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Overthrowing the Overhaul: An Analysis of the Education Achievement Authority and Michigan's Proposed Legislation

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*Overthrowing the Overhaul: An Analysis of the Education Achievement Authority and
Michigan's Proposed Legislation*
by
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Submitted in partial fulfillment of the requirements of the
King Scholar Program
Michigan State University College of Law
under direction of
Professor Bowman
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**OVERTHROWING THE OVERHAUL: AN ANALYSIS OF THE EDUCATION
ACHIEVEMENT AUTHORITY AND MICHIGAN’S PROPOSED LEGISLATION**

*Cassie J. Hare **

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INTRODUCTION

In 1880, James A. Garfield, the Republican Presidential nominee who was soon to become the twentieth president of the United States, declared, “Next in importance to freedom and justice is popular education, without which neither freedom nor justice can be maintained.”¹ This ideal, that education is central to the existence of democracy and improving society, has consistently been repeated throughout history.² Though education is of the utmost importance, the federal government has traditionally left education regulation in the hands of state and local governments. Yet, as academic performance in the U.S. has continued to fall short, the federal government has increased its involvement. Improving U.S. school systems has never been more imperative, as “53 percent of Americans think today’s children will not be better off than their parents were.”³

Just as the federal government has felt the need to become more involved in education,

* Cassie J. Hare is a law student at Michigan State University College of Law. This paper was presented to fulfill the final requirement of the King Scholar Program. Cassie would like to thank Professor Kristi L. Bowman for the guidance and expertise she provided throughout the research and writing process.

¹ James A. Garfield, *Letter accepting the 1880 Republican Nomination for President*, United States History, available at <http://www.u-s-history.com/pages/h724.html>.

² See *Brown v. Board of Education*, 347 U.S. 483, 493 (1954) (stating “education is perhaps the most important function of state and local governments”). The Court’s sentiments had not been lessened nearly twenty years later when the Supreme Court quoted *Brown* in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 30 (1973):

Compulsory school attendance laws and the great expenditures for education both demonstrate or recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

³ Erik Telford, *State-level Education Reform Key to Kids’ Future*, The Washington Times, Jan. 27, 2013, available at <http://www.washingtontimes.com/news/2013/jan/27/telfordstate-leve-education-reform-key-kids-future/>.

states that have traditionally left academic governance of schools in the hands of locally elected school boards have felt the need to take extreme measures to remedy these academic challenges. Michigan is one such state, which began to take extreme action to gain control over the public education system once its students' test performance began to plummet. This was done first by giving emergency financial managers, and later emergency managers, control over school districts. However, emergency managers were only able to access local school districts facing financial emergencies, not academic performance emergencies. This led to the creation of a new state program called the Education Achievement Authority (EAA).

The EAA was implemented in fifteen Detroit Public Schools beginning in September of 2012. Due to the complexity of the education system in Michigan, and the overlapping authority with the Emergency Managers, the EAA faced a great deal of turmoil during its implementation, with the Detroit Public Schools' School Board repeatedly attempting to regain control. Furthermore, since the EAA has only been in effect since November of 2012, the success of the program is impossible to determine. Regardless of these obvious concerns, the Michigan legislature has decided to pass new legislation that would solidify the EAA in state law.

The legislature is jumping the gun in pushing such legislation through. However, if EAA legislation is to be passed, there are some very serious concerns that must be addressed and issues that arose during the application of the EAA that the legislature must consider. Part I addresses the history of education in the United States, taking both the traditional structure of education and the continuing expansion of federal government authority over public education into consideration. Part II focuses on the history of education in the state of Michigan, the overhaul of the Michigan education system, and the significance of emergency managers in school districts. Part III discusses the EAA and its implementation to fifteen DPS schools. Part IV explains the

proposed legislation designed to solidify the EAA in Michigan state law. Finally, Part V weighs the concerns over state versus local control and addresses the changes the legislature should make before enacting such legislation.

I. EDUCATION IN THE UNITED STATES

A. Traditional Structure of Education

The United States has traditionally left education law to the states.⁴ Education, therefore, is chiefly the responsibility of state and local governments, giving them the power to create schools, design the curricula, and establish graduation requirements.⁵ Unfortunately, the states have not always been successful in ensuring that the nation's students are achieving the greatest possible education. In these instances, the federal government has recognized a need and stepped in to create federal education law.

1. *Elementary and Secondary Education Act*

There has consistently been an achievement gap between students in the United States based on race and socio-economic status.⁶ The Elementary and Secondary Education Act (ESEA) was enacted in 1965 by President Lyndon Johnson in an attempt to remedy these issues.⁷ This Act provided subsidies to schools with high numbers of low-income students, funded a Headstart program to begin educating students before the first grade, and created the National Assessment of Educational Progress (NAEP) Test.⁸ NAEP tested children in fourth, eighth, and twelfth grades to provide a "measure of national achievement" to lawmakers.⁹ However, this Act did not

⁴ Joseph Strong, Student Note, "*The Grass is Always Greener*": *A Look at Educational Reform in the United States and Japan*, TRANSNAT'L L. & CONTEMP. PROBS. 277 (Spring 2012) (quoting The Federal Role in Education: Overview, U.S. Dep't of Educ. (Mar. 30, 2011), <http://www.ed.gov/about/overview/fed/role.html>).

⁵ *Id.* at 277

⁶ Kristina Nwazota, *The Federal Role in Education Before No Child Left Behind*, PBS NEWSHOUR (Aug. 21, 2005), available at http://www.pbs.org/newshour/indepth_coverage/education/no_child/before.html.

⁷ Strong, *supra* note 4, at 289-90; Nwazota, *supra* note 6.

⁸ Nwazota, *supra* note 6.

⁹ *Id.*

hold schools accountable for their performance.¹⁰ Despite the fact that the ESEA was providing federal funds to schools, the federal government did not alter the historical structure of leaving the school governance responsibilities to the state.¹¹

2. *Improving America's Schools Act*

Unfortunately, the ESEA was unsuccessful in its goals and major disparities in achievement amongst U.S.'s students continued into the 1990s.¹² President Bill Clinton enacted the Improving America's Schools Act (IASA) in 1994.¹³ The ISA increased student assessment tests and required states to create standardized test requirements specifically for disadvantaged students.¹⁴ However, by the end of the 1990s, it was overwhelmingly evident that the United States' education system was failing to make students proficient in major subject areas, especially in the case of minority and impoverished students.¹⁵ In 1998, only sixty percent of fourth graders were performing at the "basic" level of NAEP.¹⁶ Furthermore, only thirty percent of eighth graders and forty percent of twelfth graders were performing at NAEP's "proficient" or "average" level.¹⁷

3. *No Child Left Behind*

The No Child Left Behind Act was enacted in 2002 under President George W. Bush, with the goal of raising all students' test scores in math and reading to grade level by 2014.¹⁸ The most dramatic change made by this Act was that schools and states would be held accountable

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *I*Nwazota, *supra* note 6.

