



Other students, such as senior Makayla Smith, remained in the unaccredited Normandy School District with a determined attitude. Makayla said, “We want to make a fool out of what’s been said of our school.”<sup>6</sup> Makayla, along with the other students who chose not to transfer, saw a large crowd of parents and alumni cheering as they arrived for the first day of the school year.<sup>7</sup> The cheering was short-lived. In the following months, those students who remained at Normandy were part of a school district that laid off over 100 employees, closed an elementary school, and became financially crippled by staggering tuition and transportation costs.<sup>8</sup> Those crippling costs resulted in the state taking control of the district’s finances and then eventually dissolving Normandy School District.<sup>9</sup>

Part I of this Note will examine the court’s analysis and holding in *Breitenfeld* as well as provide some background information on the Normandy School District. Part II of this Note will discuss how the *Breitenfeld* holding and the UDTS were implemented in relation to Normandy. This



or adjoining county.”<sup>20</sup> Additionally, this section establishes the tuition rate that the unaccredited school district must pay to the accredited school district when a student elects to transfer under this statute.<sup>21</sup> This tuition rate varies depending on the amount the accredited school district pays to educate its students.

Harold Caskey, a longtime Democratic state senator, wrote this piece of legislation in 1993 with the intention that it would be a “stick” for school districts on the verge of failure.<sup>22</sup> In 1993, this “stick” was likely meant to force the struggling St. Louis City Public Schools District to improve.<sup>23</sup> Caskey stated the statute “forces the local districts to try to work their problems out before the extreme measures set in.”

Wellston; the state disbanded Wellston and assigned its students to the neighboring Normandy School District.<sup>32</sup>

*C. Procedural Posture and the Turner Decision*

To understand the present situation, it is important to look back at how this litigation evolved. *Breitenfeld v. School District of Clayton* originally started as *Turner v. School District of Clayton*.<sup>33</sup> In *Turner*, the plaintiffs were parents of students who lived within the boundaries of the City of St. Louis Transitional School District.<sup>34</sup> Prior to the Transitional School District losing accreditation, the parents entered into personal tuition agreements with Clayton School District to have their children attend Clayton schools.<sup>35</sup> Once the City of St. Louis Transitional School District lost its accreditation, the parents requested that Clayton charge the Transitional School District for their children's tuition pursuant to the UDTs.<sup>36</sup> The School District of Clayton declined that request, and the parents subsequently filed suit.<sup>37</sup> On appeal, the court held that the UDTs was applicable and required an accredited school district to accept a student from an unaccredited school district as long as the accredited school district was in the same or adjoining county.<sup>38</sup>

The *Turner* court followed the express language of the statute and did not consider policy implications in its analysis.<sup>39</sup> Specifically, the court noted that “[t]he policy considerations and mandates regarding public schools and public school funding are particularly well-suited for the state legislature and not the courts.”<sup>40</sup> Furthermore, the court noted that it would not “question the wisdom, social desirability, or economic policy underlying a statute as these matters are for the legislature’s determination.”<sup>41</sup>

The school districts unsuccessfully tried to argue that the UDTs was preempted by provisions contained in Senate Bill 781 (SB 781), passed in 1998.<sup>42</sup> The provisions of SB 781 included section 162.1060, which created the

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32. *Id.*; Hunn, *supra* note 10.

33. *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 819 (Mo. 2013); *see also Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 670 (Mo. 2010).

34. *Turner*, 318 S.W.3d at 663. The special administrative board of the transitional school district governed the St. Louis Public School District once the public school district lost accreditation in 2007. *Id.* at 662 n.2.

35. *Id.* at 663.

36. *Id.*

37. *Id.*

38. *Id.* at 669.

39. *Turner*, 318 S.W.3d at 666.

40. *Id.* at 666 n.5.

41. *Id.* at 668 (quoting *Winston v. Reorganized Sch. Dist. R-2*, 636 S.W.2d 324, 327 (Mo. 1982)) (internal quotation marks omitted).

42. *Id.* at 665, 667.

