June 2004 balance of KCMSD in its capital projects fund." Thus, DESE recommended "that the Board of Fund Commissioners deny the request submitted on behalf of the charter schools."

On April 11, 2005, KCMSD, for the first time, received oral notice that the Board of Fund Commissioners would be meeting on April 13, 2005, and would address KCMSD's fund balances under Mo. Rev. Stat. § 33.315. At the meeting, DESE again recommended against a determination under Mo. Rev. Stat. § 33.315, consistent with its April 6, 2005 Memorandum. The Board of Fund Commissioners then heard argument from the attorney for the charter schools. The attorney for the charter schools asserted his belief that KCMSD had sufficient reserves available to pay off the leasehold revenue bonds. An attorney for KCMSD argued to the Board of Fund Commissioners that a determination requiring a portion of the fund balances to be paid to the charter schools would violate the Settlement Agreement approved by the federal district court in the desegregation litigation. However, the Board of Fund Commissioners passed a motion "determining" that KCMSD had sufficient funds to redeem the leasehold bonds. At the time the Board of Fund Commissioners passed the motion, the balance KCMSD owed on the

desegregation bonds was approximately \$160 million and the last of the bonds was not scheduled to be fully repaid until 2014.

On April 22, 2005, the Board of Education convened a meeting to evaluate the motion passed by the Board of Fund Commissioners. Although KCMSD argued to the Board of Education that it could not lawfully certify the determination of the Board of Fund Commissioners, the Commissioner of the Board of Education recommended that the Board of Education had no choice under the language of the statute but to accept the Board of Fund Commissioners' determination and "direct that withholdings made pursuant to Section 160.415(2)(5) Mo. Rev. Stat. be discontinued as of the date of this action." After the decision of the Board of Fund Commissioners and the resulting certification by the Board of Education, KCMSD began paying to the charter schools millions of dollars in local property tax revenues that were previously dedicated to payments on the desegregation bonds.

F. The Federal District Court's Finding that the State's Conduct Violated the Settlement Agreement and Previous Federal District Court Order Dismissing the State From the Desegregation Litigation

On February 22, 2006, KCMSD and other parties in the desegregation litigation filed a Motion To Enforce Judgment, requesting that the federal district court enjoin enforcement of Mo. Rev. Stat. § 33.315. KCMSD argued that Mo. Rev. Stat. § 33.315 violated the federal district court's order dismissing the State from the desegregation lawsuit because the dismissal was premised on the State's assurance of adequate funding for KCMSD to repay the court-ordered desegregation bonds.

On June 15, 2006, the federal district court entered an order granting the Motion To Enforce Judgment and prohibiting the State from requiring KCMSD to divert any funds from its property tax revenues to the charter schools until 2014 or until KCMSD completes its repayment of court-ordered desegregation bonds, whichever occurs first. The federal district court stated

that its order applied “prospectively and retroactively to any funds excepted under § 160.415.2(5) between 1999 and 2005.” *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (6/15/2006), at 7-8. In its order, the federal district court concluded the State’s attempt to transfer to the charter schools any portion of KCMSD’s local property tax revenues was an improper attempt to interfere with KCMSD’s ability to meet its court-ordered desegregation obligations and was in violation of the Settlement Agreement and the order dismissing the State from the desegregation litigation. *Id.* at 6. The federal district court also concluded that the State’s conduct was an attempt to improperly reclaim part of the \$314 million in lump-sum payments that the State made pursuant to the Settlement Agreement. *Id.* at 6.

On November 11, 2006, the federal district court issued an Amended Order, clarifying that its earlier injunction prohibited the State from requiring KCMSD to transfer to the charter schools that portion of local tax revenues “traditionally withheld by KCMSD under Mo. Rev. Stat. § 160.415.2(5).” *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (11/21/2006), at 1. In its Amended Order, the federal district court stated as follows:

On January 28, 1999, the State was dismissed from this action upon payment of the agreed amounts designated in the Settlement Agreement. Although the State’s dismissal was with prejudice, certain obligations were specified in *the Agreement* and continued after its dismissal. Most importantly, the State explicitly agreed to “support existing court-ordered financing until such time that the District is declared unitary.” (*Agreement*, ¶ 8). “Existing court-ordered financing” included the property tax levy which was initially set at \$4.96 by court order and later set at \$4.95 pursuant to Missouri law. *See* Mo. Const. Art. X, § 11(g).

* * *

The next question is whether the State was required to permit KCMSD to withhold funds beyond [the date KCMSD was declared unitary]. If the court-ordered bonds are deemed to fall within the “court-ordered financing” that the State must support under the *Settlement Agreement*, then the State would be required to allow KCMSD to withhold funds until the bonds are fully retired

* * *

Under the *Settlement Agreement* and previous orders of this Court, the Court finds that the leasehold revenue bond obligations are “court-ordered financing” and the State has a continuing obligation to support KCMSD’s efforts to retire them within their respective initial maturation dates.

Accordingly, the Court hereby ORDERS that the *1996 Settlement Agreement* requires the State to permit KCMSD to withhold local property tax levy funds for repayment of court-ordered leasehold revenue bonds from transfer to the charter schools, pursuant to Mo. Rev. Stat. § 160.415.2(5), through the respective initial retirement dates of each of the court-ordered leasehold revenue bond obligations.

Id. at 3 (emphasis added).

On appeal, the Eighth Circuit affirmed the federal district court’s holding that the State violated the Settlement Agreement and order dismissing the State from the desegregation litigation. *Jenkins v. Kansas City, Missouri School District*, Eighth Circuit Opinion (2/27/2008), at 6, 516 F.3d at 1079. The Eighth Circuit stated, among other things:

In enjoining the State from interfering with the District’s use of levy proceeds previously withheld under Section 160.415.2(5) to repay court-ordered bonds, the District Court indicated it was enforcing *both* court orders and the *terms of the 1996 Agreement* that were incorporated into court orders. Our review of the *Agreement* and the numerous orders in this case leads us to conclude that the District Court acted properly.