¹⁵ *Id.*

¹⁶ *Id.* (citing the National Center for Education Statistics).

¹⁷ *Id.* (citing the National Center for Education Statistics).

¹⁸ Strong, *supra* note 4, at 291.

for student achievement.¹⁹ This was the first federal act that penalized schools that failed to improve their standardized test scores, creating new involvement from the federal government in the education system.²⁰ While this Act still provided states with the power to regulate their own school systems and design their own assessments, this level of federal involvement was unprecedented.²¹

B. Achieving Failure

Despite the repeated and increasing attempts of the federal government to improve the nation's education system, the United States has continued to fall behind. The Trends in International Mathematics and Science Study (TIMSS) compares data collected from other countries with data in the U.S. to determine how students compare internationally in the topics of mathematics and science.²² According to the 2011 TIMSS report, U.S. eighth grade math scores ranked twelfth out of the sixty countries measured.²³ While twelfth does not seem that low of a ranking, it is important to note that though only eleven countries ranked higher than the United States, twelve other countries had systems that "were not measurably different."²⁴ This means that the U.S. ranked higher than only thirty-two other education systems out of sixty measured.²⁵ Furthermore, TIMSS reported "no measurable difference" between the 2007 and the 2011 average math scores for eighth graders in the U.S.²⁶ These studies indicate that the federal involvement has not helped to improve the current educational system.

¹⁹ *Id.*

²⁰ *Id.* at 292.

²¹ *Id.*

²² Institute of Education Sciences, *Overview: Trends in International Mathematics and Science Study (TIMSS)*, NATIONAL CENTER FOR EDUCATIONAL STATISTICS, available at <http://nces.ed.gov/Timss/>.

²³ Trends in Mathematics and Science Study, *Mathematics Achievement of Fourth- and Eighth-Graders in 2011*, NATIONAL CENTER FOR EDUCATIONAL STATISTICS, available at http://nces.ed.gov/Timss/results11_math11.asp.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

II. PURE MICHIGAN

Success and failure of an education system can be better measured at the state level. It is the state and local governments that have traditionally held the authority over regulating education systems, and that authority provides these governments with more ability to make dramatic changes. One state that has been a leader in taking dramatic action in an attempt to improve its educational system is Michigan.

A. Michigan, a State in Freefall

The Michigan economy has been in a severe economic downturn since 2001.²⁷ The entire country was facing a recession at that time as well, but while the rest of the nation began to recover, Michigan continued on in its own one-state recession.²⁸ After nearly a decade of recession, the state is facing severe economic problems. While this paper does not discuss financing of public school systems, economic problems in the state and severe losses of population can have a devastating impact on the state's educational programs.

The Education Trust-Midwest compared Michigan students' performance on the National Assessment of Educational Progress to the results of students in other states.²⁹ From 2003 to 2011, Michigan's fourth-grade reading level ranking dropped from twenty-eighth to thirty-fifth place out of the fifty U.S. states.³⁰ Even more of a decline occurred in fourth-grade mathematics levels, which dropped from twenty-seventh to forty-first place.³¹ While there was less of a decline in eighth-grade student's rankings, there was still a decline with their reading ranking drop-

²⁷ *Is Michigan's Economic Recovery Real? Re-Thinking the One-State Recession*, Mich. Dept. of Tech., Mgmt., & Budget 1 (2011).

²⁸ *Id.*

²⁹ Dave Murray, *Report: Michigan Schools Have 'Alarming and Persistent' Problems, Falling Behind Other States*, MLIVE (Feb. 9, 2012), available at http://www.mlive.com/education/index.ssf/2012/02/report_michigan_schools_have_a.html (last updated Feb. 10, 2012).

³⁰ *Id.*

³¹ *Id.*

ping from twenty-seventh to twenty-eighth and their math score dropping from thirty-fourth to thirty-sixth.³² An even more devastating statistic was found when the state's African American students' test scores were ranked. Out of the forty-five states that reported reading level results for African American fourth grade students, Michigan ranked last.³³ Even higher income students' achievement levels have declined in comparison to other states, with eighth-grade math scores of more well-off students dropping from thirty-fourth place in 2003 to forty-third in 2011.³⁴

Taking these statistics into consideration, it is clear that Michigan is in need of a dramatic overhaul of its education system.

B. Governing Michigan Schools

The school governance structure in Michigan consists of a complicated web of overlapping authority.³⁵ This has created issues of hostility and confusion among the different levels of school governance and the citizens of Michigan. While Michigan has historically followed the traditional model of delegating authority to locally elected school boards, the more recent trend has been toward greater centralization of school control in the hands of the state.³⁶ Michigan began taking over school districts through the use of the Emergency Financial Manager system, and later the Emergency Manager system. The existence of an Emergency Manager creates a new level of complexity for school districts, especially in regards to the application of the Education Achievement Authority.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See Peter J. Hammer, *The Fate of the Detroit Public Schools: Governance, Finance and Competition*, 13 J.L. SOC'Y 111 (2011-2012).

³⁶ *Id.* at 121.

1. *School System Format*

Michigan’s education system is governed by a State Board of Education, a “quasi-independent body created by the State Constitution.”³⁷ This State Board serves a consultative and advisory purpose, but has “little active policy making or implementing authority.”³⁸ There is also a State Superintendent who is appointed by the governor and serves as a non-voting chair of the State Board.³⁹ The Superintendent is also the Executive Director of the Michigan Department of Education (MDE).⁴⁰ The MDE is in charge of enforcing laws created by the legislature and policies created by the State Board.⁴¹

While the governance of public education is the states’ responsibility, the states generally delegate the delivery of educational services to local school districts.⁴² In 2009, Michigan had 551 school districts with locally elected school boards, which are separate from municipal governments and often cross municipal borders.⁴³ While the state is responsible for providing an annual operating budget, the school board is responsible for determining how that funding is to be allocated.⁴⁴ Funding for Michigan schools is determined by the number of students enrolled in the district.⁴⁵ Michigan school districts have the authority to enroll students from other districts through school of choice and cannot prevent students within their district from enrolling elsewhere.⁴⁶ This means that students who choose school of choice take funding with them.⁴⁷

³⁷ *Id.* (citing *Public Education Governance in Michigan*, CITIZENS RESEARCH COUNCIL OF MICHIGAN (Jan. 2010)).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* (quoting *Public Education Governance*, *supra* note 37, at 9).