“urban voluntary school transfer program,”<sup>43</sup> and section 162.1100, which directs how the St. Louis Public School District is governed in the event it loses its state accreditation.<sup>44</sup> The court held that “[a]t most, SB 781 and §

political subdivisions, and (2) the political subdivision experiences increased costs in performing that activity or service.<sup>51</sup> The first prong of the “unfunded

statutes were different in the past, and the court's task in *Breitenfeld* was not to determine the fairness of the UDTS as a matter of public policy.<sup>60</sup>

The long-standing mandate for school districts in Missouri is to provide a free public education for all students who attend.<sup>61</sup> Students attending an out-of-district school district under statutory directives are included in this mandate.<sup>62</sup> The court concluded that nothing in the UDTS changed this mandate as both St. Louis Public Schools (SLPS) and Clayton were providing K–12 educational services to eligible students prior to the enactment of the Hancock Amendment.<sup>63</sup> Thus, the UDTS did not create a new mandate when it was applied to allow SLPS resident students to attend accredited school districts in adjoining counties as non-residents.<sup>64</sup>

Furthermore, the court held that there was no increased level of service mandated by the UDTS for the purpose of applying the Hancock Amendment test to accepting non-resident students.<sup>65</sup> The court reasoned that an increase to the student population of Clayton did not result in an increased *level* of educational services provided.<sup>66</sup> Specifically, the court held that the *level* of services provided by Clayton is not changed even if the district provides the services to more students under the statute.<sup>67</sup> Clayton's argument that it provided additional services at a greater cost than SLPS failed because those additional costs were not state-mandated; they were the choice of Clayton.<sup>68</sup>

The second prong of the Hancock test evaluates whether the burden is shifted from the state to the local entity.<sup>69</sup> The *Breitenfeld* court concluded that the Hancock Amendment does not prevent local-to-local burden shifting of

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60. *Breitenfeld*



responsibilities.<sup>70</sup> The total number of children eligible for education statewide is not increased, and thus the state is simply shifting existing education responsibilities between the sending and receiving districts.<sup>71</sup> Simply, the UDTS shifts an existing mandate from the unaccredited school district to the accredited school district, and thus the purpose of the Hancock Amendment was not violated.<sup>72</sup>

Conversely, the mandatory transport provisions of the UDTS constituted a new mandate for SLPS.<sup>73</sup> The court held that section 167.231 required districts to provide transportation “[w]ithin all school districts *except metropolitan districts*,” whereas the UDTS created a new mandate of providing transportation to out-of-district schools.<sup>74</sup> However, the court noted thae .1( w)4(h)-1.1(ereas t)5.3(h)-1.1(



designated receiving district was at capacity, the sending district should designate an additional receiving district.<sup>91</sup> However, the parent/guardian shall be responsible for transportation if the parent/guardian chooses to enroll the student in a different school district.<sup>92</sup>

Guidance for Student Transfers also provided guidance for accredited school districts that may receive students from unaccredited school districts. According to the document, accredited school districts “should adopt and publish a policy for class size and student-teacher ratios between the desirable and minimum MSIP5 Resource Standards for all grade levels.”<sup>93</sup> Also, accredited school districts should publicly post on their websites the student transfer application as well as the ad

sizes and staffing shortages in accredited school districts.<sup>100</sup> The director of the Cooperating School Districts of Greater St. Louis was quoted in the *St. Louis Post-Dispatch* as saying: “What we’ve been asking for is reasonable parameters. Class sizes. When can we say we’re full? School boards need to have some local control or the quality of the district would decline and no one would want to transfer.”<sup>101</sup> Another person offered this prediction: “Competition is good for schools. . . . When students start leaving, they need to and will start to respond.”<sup>102</sup> That prediction turned out to be correct; however, another parent’s prediction that students would not transfer in “droves” would turn out to be incorrect.<sup>103</sup>

The directive from DESE required that Normandy School District designate a school district to which it will provide transportation for students wishing to transfer.<sup>104</sup> On July 2, 2013, Normandy announced its decision to provide transportation to Francis Howell School District in neighboring St. Charles County, which is over twenty miles away.<sup>105</sup> The Normandy superintendent stated that the district looked at academic performance, class sizes, and available space when choosing Francis Howell.<sup>106</sup> Almost immediately, parents of Francis Howell students began objecting to the transfer students from Normandy.<sup>107</sup> Some were worried about violence; others were

but rather “Normandy is not performing in their own district, they are going to come to Francis Howell and bring [Francis Howell] down.”<sup>112</sup>