* * *

In addition to stopping the State from flouting the court orders themselves, the District Court indicated that it was enforcing the *1996 Agreement*, which we have found incorporated into court orders and thus enforceable under the court’s ancillary jurisdiction.

* * *

According to the movants, the State is indirectly reclaiming funds that it transferred under the *Agreement* by requiring the KCMSD to divert moneys to the charter schools. With these moneys now unavailable to make payments on the bonds, the KCMSD will be forced to deplete its reserves to service its bond obligations. We agree with the District Court’s finding that *implicit in the Agreement* was the parties’ expectations that the State would not reclaim the funds that it was transferring under the *Agreement*. The District Court’s order therefore appropriately gave effect to this provision.

* * *

The District Court also considered Paragraph 8 of the *Agreement*, which requires the parties to “jointly support existing court-ordered financing” (including the increased property tax levy). . . . The District Court thus relied on *both* the *Agreement* and an order of this Court in finding that the leasehold revenue bond obligations are “court-ordered financing” and the State has a continuing obligation to support KCMSD’s efforts to retire them within their respective initial maturation dates.

* * *

As we stated above, the District Court’s order did not require the State to provide new funding to the District; rather, it simply enforced the State’s long-standing obligation not to impede the District’s ability to use levy proceeds to retire the bonds. Thus, we reject the State’s argument that the District Court’s order unlawfully modified the *Agreement*.

Id. at 13, 17-19, 516 F.3d. at 1083, 1085-86 (emphasis added).

G. The Amount of KCMSD’s Funds Diverted to the Charter Schools

From the time that the State began forcing KCMSD to divert additional local property tax revenue pursuant to Mo. Rev. Stat § 33.315 in April 2005, until entry of the federal district court’s injunction in June 2006, KCMSD was forced to divert \$6,162,011.00 in local tax revenues to the charter schools that were previously dedicated to payments on the desegregation bonds.

As a result of the State’s enforcement of Mo. Rev. Stat. § 33.315, and from April 2005 to June 2006, the Intervenor charter schools received the following amounts of KCMSD’s local property tax revenues that were previously dedicated to repayment of the desegregation bonds:

School	KCMSD Funds Received
Académie Lafayette (p/k/a Kansas City Foreign Language Charter School)	\$379,352.00
Academy of Kansas City	\$270,382.00
Alta Vista Charter School	\$123,367.00
Benjamin Banneker	\$156,722.00

School	KCMSD Funds Received
Brookside	\$220,601.00
Della Lamb	\$576,924.00
Derrick Thomas Academy	\$798,979.00
Genesis	\$126,899.00
Gordon Parks	\$200,643.00
Lee A. Tolbert	\$501,893.00
Scuola Vita Nuova	\$201,561.00
Urban Community	\$232,151.00
Westport Allen Village (p/k/a Westport Allen-Edison Village Educational School)	\$527,188.00
University Academy	\$765,591.00
Total	\$5,082,253.00

H. KCMSD's Federal District Court Motion for Return of the Diverted Funds

After the Eighth Circuit affirmed the federal district court's retroactive and prospective injunction prohibiting the State from enforcing Mo. Rev. Stat. § 33.315 against KCMSD, on July 15, 2006, KCMSD filed a second motion with the federal district court requesting that the court order the State to return to KCMSD the approximately \$6.1 million in diverted funds. *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (1/31/2007), at 1. The State opposed KCMSD's request, arguing that an award of money damages was beyond the federal district court's equitable powers and was prohibited by the Eleventh Amendment to the United States Constitution, which precludes awards of money damages against states in federal courts. *Id.* at 1.

The federal district court denied KCMSD's request for an order directing the State to return the diverted funds. In so doing, the federal district court expressly stated that the relief KCMSD requested was *equitable* in nature and that the injunction against the State was issued

pursuant to the federal district court's equitable power. The federal district court held that equity "does not require the State to reimburse KCMSD for the funds transferred to the charter schools." *Id.* at 2. KCMSD did not assert a legal claim for breach of contract before the federal district court and, consequently, the federal district court did not determine whether KCMSD was entitled to compensatory damages in the approximate amount of \$6.1 million under the legal claim of breach of contract. *Id.*

I. KCMSD's Request to DESE to Restore the Diverted Funds

At all times relevant to this Petition, Mo. Rev. Stat. § 160.415.5 provided, in part:

If a charter school is paid more or less than the amounts due pursuant to this section the amount of overpayment or underpayment shall be adjusted equally in the next twelve payments by the school district or the Department of Elementary and Secondary Education, as appropriate. Any dispute between the school district and a charter school as to the amount owing to the charter school shall be resolved by the Department of Elementary and Secondary Education, and the Department's decision shall be the final administrative action for the purposes of review pursuant to chapter 536, RSMO.

See Mo. Rev. Stat. § 160.415.5 (2005).

On December 3, 2007, KCMSD requested that DESE restore the approximately \$6.1 million in diverted funds to KCMSD through the mechanism established in Mo. Rev. Stat. § 160.415.5. Having received no response from DESE, on February 27, 2008, KCMSD renewed its request that DESE restore the \$6.1 million.

After exchange of additional correspondence between KCMSD, DESE, and the charter schools, on December 9, 2008, DESE denied KCMSD's request to restore the \$6.1 million in diverted funds, concluding that the withholding was proper because it was done "under color of state law" and, "during the period in question, did not violate any court ruling." *See* DESE Denial Order (12/9/2008). To date, neither the State nor the Intervenor charter schools have

repaid to KCMSD any portion of the \$6.1 million in funds diverted as a result of the State's enforcement of Mo. Rev. Stat. § 33.315 against KCMSD.