⁴³ *Id.* at 121-22 (citing *Public Education Governance*, *supra* note 37, at 9).

⁴⁴ *Id.* at 122.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* In 2009, five percent of Michigan students were enrolled in the school of choice program and six percent were enrolled in Public School Academies, or Charter Schools. *Id.*

2. Public Act 72

While the state of Michigan has traditionally followed the format of granting school governance to locally elected school boards, this is not always the case. The Local Government Fiscal Responsibility Act of 1990, commonly known as Public Act 72 (PA 72), created the state's highly controversial Emergency Financial Manager (EFM) System.⁴⁸ The EFM is most frequently discussed in terms of taking control over cities. However, EFMs can also be appointed to take over school districts.⁴⁹ This act required the initial step of state involvement to be limited to investigation and possibly a consent agreement with the state.⁵⁰ An EFM would then be appointed if those actions did not result in an abatement of the financial crisis.⁵¹ In order for an EFM to be appointed, one of the many triggers must occur, such as the local government or school district's failure to pay creditors or make timely pension contributions.⁵² PA 72 granted an EFM authority to control a failing school district's finances.⁵³ The act required an appointed EFM to consult the local school board regarding planned financial actions, but the EFM could act on those planned reforms regardless of the board's approval.⁵⁴

The emergency financial manager law is most easily explained through the example provided by the Detroit Public Schools (DPS). In 2009, Governor Granholm appointed Robert Bobb to the position of EFM for the DPS.⁵⁵ Public Act 72 gave Bobb the authority to control DPS's

⁴⁸ *Frequently Asked Questions Regarding Public Act 72 of 1990, Local Government Fiscal Responsibility Act, and the Appointment of Emergency Financial Managers*, MICHIGAN.GOV, [hereinafter FAQ of PA 72] http://www.michigan.gov/documents/treasury/FiscalEmerg_271926_7.pdf.

⁴⁹ See Kristi L. Bowman, *State Takeovers of School Districts and Related Litigation: Michigan as a Case Study*, ABA SECTION ON STATE AND LOCAL GOVERNMENTS 6 (Fall 2012).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² FAQ of PA 72, *supra* note 48.

⁵³ David Arsen & Mary L. Mason, *Seeking Accountability Through State-Appointed Emergency District Management*, 27 EDUC. POL'Y 248, 254 (Mar./Apr. 2013).

⁵⁴ *Id.*

⁵⁵ *Id.* at 263.

finances and budget, but the school board retained responsibility for everything else.⁵⁶ However, Bobb seized authority over both financial and academic decisions in the district, arguing that the “financial crisis was inextricably linked to its poor academic performance.”⁵⁷ Bobb refused to communicate with the school board and in August of 2009, the board filed a lawsuit against him.⁵⁸ While the lawsuit was pending, Bobb “closed, or threatened to close, more than 100 schools,” reduced the office staff, and contracted out administrative work.⁵⁹

The Democratically controlled Michigan House of Representatives was facing pressure from Governor Granholm, Bobb, and interested groups both within and outside of Detroit, to amend PA 72 to give EFMs additional control over academics.⁶⁰ Governor Granholm voiced her support by stating, “Robert Bobb is pursuing dramatic reforms to repair the district’s finances and academics, for the two are inextricably bound.”⁶¹ However, the issue was too controversial and the Democratic control led to the blockage of all efforts to expand PA 72 powers.⁶² In December of 2010, a Wayne Circuit Court Judge ruled against Bobb in the lawsuit filed by DPS’ school board, and held that DPS’s elected school board retained authority over academic decisions.⁶³

3. *Public Act 4*

a. Enactment

The judge’s decision came as the Republican Party was about to take control of the governor’s office and both houses of the legislature.⁶⁴ Passing a bill to expand EFM authority

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Arsen & Mason, *supra* note 53, at 263.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 263-64.

⁶³ *Id.* at 264.

⁶⁴ *Id.*

became a priority for newly elected Governor Snyder.⁶⁵ In February of 2011, legislation was introduced to solve the three problems Bobb had raised: “academic control, interference of local officials, and protected employee compensation.”⁶⁶ Over 110 people testified, and seventy-two percent testified in opposition.⁶⁷ Only 3.5 percent of those present testified in favor of the legislation.⁶⁸

Regardless of this opposition, in March of 2011, Public Act 4 (PA 4) passed, also known as the Local Government and School District Accountability Act.⁶⁹ This Act changed the name from Emergency Financial Manager to Emergency Manager (EM), and gave Bobb full control over the school district’s financial and academic functions.⁷⁰ He set out a plan that would involve closing an additional fifty schools, leaving only forty-one DPS schools remaining.⁷¹ These remaining schools would be converted into charter schools.⁷² However, in May 2011, before Bobb could implement any of his plans, Governor Snyder appointed Roy Roberts, a retired General Motors Executive, to take over as DPS’s Emergency Manager (EM).⁷³

b. The Process

There are five steps in the EM process:

(a) identifying financial problems that trigger state intervention, then proceeds to, (b) a preliminary financial review by the state superintendent with a determination of a serious financial problem, (c) appointment by the governor of a review team that reports its findings to the governor and state superintendent, (d) determination of financial emergency, and (e) appointment of an EM to take over functions of the local school board and superintendent.⁷⁴

⁶⁵ Arsen & Mason, *supra* note 53, at 264.

⁶⁶ *Id.*

⁶⁷ *Id.* at 266.

⁶⁸ *Id.*

⁶⁹ *Id.* at 249.

⁷⁰ *Id.* at 266.

⁷¹ *Id.* at 267.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 254.

This process can be triggered by a variety of factors; however, all of the triggers are financial.⁷⁵ Despite the push for more control over academically failing schools, an EM cannot be appointed solely because the school is failing academically.⁷⁶ While there are some specific factors or circumstances that can trigger the appointment of an EM,⁷⁷ it can also be triggered by the very vague and broad occurrence of “other facts or circumstances” that the state financial authority determines, in his or her sole discretion, indicate the school district is in financial distress.⁷⁸ Alone, this authority would be excessive; however, if this is the trigger factor, the governor is required to “appoint a financial review team” that would determine whether any of twelve specific conditions exist or are likely to exist before an EM can be appointed.⁷⁹

c. The Powers

The EM’s powers under Public Act 4 greatly exceeded that given to the EFM under Public Act 72. For example, while the EFM was not authorized to control academic aspects of a school district, the EM was given this authority.⁸⁰ However, these academic powers were not expressly defined, giving the EM broad authority over “decisions regarding curriculum and academic programs, teacher hiring and assignments, professional development, teacher evaluation, student assessment, and the opening and closing of school buildings.”⁸¹

As soon as an EM was appointed to a school district, the locally elected school board and superintendent would lose their power and their compensation would immediately be suspend-

⁷⁵ *Id.* at 255.