Normandy transfer students began attending Francis Howell on August 8, 2013.<sup>113</sup> The transfer students had to board their school buses earlier than usual, but aside from a few minor logistical issues, no negative events were reported.<sup>114</sup>

where to send the students.<sup>122</sup> The governor made a request to the state legislature for \$5 million to get Normandy School District through the rest of the academic year; however, the legislature did not act on the request.<sup>123</sup> One senator predicted that the request would be an “uphill battle” because the legislature would be wary of setting a precedent.<sup>124</sup>

Due to Normandy’s financial struggles and impending insolvency, the State Board of Education took immediate action on February 18, 2014.<sup>125</sup> The Board imposed financial oversight of Normandy School District which required that “[a]ll expenditures, contracts, financial obligations and any other action with fiscal implications must be approved by the Department [of Elementary and Secondary Education] beginning immediately and through the remainder of the year.”<sup>126</sup> By assuming financial oversight of Normandy, the department ensured that Normandy students would finish the school year in their own districts and that the seniors would graduate as scheduled.

After years of struggling, Normandy School District finally met the same fate as the former Wellston School District. On May 20, 2014, the Board of Education voted to remove Normandy’s accreditation effective June 30, 2014 and to void all contracts with the school district.<sup>127</sup> The Board created the Normandy Schools Collaborative, with a Joint Governing Board appointed by the Board of Education, to administer the school system in Normandy and report directly to the state.<sup>128</sup> The new school district will not have an

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122. *Id.* According to the newspaper account of the meeting, Commissioner Nicastro said this would happen pursuant to state law but did not list what statute she was referring to. Meeting minutes were not yet publically available as of the time of this publication. Commissioner Nicastro was likely referring to section 162.081 which states:

1. Whenever any school district in this state *fails* or refuses in any school year to *provide for the minimum school term required by section 163.021* or is classified unaccredited, the state board of education shall, upon a district’s initial classification or reclassification as unaccredited . . .
  - (2) *Determine the date the district shall lapse* and determine an alternative governing structure for the district. . . .
3. Upon classification of a district as unaccredited, the state board of education may:
  - (2) Lapse the corporate organization of the unaccredited district and:
    - (c) Attach the territory of the lapsed district to another district or districts for school purposes[.]

MO. REV. STAT. § 162.081 (2000) (emphasis added).

123. Crouch, *supra* note 121.

124. *Id.*

125. *State Board Approves Emergency Action for Normandy School District*, MO. DEP’T ELEMENTARY & SECONDARY EDUC. (Feb. 18, 2014), <http://dese.mo.gov/communications/news-releases/state-board-approves-emergency-action-normandy-school-district>.

126. *Id.*

127. MO. DEP’T ELEMENTARY & SECONDARY EDUC., *supra* note 9, at 1.

128. *Id.*

accreditation classification for its first three years of operation.<sup>129</sup> Because the new district is not “unaccredited,” no students will be permitted to transfer under the UDTS.<sup>130</sup>

### III. ANALYSIS OF THE FINANCIAL IMPACT ON NORMANDY OF THE POST-BREITENFELD UDTS IMPLEMENTATION

The financial implications of implementing the UDTS are staggering. The total projected cost to Normandy will be between \$13 and \$15 million per year.<sup>131</sup> This amounts to an approximately 30% reduction in funding while decreasing the number of students by only 20%.<sup>132</sup> Dr. Ty McNichols, superintendent of Normandy School District, explained that the district’s financial difficulties were not a result of mismanaged money, but rather the result of \$1.3 million worth of tuition payments each month for which the District was not able to plan.<sup>133</sup>

Cutting costs will not salvage Normandy’s financial situation because the fixed overhead costs cannot be reduced when the number of students decreases. The deputy commissioner of education explained this situation as follows:

The electricity cost is the same, your fixed cost of operation is the same and your debt service and facilities costs don’t go down any . . . [a]nd you don’t want to take three classes that were 22 students apiece and make two that are 35. You can’t do proportional cuts based on a decrease in revenue.<sup>134</sup>

129. *Normandy Schools Collaborative to Operate with New Leadership*, MO. DEP’T ELEMENTARY & SECONDARY EDUC. (June 16, 2014), <http://dese.mo.gov/communications/news-releases/normandy-schools-collaborative-operate-new-leadership>.