IV. THE CLAIMS

In light of the facts identified above, KCMSD asserts the following claims against the State Defendants:

- Count I: "Declaratory Judgment And Other Equitable Relief Regarding The State Defendant's Wrongful Withholding Of Funds." Through this Count, KCMSD seeks a declaration that the State's diversion of funds pursuant to § 33.315 was contrary to the Settlement Agreement and violated the Supremacy Clause of the United States Constitution. Through Count I, KCMSD also seeks an order requiring the State Defendants to restore the \$6,162,011.00 in diverted funds to KCMSD.
- Count II: "Breach of Contract." Through this Count, KCMSD asserts a traditional breach of contract claim against the State for breach of the Settlement Agreement. As damages for breach of the Settlement Agreement, KCMSD seeks \$6,162,000.00 in damages.
- Count III: "Judicial Review of Administrative Action." Through this Count, KCMSD seeks judicial review pursuant to Chapter 536, Mo. Rev. Stat. of DESE's denial of KCMSD's request to restore the \$6,162,011.00 in diverted funds to KCMSD. KCMSD seeks a ruling that DESE's refusal to restore the \$6,162,011.00 to KCMSD was unlawful, unreasonable, arbitrary, capricious, and an abuse of discretion, and an order directing DESE to restore the \$6,162,011.00 in diverted funds.

KCMSD also asserts a single claim against the Intervenor charter schools for money had and received. Through its claim for money had and received, KCMSD seeks judgment against each of the Intervenor charter schools for the amount of KCMSD's diverted funds received by each charter school, which collectively total \$5,082,253.00.

V. ANALYSIS

A. KCMSD is Entitled to Summary Judgment on its Breach of Contract Claim Against the State (KCMSD Count II)

To establish a breach of contract claim, KCMSD must show: (1) the existence of an enforceable contract between itself and the State; (2) that the parties had mutual obligations

under the contract; (3) that the State did not perform its obligations under the contract; and (4) that KCMSD was thereby damaged. *Superior Ins. Co. v. Univ. Underwriters Ins. Co.*, 62 S.W.3d 110, 118 (Mo. Ct. App. 2001).

1. KCMSD Established the Existence of an Enforceable Contract with Mutual Obligations

It is undisputed that there was a Settlement Agreement between KCMSD and the State, and that the parties had mutual obligations under the Settlement Agreement. The State does not contend that KCMSD failed to perform any of its obligations under the Settlement Agreement. While the State argues it enjoys sovereign immunity from suit for breach of contract, precedent from the Missouri Supreme Court has held that sovereign immunity does not apply to claims for breach of an express contract like the Settlement Agreement. *See Kunzie v. City of Olivette*, 184 S.W.3d 570, 575 (Mo. 2006) (en banc); *V.S. DiCarlo Const. Co., Inc. v. State of Missouri*, 485 S.W.2d 52, 54-55 (Mo. 1972). Therefore, if KCMSD can establish that the State breached the Settlement Agreement and KCMSD was thereby damaged, KCMSD is entitled to summary judgment on its breach of contract claim.

2. KCMSD Established that the State Breached the Settlement Agreement

Under the Settlement Agreement, the State agreed to pay to KCMSD some \$314 million in lump-sum payments to KCMSD. The State agreed that the lump-sum payments were intended to serve as a source of funding to KCMSD in future years. The State also acknowledged that KCMSD's local tax levy rate was set at \$4.96³ pursuant to court order and that it agreed to "support existing court-ordered financing, except for an order requiring State financing other than the State payments set forth in the agreement."

³ As noted *supra*, this rate was later reduced to \$4.95 after Missouri voters approved a constitutional amendment authorizing KCMSD to increase its local tax levy to that amount.

As the federal district court explained, it “envisioned the proceeds of the property tax increase to be used for both the retirement of capital improvement bonds, and to fund other desegregation costs.” *Jenkins v. Kansas City, Missouri School District*, Federal District Court Order (6/15/2006), at 6. Although the State argued it did not have an obligation to support court-ordered financing after 2003, the federal district court disagreed, holding that, under the Settlement Agreement, the State could not alter the “financial status quo” until KCMSD had fully repaid the desegregation bonds. *Id.* at 7.⁴ KCMSD also argued that the Settlement Agreement prohibited the State from indirectly reclaiming any part of the \$314 million in lump-sum payments. The district court agreed, stating: “[c]learly, the State may not require KCMSD to transfer funds . . . that were part of the payments made pursuant to the 1996 Settlement Agreement.” *Id.* at 6.

The Eighth Circuit affirmed the federal district court’s construction of the Settlement Agreement. First, the Eighth Circuit agreed that the Settlement Agreement required the State to “support existing court-ordered financing,” including KCMSD’s use of the local tax levy to repay desegregation bonds through their maturity dates. *See Jenkins v. Kansas City, Missouri School District*, Eighth Circuit Opinion (2/27/2008), at 18, 516 F.3d at 1085-86. The Eighth Circuit explained:

The District Court thus relied on both the Agreement and an order of this Court in finding “that the leasehold revenue bond obligations are ‘court-ordered financing’ and the State has a continuing obligation to support KCMSD’s efforts to retire them within their respective maturation dates.” We find the District Court’s opinion well reasoned

Id. at 19, 516 F.3d at 1086.

⁴ In a subsequent order, the federal district court further explained “[T]he terms of the Settlement Agreement require the former State Defendants to support KCMSD’s obligation to repay the Court-ordered bonds from 1999 until 2014.” *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (1/31/2007), at 2.

Second, the Eighth Circuit agreed that the Settlement Agreement prohibited the State from indirectly reclaiming any portion of the \$314 million in lump-sum payments by forcing KCMSD to use that money to pay off desegregation bonds early. As the Eighth Circuit explained:

According to [KCMSD], the State is indirectly reclaiming funds that it transferred under the Agreement by requiring the KCMSD to divert moneys to the charter schools. With these moneys now unavailable to make payments on the bonds, the KCMSD will be forced to deplete its reserves to service its bond obligations. We agree with the District Court's finding that implicit in the Agreement was the parties' expectations that the State would not reclaim the funds that it was transferring under the Agreement.

Id. at 18, 516 F.3d at 1085.