⁷⁶ *See id.*

⁷⁷ There are eighteen different conditions that would enable the state to appoint an EM, including “defaults in payments or other financial obligations, budget deficits, violations of financial regulations or reporting requirements, or poor debt ratings.” *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 254.

⁸¹ *Id.*

ed.⁸² This compensation would only be restored if the EM decided to restore it, a decision left entirely in the EM’s discretion.⁸³ PA 4 did not merely grant the EM the powers of the school board and superintendent, but also provided the EM with powers exceeding that of local district governance.⁸⁴ The EM was given the authority to “unilaterally modify or terminate existing contracts,” which meant the EM was able to terminate union contracts and modify teachers’ salaries, benefits, job responsibilities, and other previously bargained for terms.⁸⁵ Furthermore, the EM is granted the authority to outsource district work to private contractors and transfer and sell the district’s assets, including school buildings.⁸⁶ PA 4 also gave the EM the authority to “take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government;”⁸⁷ a very broad allotment of power. The EM remains in control of the school district until the EM “declares the financial emergency to be remedied and the state treasurer and state superintendent of public instruction concur.”⁸⁸

d. Who Can Be an EM?

There are very few limitations in PA 4 regarding who can be appointed as an emergency manager. According to PA 4, § 16(5), an EM must have “at least five years’ experience and demonstrable expertise in business, financial, or state budgetary matters.” While PA 4 expanded the authority of EMs over the academic governance of a failing school district, it did not expand the limitations on EMs to require any experience in the field of education.⁸⁹ Even though the

⁸² Arsen & Mason, *supra* note 53, at 254.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* See also Bowman, *supra* note 49, at 9.

⁸⁶ *Id.* at 254, 255.

⁸⁷ *Id.* at 255 (quoting PA 4 § 19(1)(ee)).

⁸⁸ *Id.* at 256.

⁸⁹ Arsen & Mason, *supra* note 53, at 256.

EMs may have little to no experience in the actual field of education, they are required to develop financial and academic plans for the district within forty-five days of their appointment.⁹⁰

III. THE EDUCATION ACHIEVEMENT AUTHORITY AND DETROIT PUBLIC SCHOOLS

Although the emergency manager law has been the focus of much of the recent discussions in the media, governor appointed EMs are no longer the only threat to locally elected school board members. Recognizing the issues surrounding EMs and their authority to regulate academic performance, the state developed a new program with academic success as its sole focus.

A. The Beginning

While Roy Roberts was working as the EM of DPS, he also began assisting in the development and establishment of the Education Achievement Authority (EAA).⁹¹ The EAA was created with the purpose of “turn[ing] around the state’s lowest performing 5% of schools.”⁹² The EAA, like an EM, takes the governance and administrative authority from the local school district,⁹³ and functions as a “centralized state district for low performing schools.”⁹⁴ However, unlike the EM, the EAA was created to take over a school district that is facing academic troubles, rather than financial emergencies.⁹⁵ The EAA is controlled by a chancellor, currently Dr. John Covington, who serves as the superintendent for the EAA school district.⁹⁶ It also consists of a

⁹⁰ *Id.*

⁹¹ Arsen & Mason, *supra* note 53, at 267. The EAA is also often referred to as the Education Achievement System. It seems that the “System” is the overall program, and the “Authority” is the controlling power.

⁹² *Id.* at 267.

⁹³ *Id.*

⁹⁴ Hammer, *supra* note 35, at 121.

⁹⁵ See generally Arsen & Mason, *supra* note 53.

⁹⁶ *Michigan House OKs Failing School Oversight Bill*, CBS Detroit (Mar. 22, 2013), <http://detroit.cbslocal.com/2013/03/22/michigan-house-oks-failing-school-oversight-bill/>; *J. Wm. Covington, Ed. D., Chancellor, Michigan Education Achievement Authority Bio*, Education Achievement Authority, MICHIGAN.GOV, (last visited April 20, 2013), <http://www.michigan.gov/ea/0,4841,7-281--264457--,00.html>.

five-person executive committee, headed by Roy Roberts,⁹⁷ who are also part of an eleven-member board.⁹⁸

The EAA involves dramatic changes to the way a school functions, in an effort to improve students' performance. This program expands the school day and year, providing students with almost 1,600 hours of instruction, compared to the 1,098 hours students experience in other public schools.⁹⁹ This new system also removes the need to bargain with unions, since the schools under the EAA are considered new and separate employers and all teachers who wish to continue teaching at schools that have been taken into the EAA are required to submit new applications.¹⁰⁰ While teaching contracts are negotiated by the Chancellor of the EAA, the final decision regarding the faculty in the school is left in the hands of the school's principal.¹⁰¹ This new school system originally proposed changes to the way parents and the community interact with the schools. Initially, the EAA would create a "Parent Advisory Council" at each school which would provide a means for parents to give feedback and eventually assume responsibilities within the schools.¹⁰² However, at the time of this writing, all mention of a Parent Advisory Council has been removed from the EAA's website. Therefore, it appears the EAA will no longer be providing this option for community access.

The state determines which schools are to be turned over to the EAA based on consistently poor academic performance.¹⁰³ This new program "represents the state's ultimate sanction and

⁹⁷ Arsen & Mason, *supra* note 53, at 267.

⁹⁸ *Education Achievement Authority: Frequently Asked Questions*, EASTERN MICHIGAN UNIVERSITY (last visited April 20, 2013), <http://www.emich.edu/ea/faq.php>. This board is comprised of two members appointed by EMU, two members appointed by DPS, and seven members appointed by the Governor. *Id.*

⁹⁹ Education Achievement Authority, *About the Education Achievement Authority (EAA)*, MICHIGAN.GOV (last visited Apr. 20, 2013) <http://www.michigan.gov/ea/0,4841,7-281--263377--,00.html>.