130. *Id.*

131. *Normandy Schools: District Plans to Stay Open*, ST. LOUIS POST-DISPATCH, Jan. 16, 2014, at A2.

132. Elisa Crouch & Jessica Bock, *Troubled Districts Hemorrhage Funds*, ST. LOUIS POST-DISPATCH (Nov. 20, 2014), <http://www.sltrib.com/stl/story/news/education/2014/11/20/troubled-districts-hemorrhage-funds/125859/> 130.





This would have immediately displaced the remaining Normandy students into various other school districts. Multiple nearby school districts were already struggling.<sup>145</sup> The quality of education did not significantly improve when Wellston School District dissolved and the students were absorbed by Normandy.<sup>146</sup> Just a few years later, these students are again in the same situation with the dissolution of Normandy School District. The financial collapse of Normandy is even more disappointing and fundamentally unfair, considering that most of the tuition dollars were not spent by the receiving school districts.

*low aspiration lay outside the school, brilliant leadership and a core of inspirational, well-organized teachers are not enough.*<sup>150</sup>

Here, the root of Normandy School District's problems goes back to many years of high poverty and low performance. Simply transferring a portion of the students to other schools does not fix the problem and actually makes the school situation even worse for those students who are left behind. It is not possible to address the entire failing school situation by moving students away and ignoring the poverty and socioeconomic issues at the root of a school district's problems.<sup>151</sup>

The Missouri Supreme Court's unanimous opinion in *Breitenfeld* clearly interpreted the UDTS as constitutional but did leave open the door for an impossibility defense with the correct set of facts.<sup>152</sup> However, once the impossibility situation has been reached, the school district almost certainly will not have the financial resources to mount an expensive and time consuming challenge to the UDTS before falling into bankruptcy or dissolving. This appears especially clear with the Normandy situation, as Normandy will almost certainly become insolvent long before its lawsuit makes its way through the court system.<sup>153</sup> As discussed above, the law in its current form is not an effective solution to the problem of failing school districts. The following sections analyze some proposed solutions and other considerations.

A. *Charter Schools Are Not the Answer; School Transfer Is Not the Answer Either*

One plan that was proposed to address the unaccredited school district situation involves placing unaccredited districts under the control of the state and giving control of local schools to nonprofit operators in an arrangement similar to charter schools.<sup>154</sup> Another unofficial proposal included expanding UDTS to allow transfer to more charter schools.

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150. *Id.* at 270 (emphasis added).

151. Education Commissioner Chris Nicastro recently stated: "Moving the children is not an answer. What we have to do is figure out how to improve the schools where they live. Children have a right and a need to have quality schools in their neighborhood, and that's what we're intending to create." Dale Singer, *Missouri Board Limits Normandy Transfers, Appoints Some Member to New Governing Panel*, ST. LOUIS PUB. RADIO (June 16, 2014, 8:11 PM), <http://news.stlpublicradio.org/post/missouri-school-board-limits-normandy-transfers-appoints-some-members-new-governing-panel>.

152. *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 836 (Mo. 2013).

153. See discussion *infra* Part IV.D.

154. See ETHAN L. GRAY ET AL., *THE CONDITIONS FOR SUCCESS: ENSURING GREAT PUBLIC SCHOOLS IN EVERY NEIGHBORHOOD* 32–33 (2014). Even before its official release, the authors released the draft version of the plan due to the "substantial interest in this project" and the "complexity of the ideas." ETHAN L. GRAY ET AL., *THE CONDITIONS FOR SUCCESS: EXECUTIVE SUMMARY: ENSURING GREAT PUBLIC SCHOOLS IN EVERY NEIGHBORHOOD* 4 (Jan. 2014),

Charter schools are analogous to the school transfer issue under the UDTS in that both charter schools and transfers pursuant to the UDTS allow students (and their tuition dollars) to transfer out of the traditional public school system and into different schools.<sup>155</sup> A spokesperson for Clayton School District, one of the districts with the highest per-student tuition costs being billed to the unaccredited districts, described the UDTS as forcing Normandy to “hemorrhage money.”<sup>156</sup> Charter schools would also siphon money from the unaccredited school districts causing the same “money hemorrhaging” effect as the existing UDTS statute. Looking at strictly the financial implications, neither charter schools nor UDTS transfers are a long-term answer to improving struggling school districts.<sup>157</sup>