In light of the foregoing, it is clear that the federal district court and the Eighth Circuit have already held that the State's forced diversion of KCMSD's local tax revenues to charter schools pursuant to Mo. Rev. Stat. § 33.315 violated the Settlement Agreement. In its Order of June 15, 2006, the federal district court enjoined the State from enforcing Mo. Rev. Stat. § 33.315 against KCMSD, holding that the "State Defendants are hereby enjoined from requiring KCMSD to divert any funds from the \$4.95 per \$100 property tax levy to the charter schools until 2014 or until KCMSD has completed repayment of the court-ordered desegregation bonds." *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (6/15/2006), at 7. The federal district court issued the injunction after concluding that the State's forced diversion of KCMSD's local tax revenue pursuant to Mo. Rev. Stat. § 33.315 constituted a changed financial condition, and violated the Settlement Agreement by altering the financial status quo. *Id.* at 7. In its Amended Order of November 21, 2006, the federal district court reiterated its holding, stating that "the 1996 Settlement Agreement requires the State to permit KCMSD to withhold local property tax levy funds for repayment of court-ordered desegregation bonds from transfer to the charter schools . . . through the respective retirement dates of each of

the court-ordered leasehold revenue bond obligations.” *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (11/21/2006), at 3.

On appeal, the Eighth Circuit affirmed, holding that, by enacting Mo. Rev. Stat. § 33.315, the State “changed the rules of the game.” *Jenkins v. Kansas City, Missouri School District*, Eighth Circuit Opinion (2/27/2008), at 7, 516 F.3d at 1079. The Eighth Circuit agreed that the federal district court’s injunction against the State was necessary to prevent the State from continuing to violate its obligation under the Settlement Agreement to support “court-ordered financing,” including KCMSD’s use of local tax revenues to pay off the desegregation bonds. *Id.* at 18-19, 516 F.3d at 1085-86. The Eighth Circuit explained the injunction “simply enforced the State’s long-standing obligation not to impede the District’s ability to use levy proceeds to retire the bonds.” *Id.* at 19, 516 F.3d at 1086. The Eighth Circuit also held that the federal district court’s injunction was necessary to give effect to the State’s obligation under the Settlement Agreement not to reclaim any part of the \$314 million in lump-sum payments. *Id.* at 18, 516 F.3d at 1085. Although the State argued vigorously that the federal district court had unlawfully added new obligations to the Settlement Agreement, the Eighth Circuit held otherwise, stating “we reject the State’s argument that the District Court’s order unlawfully modified the Agreement.” *Id.*, 516 F.3d at 1086.

3. The State is Collaterally Estopped From Disputing that it Breached the Settlement Agreement

KCMSD argues that the State is collaterally estopped from denying the federal district court and the Eighth Circuit’s holdings and that the State’s breach of the Settlement Agreement can be conclusively established based on the previous rulings of these courts. Under Missouri law, the doctrine of collateral estoppel may be used defensively to bar a plaintiff from raising an issue determined in a prior action or offensively to bar a defendant from litigating an element of

a plaintiff's case. *Consumer Finance Corp. v. Reams*, 158 S.W.3d 792, 798 (Mo. Ct. App. 2005). A party asserting collateral estoppel must establish four elements: "(1) the issue decided in the prior case was identical to that in the present action; (2) the prior suit resulted in a final judgment on the merits; (3) the party against whom the doctrine is asserted participated as a party or in privity with a party to the prior adjudication; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue." *Taylor v. Compere*, 230 S.W.3d 606, 611 (Mo. Ct. App. 2007).

In this case, collateral estoppel applies to bar the State from relitigating three previous holdings of the federal district court and Eighth Circuit; namely: (1) that the Settlement Agreement prohibited the State from interfering with KCMSD's use of local tax revenues to pay off the desegregation bonds; (2) that the Settlement Agreement prohibited the State from indirectly reclaiming any part of the \$314 million in lump-sum payments; and (3) that the State's conduct in forcing KCMSD to transfer to charter schools local tax revenues previously dedicated to payment of desegregation bonds violated the State's obligations under the Settlement Agreement.

First, the issue implicated by KCMSD's breach of contract claim is whether the State's forced diversion of KCMSD's local tax revenues to charter schools pursuant to Mo. Rev. Stat. § 33.315 violated the Settlement Agreement. The federal district court and the Eighth Circuit evaluated and resolved this precise issue, which is clear from the respective orders and opinions issued by those courts construing the Settlement Agreement and concluding that the State's conduct violated its terms. That KCMSD sought equitable relief from the federal district court, rather than the legal remedy of breach of contract, is irrelevant. Collateral estoppel applies to factual and legal determinations, not the type of relief awarded. *Carr v. Holt*, 134 S.W.3d 647,

650 (Mo. Ct. App. 2004). Thus, the issue decided in the previous action is identical to the present action.

Second, KCMSD's Motion To Enforce Judgment clearly resulted in a final judgment on the merits issued by the federal district court. In the context of collateral estoppel, "[a] judgment on the merits is one rendered after argument and investigation and when it is determined which party is in the right, as distinguished from a judgment rendered upon some preliminary or technical point, or by default, and without trial." *Metal Exchange Corp. v. Terrill*, 173 S.W.3d 672, 677 (Mo. Ct. App. 2005). The federal district court entered its ruling on the Motion To Enforce Judgment after being fully briefed on the issues by both sides and determined KCMSD to be in the right. Moreover, the federal district court's order was appealed, and ultimately affirmed, by the Eighth Circuit. Therefore, the prior suit resulted in a judgment on the merits.

Third, KCMSD, in its breach of contract claim, asserts collateral estoppel against the State, which was a party to the Settlement Agreement and opposed KCMSD's Motion To Enforce Judgment. Therefore, the party against whom collateral estoppel is asserted was a party to the earlier action.

Fourth, it is fair to impose collateral estoppel against the State. The State had a full opportunity to oppose KCMSD's Motion To Enforce Judgment and did so, eventually appealing the federal district court's order to the Eighth Circuit. Thus, the State had a full and fair opportunity to litigate the action. Therefore, because all elements of collateral estoppel are satisfied, the State cannot contest the federal courts' construction of the Settlement Agreement or the federal courts' conclusion that the State breached the Settlement Agreement through its use of Mo. Rev. Stat. § 33.315 to force the School District to divert local tax revenues previously dedicated to payment of desegregation bonds to the charter schools.