¹⁰⁰ Eastern Michigan University, *supra* note 98, at *Employees and Contracts*.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Arsen & Mason, *supra* note 53, at 257.

consequence for holding schools academically accountable.”¹⁰⁴ However, this does not apply to school districts that are controlled by EMs.¹⁰⁵ In EM-controlled school districts, it is the EM who determines whether to turn the district over to the EAA, not the state.¹⁰⁶ Governor Snyder, who has been the guiding force behind Michigan’s education overhaul, stated, “The Education[] Achievement Authority is a groundbreaking approach to help provide the kids in these targeted, challenged schools with the educational opportunities they need and deserve.”¹⁰⁷

B. Down with Detroit

1. *Governance of Detroit*

The governance of the Detroit Public School district has always been different than other districts in the state. Since 1927, DPS has been classified as a “first class” school district, which means the district has been subject to “additional rights as well as responsibilities.”¹⁰⁸ Beginning in 1949, the DPS School Board had the authority to control the governance of the school, including the power to adopt a budget and incur debt.¹⁰⁹ Then, in the 1970s, the state began to decentralize the control of large school districts by creating regional boards to manage those districts.¹¹⁰ Detroit voters did not approve of this “decentralization experiment” and, in 1981, they voted to return administrative control to a central board of education.¹¹¹

This traditional community elected school board structure continued until 1999, when the state suspended the authority of the school boards and instead created a school reform board

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Sarah Cwiek, *Michigan Attorney General Sues to Block Detroit School Board from Resuming Power*, MICHIGAN RADIO (Aug. 10, 2012).

¹⁰⁸ Hammer, *supra* note 35, at 131 (citing *A History of the Relationship Between the Detroit Board of Education and the City of Detroit*, CITIZEN’S RESEARCH COUNCIL OF MICH. 3 [hereinafter CRC, *History*] (July 1990)).

¹⁰⁹ *Id.* at 131.

¹¹⁰ *Id.* at 131-32 (citing CRC *History*, *supra* note 108, at 9).

¹¹¹ *Id.* at 132 (citing CRC *History*, *supra* note 108, at 12).

whose members were appointed by the mayor of the city.¹¹² This program was set for a minimum of five years, after which citizens could vote whether to continue under the reform board or to return control once again to the local board.¹¹³ When the reform board's term ended, Detroit voters again voted in favor of local control, and the school board took back authority in January of 2006.¹¹⁴ Then, in 2008, the State Superintendent of Public Instruction declared DPS to be in a state of financial emergency, and Governor Granholm appointed Robert Bobb as the EMF.¹¹⁵ In 2011, following the passage of PA 4, Governor Snyder appointed Roy Roberts as the EM for the district.¹¹⁶ Control over Detroit Public Schools has, therefore, been very inconsistent and the district's transfer to the EAA came as no surprise.

2. *Application to Detroit Schools*

The EAA began by taking control over fifteen Detroit schools, placed in the EAA by DPS's emergency manager and one of the EAA's creators, Roy Roberts.¹¹⁷ The EAA operates control under an interlocal contract between DPS and Eastern Michigan University.¹¹⁸ Since state funding, as previously discussed, depends on the number of students enrolled in the school, DPS does not receive the money for students in schools that have been pulled into the EAA.¹¹⁹ However, DPS is still required to spend a fixed amount on its debt service and other fixed costs,

¹¹² *Id.* at 132 (citing *Proposal E: Form of Governance for the Detroit Public Schools*, CITIZEN'S RESEARCH COUNCIL OF MICH. 1, 2).

¹¹³ *Id.* at 132.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 132-33.

¹¹⁶ Office of the Emergency Manager, *About Roy S. Roberts*, DETROIT PUBLIC SCHOOLS (last visited Apr. 20, 2013), http://detroitk12.org/admin/emergency_manager/.

¹¹⁷ *Sorting out Michigan's Proposed Education Overhaul*, MICHIGAN RADIO NEWSROOM (Nov. 21, 2012) *available at* http://m.michiganradio.org/?utm_referrer=http%3A%2F%2Fmichiganradio.org%2Ftaxonomy%2Fterm%2F4189%3Fpage%3D2#mobile/10019.

¹¹⁸ *Id.* Eastern Michigan University served as a founder of the EAA and assisted in the EAA's operation by selecting two members of the EAA's board. See *Education Achievement Authority: Frequently Asked Questions*, EASTERN MICHIGAN UNIVERSITY, at Background, (last visited Apr. 21, 2013) <http://www.emich.edu/ea/faq.php>.

¹¹⁹ Hammer, *supra* note 35, at 133.

and these costs will now be “spread over a smaller and smaller number of remaining students.”¹²⁰ “The state bemoans the fact that only fifty-five percent of allocated DPS resources currently reach the school level. EAS could well make this situation even worse for the students who remain in Detroit schools.”¹²¹

3. *Detroit Fights Back*

In August of 2012, a voter referendum was filed against PA 4, suspending the emergency manager law and leaving school districts that had emergency managers uncertain about who was in control.¹²² The local school board attempted to take back power over the district, voting to elect Dr. John Telford, a “long-time Detroit educational activist,” as the new DPS superintendent.¹²³ The board also voted to end the contract with Eastern Michigan University and remove the fifteen DPS schools from control of the EAA.¹²⁴ The EAA was set to launch in September, but authority and control were uncertain due to the public referendum.¹²⁵ The State Attorney General then sued in an attempt to prevent the school board from regaining authority and removing the DPS schools from the EAA.¹²⁶

The school board argued that, since Roy Roberts, the DPS EM, created the contract for the EAA and the emergency manager law was suspended by the public referendum, the agreement was no longer valid.¹²⁷ However, Wayne County Circuit Judge Stephen Murphy disagreed,

¹²⁰ *Id.*

¹²¹ *Id.* at 133-34.

¹²² Sarah Cwiek, *Michigan Attorney General Sues to Block Detroit School Board from Resuming Power*, MICHIGAN RADIO [hereinafter *Michigan AG*] (Aug. 10, 2012).

¹²³ *Id.*

¹²⁴ Sarah Cwiek, *Judge: Schools can go to EAA, but Detroit School Board Regains Academic Control*, MICHIGAN RADIO [hereinafter *Judge*] (Aug. 14, 2012); Michigan Radio Newsroom, *Stateside: Education Achievement Authority Faces Loss of Detroit Public Schools*, MICHIGAN RADIO (Nov. 14, 2012), available at http://m.michiganradio.org/?utm_referrer=http%3A%2F%2Fmichiganradio.org%2Ftaxonomy%2Fterm%2F4189%3Fpage%3D2#mobile/9912.

¹²⁵ Cwiek, *Michigan AG*, *supra* note 122.