4. KCMSD Established Damages Resulting From the State's Breach of the Settlement Agreement

It is undisputed that the State's breach of the Settlement Agreement damaged KCMSD. Because of the State's enactment and enforcement of Mo. Rev. Stat. § 33.315 against KCMSD, KCMSD was forced to divert millions of dollars in payments to the charter schools that KCMSD otherwise would have retained and used to make KCMSD's payments on the desegregation bonds. As established by the uncontroverted testimony of Veronica Sarmiento, KCMSD's budget specialist, from April 2005 to June 2006, KCMSD was required to transfer to the charter schools \$6,162,011.00 in monies that KCMSD otherwise would have withheld but for the State's enactment and enforcement of Mo. Rev. Stat. § 33.315. Therefore, KCMSD was damaged by the State's breach of the Settlement Agreement in the amount of \$6,162,011.00.

5. KCMSD is Not Collaterally Estopped or Barred by *Res Judicata* From Asserting its Breach of Contract Claim

Both the State and Intervenor argue that KCMSD's breach of contract claim is barred by collateral estoppel and/or *res judicata* because the federal district court denied KCMSD's motion seeking an order that the State return the approximately \$6.1 million in diverted funds. As the federal district court made clear, KCMSD requested that the federal district court use its *equitable* powers to enjoin the State from enforcing Mo. Rev. Stat. § 33.315 against KCMSD. *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (1/31/2007), at 1-2. The federal district court held that KCMSD was not entitled to its subsequent request that the federal district court require the State to return the approximately \$6.1 million in diverted funds as a matter of *equity*. Thus, collateral estoppel does not apply because the issue decided by the federal district court (whether equity required return of the approximately \$6.1 million) is not identical to the claim before this Court (whether KCMSD is entitled to money damages under the

legal claim of breach of contract).⁵ Similarly, to the extent KCMSD waived any claim by not appealing the federal district court's order, it waived only its claim that the funds should be restored as a matter of equity.

Further, KCMSD's breach of contract claim is not barred by *res judicata*. The doctrine of *res judicata* bars the reassertion of a claim that has already been adjudicated between the parties. To bar a claim under *res judicata*, a party must establish: (1) identity of the thing sued for, (2) identity of the cause of action, (3) identity of the persons or parties to the action, and (4) identity of the quality of the person for or against whom the claim is made. *Creative Walking, Inc. v. Am. State Ins. Co.*, 25 S.W.3d 682, 686 (Mo. Ct. App. 2000). However, *res judicata* does not bar any claim that *could not* have been litigated in the first court. *Meier v. Thorpe*, 822 S.W.2d 556, 559 (Mo. Ct. App. 1992).

Res judicata does not apply to bar KCMSD's breach of contract claim because it was not possible for KCMSD to seek or obtain money damages for breach of contract in federal court. Indeed, the State defendants argued to the federal district court that the Eleventh Amendment to the United States Constitution prohibited the federal district court from awarding any money judgment to KCMSD. *See Edelman v. Jordan*, 415 U.S. 651, 664 (1974) (a federal court cannot impose on a state "a liability which must be paid from public funds in the state treasury"). The State is correct that the Eleventh Amendment bars a claim for money damages against the State under the legal claim of breach of contract asserted in federal court. *See Dover Elevator Co. v.*

⁵ Similarly, the federal district court did not review the propriety of DESE's denial of KCMSD's request for restoration of the funds pursuant to Mo. Rev. Stat. § 160.415, nor did it evaluate the propriety of KCMSD's money had and received claim against the Intervenor charter schools (because the Intervenor charter schools were not parties to the federal desegregation litigation). Thus, collateral estoppel clearly does not apply to bar these claims either.

Ark. State Univ., 64 F.3d 442, 446-47 (8th Cir. 1995) (while injunctive relief is beyond scope of the Eleventh Amendment, the Eleventh Amendment bars breach of contract claims against state and state departments). Simply put, KCMSD could not have brought its legal claim for breach of contract against the State, even though it sought equitable relief from the federal district court relating to same conduct by the State. *Sharafeldin v. Maryland, Dep't of Pub. Safety & Correctional Servs.*, 94 F. Supp.2d 680, 686 (D. Md. 2000) (“[A]ctions for breach of a settlement agreement dismissing [federal] claims are actions which arise under state contract law and that no basis for federal jurisdiction exists for breach of such agreements because such actions are precluded by the Eleventh Amendment from being brought in federal court [against a state.]”). Because KCMSD could not have brought a breach of contract claim against the State before the federal district court, *res judicata* does not apply.⁶ See *CIS Commc'ns LLC v. County of Jefferson*, 177 S.W.3d 848, 851 (Mo. Ct. App. 2005); Restatement (Second) of Judgments § 26, comment c.

B. KCMSD is Entitled to Summary Judgment on its Claim for Judicial Review of DESE's Administrative Action (KCMSD Count III)

After the federal district court enjoined the State's enforcement of Mo. Rev. Stat. § 33.315 against KCMSD, on December 3, 2007, KCMSD made a request of DESE pursuant to Mo. Rev. Stat. § 160.415.5, to restore to KCMSD the approximately \$6.1 million that the State forced KCMSD to transfer to the charter schools. Mo. Rev. Stat. § 160.415.5 (2005) states, in pertinent part:

⁶ *Res judicata* does not apply to KCMSD's administrative claim against DESE because KCMSD's equitable claim against the State and KCMSD's administrative claim against DESE are not identical and DESE had yet to deny KCMSD's request to restore the funds at the time KCMSD filed its second motion with the federal district court. Further, KCMSD could not have asserted a claim against the Intervenor charter schools in federal district court because the Intervenor charter schools were not parties in the desegregation litigation. Therefore, *res judicata* clearly does not apply to KCMSD's money had and received claim.

If a charter school is paid more or less than the amounts due pursuant to this section, the amount of overpayment or underpayment shall be adjusted equally in the next twelve payments by the school district or the department of elementary and secondary education, as appropriate. Any dispute between the school district and a charter school as to the amount owing to the charter school shall be resolved by the department of elementary and secondary education, and the department's decision shall be the final administrative action for the purposes of review pursuant to chapter 536, RSMo.

Mo. Rev. Stat. § 160.415.5 (2005).

After an exchange of correspondence between KCMSD and DESE, on December 9, 2008, DESE denied KCMSD's request in a letter, concluding that the diversion of funds to charter schools under Mo. Rev. Stat. § 33.315 was done "under color of state law" and "during the period in question, did not violate any court ruling." DESE Denial Order (12/9/2008). Because DESE did not hold a hearing on KCMSD's request to restore the approximately \$6.1 million, DESE's action is reviewed as a noncontested case. *See City of Valley Park v. Armstrong*, 273 S.W.3d 504, 507 (Mo. 2009) (en banc). The standard of review of noncontested cases is governed by Mo. Rev. Stat. § 536.150 (2011). The Missouri Supreme Court articulated that standard as follows:

The circuit court does not review the record for competent and substantial evidence, but instead conducts a *de novo* review in which it hears evidence on the merits, makes a record, determines the facts and decides whether the agency's decision is unconstitutional, unlawful, unreasonable, arbitrary, capricious or otherwise involves an abuse of discretion. The circuit court does not defer to facts found or credibility assessed by the agency and need not conform doubtful evidence to the agency's decision. The circuit court in a noncontested case acts to determine the evidence and give judgment from that evidence.

Armstrong, 273 S.W.3d at 508 (citations omitted).

DESE refused to restore the approximately \$6.1 million in diverted funds because:

The discontinuation of the desegregation withholdings from April of 2005 to June 2006 was based upon an action of the [Board of Fund Commissioners] under color of law. Further, payments made to the charter schools, during the period in question, did not violate any court ruling. Therefore, DESE must deny the request of KCMSD to withhold funds.

DESE Denial Order (12/9/2008). DESE's findings and conclusions are clearly erroneous as a matter of fact and law.

1. The State's Conduct Violated the Federal Court Orders

First, the State's application of Mo. Rev. Stat. § 33.315 to KCMSD did violate a court order as of April 2005. As discussed above, the federal district court and the Eighth Circuit made this abundantly clear in their analysis. As the federal district court explained, the terms of the Settlement Agreement (signed in 1996) were *incorporated* into the federal district court's 1997 order that dismissed the State from the desegregation litigation upon the condition that the State would abide by the terms of the Settlement Agreement. *Jenkins v. School District of Kansas City, Missouri*, Federal District Court Order (6/15/2006), at 3. Therefore, any violation of the Settlement Agreement violated the terms of the federal district court's 1997 order dismissing the State from the desegregation litigation. Although the State argued to the Eighth Circuit that the Settlement Agreement *was not* incorporated into the federal district court's order dismissing the State from the desegregation litigation, the Eighth Circuit held otherwise, stating: "[t]he opinions of both the District Court and this Court make it clear that the 1996 Agreement was incorporated into the District Court's orders." *Jenkins v. Kansas City, Missouri School District*, Eighth Circuit Opinion (2/27/2008), at 10, 516 F.3d at 1080-81 (emphasis added).

Therefore, DESE's finding that the "payments made to the charter schools, during the period in question, did not violate any court ruling," is incorrect, as explicitly held by the federal district court and Eighth Circuit. Therefore, DESE's reliance on this basis to deny restoration of diverted funds was unreasonable, arbitrary, capricious, and an abuse of discretion.

2. The State's Conduct is not Excused Because it Acted Under Color of Mo. Rev. Stat. § 33.315

DESE also refused to restore the \$6.1 million withheld because the State's enforcement of Mo. Rev. Stat. § 33.315 was done "under color of law." However, the Court is aware of no Missouri authority that excuses otherwise improper and illegal government conduct because it was conducted "under color of law." The phrase "under color of law" is typically a basis for imposing liability on state actors for violations of federal constitutional rights under 42 U.S.C. § 1983. The State cannot illegally apply a statute and then refuse to correct its action in an administrative proceeding by claiming it acted in good-faith reliance on a State statute.

Indeed, to the extent Mo. Rev. Stat. § 33.315 could be applied to KCMSD, such application was fully preempted by the Supremacy Clause of the United States Constitution. "No state court can countermand an order, issued by a federal court, implementing the Constitution of the United States." *Madej v. Briley*, 370 F.3d 665, 666 (7th Cir. 2004). In other words, the State's conduct was illegal from its inception, and there is no "good faith" defense. *See Cooper v. Aaron*, 358 U.S. 1, 15-18 (1958) ("If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery.").

By excusing the State's forced diversion of KCMSD's local property tax revenues because the State acted "under color" of a State statute, DESE's decision runs directly afoul of the United States Supreme Court's holding in *Cooper*. A state cannot thwart a federal district court's ruling, whether it does so under color of an illegal state law or otherwise. Consequently, as a matter of law, DESE's reliance on this rationale is unreasonable, arbitrary, capricious, and an abuse of discretion.

To the extent the Defendants claim this Court may ignore the federal district court and Eighth Circuit's analysis, this Court disagrees. Apart from the fact that the State and its various departments were bound to follow the federal district court's order under the Supremacy Clause, as a matter of State law, this Court must give effect to the decisions of the federal district court and the Eighth Circuit just like a federal court would. The United States Supreme Court has long held that "States cannot give [judgments in a federal-question case] merely whatever effect they would give their own judgments, but must accord them the effect that this Court [the United States Supreme Court] prescribes." *Semtek Intern, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507 (2001). Further, pursuant to Mo. Rev. Stat. § 490.130, the certified "records of judicial proceedings of any court of the United States" "shall have such faith and credit given to them in this state as they would have at the place where the said records come." Thus, this Court has an obligation to enforce the federal district court and the Eighth Circuit's orders and analysis.