¹²⁶ *Id.*

¹²⁷ Cwiek, *Judge*, *supra* note 124.

ruling that the fifteen DPS schools would still be transferred to the EAA.¹²⁸ In addition, he held that Roberts had control over district financial decisions, with his position reverting to that of an Emergency Financial Manager under PA 72 during the suspension of PA 4.¹²⁹ Judge Murphy held that all decisions made before the suspension would stand, but that the Detroit School Board would have control over the remaining schools in the district's academics.¹³⁰ Judge Murphy also indicated that the matter could be revisited upon the repeal of PA 4.¹³¹

Following Michigan voters' repeal of PA 4 through a public referendum, the Detroit school board voted on November 13, 2012 to again dissolve the contract with Eastern Michigan University and remove the fifteen DPS schools from the EAA.¹³² DPS School Board President, Lamar Lemmons stated, "My position is that [Roy Roberts] should resign and turn over the district to the elected governors."¹³³ However, representatives of Governor Snyder stated that neither the school board nor Eastern Michigan University can "back out of the deal without the consent of the EAA's executive committee."¹³⁴ Similarly, a DPS spokesperson stated the EAA school system is a signed contract and will remain in effect.¹³⁵

These arguments, however, became entirely moot just one month later when the legislature enacted a new emergency manager law.¹³⁶ The new emergency manager law has some vari-

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ David Sands, *Detroit School Board Votes to Withdraw from Educational Achievement Authority*, HUFFINGTON POST (Nov. 14, 2012), available at http://www.huffingtonpost.com/2012/11/14/detroit-school-board-educational-achievement-authority_n_2130318.html; *Board Votes to Remove Detroit Schools from Education Achievement Authority*, CBS DETROIT [hereinafter CBS Detroit] (Nov. 14, 2012), <http://detroit.cbslocal.com/2012/11/14/board-votes-to-remove-detroit-schools-from-education-achievement-authority/>.

¹³² Sands, *supra* note 131.

¹³³ CBS Detroit, *supra* note 131.

¹³⁴ Sands, *supra* note 131.

¹³⁵ CBS Detroit, *supra* note 131.

¹³⁶ Chris Christoff, *Michigan Lawmakers Approve New Emergency Manager Law*, BLOOMBERG (Dec. 14, 2012), available at <http://www.bloomberg.com/news/2012-12-13/michigan-lawmakers-approve-new-emergency-manager-law.html>.

ance from the original. For example, it provides local governments and school districts with options they can choose other than receiving an EM, such as filing for Chapter 9 Bankruptcy or having a mediation with creditors.¹³⁷ However, most notable is that this new law permits local officials to request the removal of an emergency manager within the first year, or the local governing body can dismiss an emergency manager itself after one year with a two-thirds vote.¹³⁸ While including such a provision may have helped to assuage some of the backlash from reenacting an emergency manager statute, enabling districts and cities to vote to remove an EM after one year simply promotes a repeat of the confusion and disarray that occurred in Detroit when PA 4 was repealed.

IV. PROPOSAL TO EXPAND THE EDUCATION ACHIEVEMENT AUTHORITY

Recognizing the precarious position the Education Achievement Authority was put into upon the repeal of PA 4, Governor Snyder and the Republicans in the Michigan State Legislature turned their focus to creating new educational legislation that would secure the EAA and completely overhaul Michigan's education system. Currently there is a bill in the Michigan House of Representatives that would allow for the creation of new types of schools such as online schools and those run by corporations.¹³⁹ There is also a proposal called the Michigan Public Education Finance Project, an enormous bill designed to change the way education is funded, but in actuality would really just further the system of the funding following the student.¹⁴⁰ However, this pa-

¹³⁷ *Id.*

¹³⁸ *Id.* The article provided the example of a city council as a "local governing body," but if the EM is controlling a school district, that district could then be considered the local governing body and be given this authority.

¹³⁹ Michigan Radio Newsroom *Sorting out Michigan's Proposed Education Overhaul*, MICHIGAN RADIO (Nov. 21, 2012), *available at* http://m.michiganradio.org/?utm_referrer=http%3A%2F%2Fmichiganradio.org%2Ftaxonomy%2Fterm%2F4189%3Fpage%3D2#mobile/10019. The Bill is HB 5923. *Id.*

¹⁴⁰ *Id.*

per is focused on the legislation regarding the EAA, and does not discuss these other proposed changes.

Securing the existence of the EAA is just one part of this overhaul, but it would be a dramatic expansion of the current program. This new legislation would expand the EAA's authority to encompass the entire state¹⁴¹ by giving the EAA authority over Michigan schools that have been in the bottom five percent of achievement for three consecutive years.¹⁴² Under this legislation, schools would be phased in twelve at a time beginning in 2014.¹⁴³ The total number of schools that they EAA would be authorized to take at one time is set at fifty, a significant increase from the fifteen schools all located within the same district that the EAA currently controls.¹⁴⁴ Schools in the EAA would be in session for 210 days, rather than the 180 days of classes in other public schools.¹⁴⁵ One of the most dramatic changes this legislation would make for students' educational experience is that instead of grouping students in classrooms based on their age or grade, students would be put into classrooms based on their "instructional level."¹⁴⁶ Once a student has achieved enough to reach the next instructional level, that student may advance, regardless of whether it is in the middle of the school year.¹⁴⁷ This legislation would also enable schools to exit the EAA once the school's test scores exceed the bottom five percent for four consecutive years.¹⁴⁸

¹⁴¹ *Id.*

¹⁴² *Michigan House OKs Failing School Oversight Bill*, CBS DETROIT (Mar. 22, 2013), <http://detroit.cbslocal.com/2013/03/22/michigan-house-oks-failing-school-oversight-bill/>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* With students in the EAA being grouped based on "instructional level," it is important to note that the state has not made clear how testing and national assessments would be performed. Assessment tests are based on grade levels, and therefore students in the EAA could not be compared to other schools. This would make it very difficult to determine when a school has achieved enough to bring it out of the bottom.

In March of 2012, the House of Representatives voted to pass H.B. 6004, the Education Achievement Authority legislation, which would amend the Michigan School Code.¹⁴⁹ The bill passed 57 to 53, mostly following party lines.¹⁵⁰ Democrats in the House are in strong opposition to this bill. Democratic House Minority Leader Tim Greimel stated that this bill is a ““very misguided and heavy-handed erosion of local control by big government Republicans.””¹⁵¹ Of specific concern is the fact that the EAA had only been in existence for a few months when this legislation was drafted to expand it; an insufficient amount of time to indicate whether the program is beneficial.¹⁵² However, others argue that, since the current Michigan School Code already provides authority for state takeovers of low performing schools, such a bill is necessary to clarify the state law and provide a means for such a takeover.¹⁵³ Republican Representative and sponsor of H.B. 6004, Lisa Lyons stated, ““[I]f the local school districts can’t get the job done, the state must.””¹⁵⁴

V. WEIGHING IN

Michigan is only one of many states that have implemented state control over troubled schools,¹⁵⁵ but many of its experiences have been unique. Detroit is a city that has been tossed from one management group to another, never being controlled by one long enough to see real improvement. However, the state’s experiences with the Detroit Public Schools, emergency managers, and the Education Achievement Authority can help provide the state with a clearer path forward.