Further, DESE's refusal to restore the monies to KCMSD on the basis that the State acted under color of Mo. Rev. Stat. § 33.315 is essentially a retroactive application of Mo. Rev. Stat. § 33.315, which is expressly barred by the federal district court's 2006 order *retroactively* and prospectively enjoining enforcement of Mo. Rev. Stat. § 33.315 against KCMSD. While the State's enforcement of Mo. Rev. Stat. § 33.315 against KCMSD to cause diversion of funds to the charter schools was illegal, DESE's refusal to restore the funds on the basis that the forced diversion was under color of law, after the federal district court already enjoined retroactive application of Mo. Rev. Stat. § 33.315, is also illegal because it gives retroactive legitimacy to the State's use of Mo. Rev. Stat. § 33.315. Thus, in addition to being unreasonable, arbitrary, capricious, and an abuse of discretion, DESE's administrative decision refusing to restore the

diverted funds must be reversed because it is unconstitutional (violating the Supremacy Clause) and illegal (violating the federal district court's injunction).

C. **KCMSD is Entitled to Summary Judgment on its Claim Against the Charter Schools for Money Had and Received**

An action for money had and received is a remedy at law that is governed by equitable principles. *Ward v. Luck*, 242 S.W.3d 473, 476 (Mo. Ct. App. 2008). "The action is appropriate whenever it is shown that the defendant has money in his possession that rightfully belongs to the plaintiff, and which, in equity and good conscience, he should pay over to the plaintiff." *Id.* "An action for money had and received has always been favored in the law and the tendency of the court is to *widen* its scope." *Id.* (emphasis added). To establish its claim for money had and received against the charter schools, KCMSD must show: (1) that the charter schools received or obtained possession of KCMSD's money; (2) that the charter schools thereby appreciated a benefit; and (3) that the Intervenor charter school's acceptance and retention of the money was unjust. *Id.*

There is no dispute that the charter schools received millions of additional dollars from KCMSD as a result of the State's enforcement of Mo. Rev. Stat. § 33.315. Simply put, KCMSD was forced to transfer to the Intervenor charter schools that portion of local tax revenue that had previously been dedicated to payment of the desegregation bonds. The Intervenor charter schools received these funds from April 2005 to June 2006. As noted above, the total amount of money paid by KCMSD to the charter schools is approximately \$6.1 million. The Intervenor charter schools received \$5,082,253.00 of that \$6.1 million, which is clearly a benefit because the Intervenor charter schools used that money to pay for expenses they otherwise would have paid for with different funds. This \$5,082,253.00 was, in the eyes of the law, KCMSD's money

because the State's forcing KCMSD to divert these funds to the Intervenor charter schools was a breach of the Settlement Agreement and an illegal violation of the federal district court's order.

Because the Intervenor charter schools received KCMSD's money as a result of the State's wrongful and illegal enforcement of Mo. Rev. Stat. § 33.315, it logically follows that the Intervenor charter schools' retention of that money is unjust. Further, the charter schools, including the Intervenor charter schools, hired an attorney and petitioned the Board of Fund Commissioners to enforce Mo. Rev. Stat. § 33.315 against KCMSD. Although DESE independently concluded that KCMSD needed all of its local tax money to pay off the desegregation bonds and recommended that the Board of Fund Commissioners deny the charter schools' request, at a meeting of the Board of Fund Commissioners held on April 13, 2005, the charter schools' attorney argued that the Board of Fund Commissioners should enforce Mo. Rev. Stat. § 33.315 against KCMSD. At the conclusion of this meeting, the Board of Fund Commissioners determined that KCMSD had sufficient reserves to pay off the desegregation bonds, and thereby enforced Mo. Rev. Stat. § 33.315 against KCMSD. Therefore, the Intervenor charter schools facilitated the State's violation of the Settlement Agreement and the federal district court's order.

Although the Intervenor charter schools argue KCMSD paid the funds to them under a "mistake of law," it is clear from the undisputed material facts that KCMSD was not mistaken as to the law but insisted from the beginning of this dispute that application of § 33.315 to KCMSD violated the Settlement Agreement and the federal district court's orders. KCMSD did not pay the funds to the Intervenor charter schools voluntarily; indeed, the history of litigation between KCMSD, the State, and the Intervenor charter schools makes clear that KCMSD took all reasonable actions to prevent its funds from being transferred to the Intervenor charter schools.

Further, case law makes clear that a “mistake of law” does not occur when one acts under duress. *Am. Motorists Ins. Co. v. Shrock*, 447 S.W.2d 809, 811-12 (Mo. Ct. App. 1969). KCMSD was forced to turn over funds to the Intervenor charter schools by the State and its agencies and was acting under duress. Therefore, KCMSD is entitled to summary judgment on its money had and received claim against the Intervenor charter schools.

D. KCMSD’s Claim for Declaratory Judgment and Other Equitable Relief is Moot (Count I)

In light of the Court’s finding that the State breached the Settlement Agreement and that DESE’s decision not to restore the wrongfully diverted funds to KCMSD was in error and subject to reversal, KCMSD’s Count I seeking a declaratory judgment and other equitable relief is moot. Therefore, the Court will not enter summary judgment in favor of KCMSD on Count I.

E. The State and Intervenor’s Motions for Summary Judgment are Denied

Because the Court concludes that KCMSD’s motion for summary judgment should be granted, the Court concludes that the State Defendants and Intervenor’s motions for summary judgment should be denied based on the same analysis.⁷

VI. REMEDIES TO BE GRANTED KCMSD

The Court will enter judgment in favor of KCMSD on Count II of KCMSD’s complaint for the principal sum of \$6,162,011.00. Further, because the amount of KCMSD’s breach of contract claim became certain and liquidated on June 15, 2006, when the federal district court entered its order enjoining enforcement of § 33.315, and KCMSD had already instituted this lawsuit at that time, KCMSD is entitled to pre-judgment interest at a rate of 9% per annum from

⁷ In their motion, Intervenor’s indicate they assert an alternative motion to dismiss based on the “affirmative defenses of claim and issue preclusion.” The Court denies this alternative motion to dismiss based on the same analysis that requires denial of the Intervenor’s motion for summary judgment.