¹⁴⁹ *Id.*; H.B. No. 6004, a bill to amend 1976 PA 451 (Nov. 8, 2012).

¹⁵⁰ *Michigan House OKs Failing School Oversight Bill*, *supra* note 142.

¹⁵¹ *Id.*

¹⁵² *Id.* See also Jaelyn Zubrzycki, *Michigan Education Achievement Authority Special School District a Lightning Rod for Controversy*, HUFFINGTON POST, Dec. 12, 2012, available at http://www.huffingtonpost.com/2012/12/12/mich-achievement-authori_n_2287214.html?view=print&comm_ref=false.

¹⁵³ *Michigan House OKs Failing School Oversight Bill*, *supra* note 142.

¹⁵⁴ *Id.*

¹⁵⁵ Zubrzycki, *supra* note 152.

A. State vs. Local Control

One of the most highly contentious issues revolving around state control of school districts is accountability. The traditional notion of education in the United States is that it is the local communities that have the responsibility of deciding how to best educate the students within that community. When a school is failing, or not living up to the standards of the community, the voters within the community have the voting power to remove members of the board.¹⁵⁶ A school board, therefore, is both accessible and “accountable for the performance of the schools in [a] district.”¹⁵⁷ This level of accountability means that the school board’s main priority is the education of the children.¹⁵⁸ Education is more than just a “line item” in a budget for school boards, and the board’s focus is more on the provision of quality education and not the costs.¹⁵⁹ Representative Lisa Howze stated that this bill will “essentially take away our citizens’ right to vote and transfer local control away from our duly elected officials.... Creating a system with no checks and balances, this legislation gives outsiders total control over our municipalities and school districts.”¹⁶⁰ According to David Arsen and Mary L. Mason, authors of *Seeking Accountability Through State-Appointed Emergency District Management*, state control over the schools “further disempowers many of the state’s most vulnerable citizens by suspending traditional rights of democratic participation.”¹⁶¹

However, the authors also note that, while the short term effect is disempowerment, it is possible that Michigan’s state control over education may end up empowering citizens by im-

¹⁵⁶ See *Why School Boards? Five Reasons for Local Control of Public Education*, NATIONAL SCHOOL BOARDS ASSOCIATION, <http://www.nsba.org/Board-Leadership/Governance/WhySchoolBoards/WhySchoolBoards.txt> (last visited Apr. 7, 2013).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Arsen & Mason, *supra* note 53, at 264.

¹⁶¹ *Id.* at 266.

proving the low performing schools.¹⁶² This is because the state is better able to provide education for disadvantaged groups, such as handicapped and non-English speaking students.¹⁶³ Furthermore, the state has the ability to remove inequities between the districts.¹⁶⁴ Therefore, being forced to determine whether there should be state or local control of school districts means that citizens are not able to have their cake and eat it too. The best possible outcome is for the state and local governments to work together, providing both the accountability and equality that citizens demand.

B. A More Functional Overhaul

1. *It's a Toss Up*

There is no doubt that a complete overhaul of the Michigan education system is necessary. With Michigan students' performance continuing to descend in the rankings, there can be no argument that the current system is failing.¹⁶⁵ However, diving headfirst into an unknown body of water is never a good solution. The waters should always be tested. The Education Achievement Authority is a new state program designed to remedy the problems of the lowest performing schools in Michigan, but it was only implemented in September 2012, less than one year ago. While this system may be just what Michigan schools have needed, it is impossible to know whether it will succeed with such a short period of time given to study its effects. For this reason, securing the EAA in state law and providing it authority over the entire state is not a very wise decision.

However, it is important to note that the most recent evidence regarding the EAA's effectiveness has indicated that students are improving in leaps and bounds. According to John Cov-

¹⁶² *Id.*

¹⁶³ Margaret L. Hadderan, *State vs. Local Control of School Districts*, ERIC DIGEST SERIES No. 24 (1988).

¹⁶⁴ *Id.*

¹⁶⁵ Murray, *supra* note 29.

ington, the EAA chancellor, “early results from assessments given to students in late January and early February showed 27 percent of EAA students in grades 2-9 achieved a year’s growth or more in reading and 22 percent with the same growth range in math.”¹⁶⁶ These are significant improvements, but the report does not discuss the remaining 73 percent and 78 percent, respectively, of students, meaning the majority of students may be showing no improvement or may be worse off under this system. Regardless, the state legislature seems to be determined to pass EAA legislation to expand its control.

2. *How to Achieve Success*

If the legislature decides to take such action, it needs to be very cognizant of the events that have occurred over the past school year in Detroit. DPS was in complete and utter turmoil, with both the state and local governments fighting for control. For these reasons, there are two issues that need to be addressed before this legislation passes: 1) does the EAA have definite control over a school district, regardless of the existence of an EM or the removal of an EM?; and 2) is there a specified time for the EAA to have complete control before local citizens can vote to return power to the local school board?

In order to resolve these two issues, this legislation must be amended to include a provision that will prevent local governments from dissolving the EAA’s authority and any contracts it establishes before the state intends the local government to have that ability. Schools can be placed in the EAA by the state, but if that district is already controlled by an EM, it is the EM that determines whether to place the district in the EAA.¹⁶⁷ This poses a problem for schools districts, such as DPS, that are failing both financially and academically. If it is an EM that

¹⁶⁶ Jennifer Chambers, *EAA Says Students’ Performance Improving*, THE DETROIT NEWS, Feb. 23, 2013, available at <http://www.detroitnews.com/article/20130223/SCHOOLS/302230346#ixzz2Lx63PzQb>. The growth rate described occurred between September of 2012 when DPS took control and late January to early February of 2013, less than a year. *Id.*

¹⁶⁷ Arsen & Mason, *supra* note 53, at 257.

placed the school district in the EAA or created contracts regarding the EAA, and then that EM is removed, there is confusion over who is then in control of the district. This was represented by the events that occurred in Detroit when Michigan voters repealed PA 4, effectively ending the EM position.¹⁶⁸ DPS found itself in the middle of chaos and multiple court battles, all to determine whether the local district had regained authority and whether the EAA still remained in control of fifteen DPS schools.¹⁶⁹