June 15, 2006, until the date of entry of the Court's judgment. *See* Mo. Rev. Stat. § 408.020; *Midwest Division-OPRMC, LLC v. Dep't of Social Servs.*, 241 S.W.3d 371, 384 (Mo. Ct. App. 2007). The Court declines to compound the interest. Therefore, the total amount of judgment against the State for breach of the Settlement Agreement shall be \$[8,950,110.00 as of June 24, 2011].⁸

The Court will also enter judgment in favor of KCMSD on Count III of KCMSD's complaint and reverse DESE's order denying KCMSD's request to restore the \$6,162,011.00 pursuant to Mo. Rev. Stat. § 160.415.5. The Court will direct DESE to recoup the \$6,162,011.00 from payments to the charter schools (including the Intervenor charter schools) in twelve equal amounts over the next twelve payments to the charter schools). In order to permit the State to utilize the procedure in Mo. Rev. Stat. § 160.415.5 to recoup money from the charter schools to pay KCMSD, the State shall be given one year from the date this judgment is entered to make payment of the full amount of \$6,162,011.00 to KCMSD, together with pre and post-judgment interest.

The Court will separately enter judgment in favor of KCMSD against each Intervenor charter school on KCMSD's claim for money had and received. In an exercise of its discretion, and based on the same facts justifying an award of pre-judgment interest against the State, the Court will also award pre-judgment interest on the judgments against the Intervenor charter schools at 9% per annum from June 15, 2006, until the date of entry of the Court's judgment. *See Springfield Land and Dev. Co. v. Bass*, 48 S.W.3d 620, 634 (Mo. Ct. App. 2001). The Court

⁸ 9% per annum interest on the principal sum of \$6,162,011.00, amounts to \$1,519.40 in interest per day. There have been 1,886 days from June 15, 2006, to August 15, 2011. Therefore, accrued, un compounded interest through August 15, 2011, would total \$2,665,588.40. An additional \$1,519.40 would be added for each day after the date of this judgment

recognizes that the relief granted in favor of KCMSD against the State and Intervenor charter schools is overlapping and that KCMSD is entitled to only one satisfaction. Therefore, the Court directs that KCMSD shall not pursue collection against the Intervenor charter schools until one year after this judgment is entered. If KCMSD has not received complete satisfaction within one year after this judgment is entered, KCMSD shall be entitled to collect on all amounts due at that time from the State and/or the Intervenor Charter Schools, at KCMSD's choosing, until such time as KCMSD receives complete satisfaction.

Post-judgment interest on all amounts set forth in the judgment shall accrue at the 9% per annum rate for non-tort claims pursuant to Mo. Rev. Stat. § 408.040. *See Karpierz v. Easley*, 68 S.W.3d 565, 570 (Mo. Ct. App. 2002) (claim for money had and received is an "action at law founded upon an implied contract created by law").

VII. JUDGMENT

The Court enters judgment in favor of KCMSD and against the State on KCMSD's claim for breach of contract in the amount of \$9,027,599.40 of August 15, 2011. The State is ordered to make payment of the full amount of \$9,027,599.40 of August 15, 2011 to KCMSD within twelve months of the date of this judgment.

The Court enters judgment in favor of KCMSD and against DESE on KCMSD's claim for judicial review. DESE's order denying KCMSD's request to recoup the \$6,162,011.00 in funds diverted to the charter schools is reversed as unlawful, unreasonable, arbitrary, capricious, an abuse of discretion, and in violation of the Supremacy Clause of the United States Constitution. DESE is hereby ordered to restore the \$6,162,011.00 in diverted funds to KCMSD within twelve months of the date of this judgment pursuant to the mechanism in Mo. Rev. Stat. § 160.415.5.

The Court enters judgment in favor of KCMSD and against each of the individual Intervenor charter schools on KCMSD's claim for money had and received in the following amounts:


School	Principal	Interest ⁹	Total
Académie Lafayette (p/k/a Kansas City Foreign Language Charter School)	\$379,352.00	\$176,414.27	\$555,766.27
Academy of Kansas City	\$270,382.00	\$125,738.74	\$396,120.74
Alta Vista Charter School	\$123,367.00	\$57,370.72	\$180,737.72
Benjamin Banneker	\$156,722.00	\$72,882.17	\$229,604.17
Brookside	\$220,601.00	\$102,588.53	\$323,189.53
Della Lamb	\$576,924.00	\$268,293.37	\$845,217.37
Derrick Thomas Academy	\$798,979.00	\$371,558.07	\$1,170,537.07
Genesis	\$126,899.00	\$59,013.25	\$185,912.25
Gordon Parks	\$200,643.00	\$93,307.24	\$293,950.24
Lee A. Tolbert	\$501,893.00	\$233,400.87	\$735,293.87
Scuola Vita Nuova	\$201,561.00	\$93,734.15	\$295,295.15
Urban Community	\$232,151.00	\$107,959.76	\$340,110.76
Westport Allen Village (p/k/a Westport Allen-Edison Village Educational School)	\$527,188.00	\$245,164.09	\$772,352.09
University Academy	\$765,591.00	\$356,031.28	\$1,121,622.28
Total	\$5,082,253.00	\$2,363,456.51	\$7,445,709.51

Post-judgment interest on the principal amounts set forth in the judgment shall accrue at the 9% per annum, uncompounded.

⁹ Interest figures assume 9% per annum (uncompounded) from June 15, 2006, to August 15, 2011 (1,886 days)

The beginning of the various one year periods granted Respondents to achieve satisfaction in this judgment shall not begin until this judgment is final, or if appealed, until all appeals have been exhausted.

SO ORDERED this 15th day of August 2011.



Hon. Jon E. Beeten

STATE OF MISSOURI } SS
COUNTY OF COLE }

I, BRENDA A. UMSTATTD, Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of

Judgment

as fully as the same remains of record in my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 15 day of Aug 2011.

BRENDA A. UMSTATTD, Clerk

Deputy Clerk
Circuit Court of Cole County, Missouri