This is likely to occur again without a provision in the EAA legislation to prevent it. Since the new EM law gives local governing bodies the authority to remove an emergency manager after one year with a two-thirds vote, it is likely that the situation that occurred with DPS will recur.¹⁷⁰ However, this situation would be even more confusing because the EM would simply be removed rather than revert to being an EFM as when PA 4 was repealed, potentially giving the school board the authority to remove schools from the EAA, as DPS attempted to do.¹⁷¹ Michigan citizens have already proven that they strongly oppose state takeovers through EMs, since they enacted a public referendum repealing the previous EM law.¹⁷² Furthermore, Detroit voters have repeatedly shown their disapproval of state involvement in their school districts.¹⁷³ DPS has had a long history of being passed from authority to authority and, when given the opportunity, Detroit citizens have consistently chosen to put the power back into the hands of the locally elected school board.¹⁷⁴

¹⁶⁸ See Subsection III.B.3.

¹⁶⁹ *Id.*

¹⁷⁰ Christoff, *supra* note 136.

¹⁷¹ *Id.*

¹⁷² See Sands, *supra* note 131.

¹⁷³ See Subsection III.B.1.

¹⁷⁴ *Id.*

a. Potential Provisions

To prevent these situations from arising in the future, this legislation must prevent dissolution of the EAA's control for a specified period of time, regardless of whether the district was placed in the EAA by the state or by the district's EM. There are many ways this could be done. First, the legislation could designate a minimum time in which the EAA must have control over a school district. This would mean that, regardless of how the EAA gained control, such authority cannot be removed by anyone until that time has expired. Such a provision would be similar to the one set out in the current EM law, which holds that after one year the local governing body can vote to remove the EM. However, if this method is chosen, the legislature should consider imposing a more lengthy time commitment than just one year. As previously discussed, one year is an insufficient time in which to be able to measure improvements. Unless local governments or citizens are able to be provided with concrete data establishing whether and what improvements have been made, they cannot be expected to make an informed decision.

Another possible option for protecting the EAA's authority in these situations is to enact a provision that expressly designates which governing bodies have the authority to remove a school from the EAA. Such provision could designate this power to the governor, the chancellor of the EAA, the Michigan Department of Education, or a mix of various governing bodies. However, this legislation would need to ensure that local school districts and local governments are not given this authority, since it is likely that such governing bodies would vote to return power to themselves. While this is a possible option, it is probably not the best solution. This is because it removes all power from local citizens' hands and does not provide them with any hope for regaining control.

A third option would be to eliminate the EM's authority to place schools in the EAA altogether. This power would remain with the state, even when a district is controlled by the state.

This option eliminates the concerns regarding what would occur if an EM was removed from his or her position after having placed schools in the control of the EAA. This is a very easy solution to the EM problem, but it fails to address any of the state versus local control concerns that are likely arise and, as in the second option, does not provide the local citizens with any hope of regaining control of their schools.

b. A Change for the Better

The first option, designating a specified time in which the EAA is in control before a local government or voting citizens can remove a school district, is much more palatable. It provides citizens with the best of both worlds of state and local government. There would still be a level of accountability to the local citizens, because they would be able to make a decision regarding the continued existence of the EAA in their district at a specified time.¹⁷⁵ This would help to assuage the fear of some citizens, such as Representative Lisa Howze, who are concerned that state control over school districts will create “a system with no checks and balances.”¹⁷⁶ However, it would also provide the benefits of centralized state control, such as the ability to reduce inequities between districts.¹⁷⁷ Furthermore, if the EAA is successful in achieving its goals, state control in this context would mean empowering the traditionally disadvantaged citizens by improving education.¹⁷⁸

Currently, the only provision that could have any impact on these issues in the legislation that was recently passed in the House states,

The board of a school district or board of directors of a public school academy shall not take any action that is inconsistent with or interferes with the powers and duties under this act of the education achievement authority, the state reform district, the state rede-

¹⁷⁵ *Why School Boards?*, *supra* note 156.

¹⁷⁶ Arsen & Mason, *supra* note 53, at 264.

¹⁷⁷ Margaret L. Hadderan, *State vs. Local Control of School Districts*, ERIC Digest Series No. 24 (1988).

¹⁷⁸ *See* Arsen & Mason, *supra* note 53, at 266.

sign officer, the chancellor, or a chief executive officer under this section.¹⁷⁹

This provision is too vague to provide any guidance to solve the plethora of issues that arose during the EAA's takeover of fifteen DPS schools. It does not designate a specific time the EAA must remain in control, does not establish a governing authority that has the sole power to determine whether a school can be removed from the EAA, nor does it address how to handle the issue of an EM being removed when that EM was the authority that put the school district into the EAA. It was this lack of understanding of who had authority over DPS when its EM was removed that caused all of the turmoil DPS schools faced this past school year. Unless such a provision is added to this bill, the EAA cannot possibly be expected to succeed.

CONCLUSION

Michigan schools have been facing hard times, demonstrated by a continuing decline in academic performance. In an attempt to remedy this situation, Michigan's governor, Rick Snyder, has pushed for a complete overhaul of the Michigan school system. This overhaul involves state takeovers of financially failing schools through the Emergency Manager law and academically failing schools through the Education Achievement Authority bill. The EAA is an extremely new program, first taking control of fifteen DPS schools a mere seven months ago at the time of this writing. There has not been sufficient time to provide reliable data regarding whether the EAA is improving the academic performance of the students in its control, though recent performance testing has indicated some impressive achievements.

Even though the success of this new program is still unknown, the Republican led Michigan legislature has been working to pass new legislation that will solidify the EAA in state law and expand its authority state-wide. While it is unwise to take such dramatic action without

¹⁷⁹ H.B. 6004, § 1280(c)(20).

knowing whether such a program will accomplish its goals, it is even more unwise to enact legislation that does not address the problems that have already arisen in the short time the EAA has been in effect. These problems revolve around Michigan's emergency manager statute and the impact it had on DPS. When DPS's Emergency Manager was removed by the public referendum repealing Public Act 4, which governing body had authority over DPS was unclear. This was especially true for the EAA, since it was DPS's EM that had originally orchestrated the contract for the EAA to take fifteen DPS schools. The fight for authority led to multiple court battles and many angry local citizens. The newly proposed legislation does not provide any guidance as to what happens when an EM is removed or whether a local school board or other local governing body has any power to remove schools from the EAA. Until provisions addressing these issues are added to the proposed legislation, the EAA's ability to succeed is doubtful.