Charter schools and school transfer options likely will not fix the quality of education for the poorest children in unaccredited school districts. Research has shown that poor children are more concentrated in traditional public schools in districts where private, charter, and magnet schools were present.<sup>158</sup> Parents who are more engaged and have more resources tend to more often self-select and enroll their children into charter schools, which further contributes to a separation and isolation of poor students in traditional public schools.<sup>159</sup> As a result, charter schools “attract a more homogenous and less impoverished student population than traditional public schools.”<sup>160</sup> Furthermore, poor and minority students face barriers to charter school enrollment.<sup>161</sup>

Research from urban school districts in New York state shows that other factors have a much greater effect on student performance than the choice of

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available at [http://mediad.publicbroadcasting.net/p/kwmu/files/201401/Conditions\\_for\\_Success\\_-\\_Executive\\_Summary\\_and\\_Full\\_Report.pdf](http://mediad.publicbroadcasting.net/p/kwmu/files/201401/Conditions_for_Success_-_Executive_Summary_and_Full_Report.pdf).

155. See MO. REV. STAT. § 160.415 (2000).

156. Crouch & Bock, *supra* note 132.

157. Michael Jones, vice president of the State Board of Education, stated, “A 300-student school does not solve the systemic problems in Normandy.” Elisa Crouch, *In Normandy, Charter Schools Struggle to Take Root*, ST. LOUIS POST-DISPATCH, June 9, 2014, at A1.

158. Salvatore Saporito & Deenesh Sohoni, *Mapping Educational Inequality: Concentrations of Poverty Among Poor and Minority Students in Public Schools*, 85 SOC. FORCES 1227, 1227 (2007).

159. Robert Bifulco & Helen F. Ladd, *Institutional Change and Coproduction of Public Services: The Effect of Charter Schools on Parental Involvement*, 16 J. PUB465 -1.2958 TD-.00fD.0014 Tcrp08 5.

school (charter or traditional public school).<sup>162</sup> The percentage of students eligible for free lunch and the percentage of students suspended tended to have the most effect, which suggests that broader systemic factors are influencing student performance in urban school districts.<sup>163</sup>

district) will experience less segregation, those students left behind in Normandy are still segregated. The authors state that “[s]eparate and unequal is prima facie across New York’s urban school districts”;<sup>173</sup> the same appears to be true with Normandy School District which is comprised of 98.6% minority students.<sup>174</sup> The UDTS has the potential to benefit the 20% of Normandy students who transfer, but does not improve the education for the 80% of the students who remain in the failing Normandy School District.

Perception plays a role in the failing public schools.<sup>175</sup> The public school system becomes more segregated along socioeconomic lines when the lower-middle class and working poor parents choose to move their children out of the traditional public schools.<sup>176</sup> This helps validate perceptions that public schools are continually failing, since the removal of students who are relatively better prepared for school may contribute to driving down average scores on statewide tests of students in traditional public schools.<sup>177</sup>

scientists conducted an experiment in which impoverished families were relocated from low-income neighborhoods to high-income areas and higher performing schools.<sup>181</sup> Most students were unable to improve their classroom grades and also had the most adjustment difficulties.<sup>182</sup> Even if improvements were noted, they were short-lived.<sup>183</sup> Furthermore, while the students became residents of middle-income neighborhoods, they were not members of middle-income *communities*, as the word community implies a “group of geographically bounded people who share a common identity, institutions, social interactions, and daily experiences.”<sup>184</sup>



added, the rank for the United States drops to the middle of the advanced industrial nations.<sup>193</sup> With a 22% child poverty rate, the problem does not solely rest with the general educational system; the educational system is having a poverty crisis.<sup>194</sup> Michael Rebell and Jessica Wolff of Columbia University explain the situation in the following way: “According to a growing body of research, America will attain its goals of equity in preparing students to function effectively as citizens and productive workers only through a concerted effort to eliminate socioeconomic barriers.”<sup>195</sup>

Through their research, Rebell and Wolff identified multiple areas of support services that would help children overcome the socioeconomic barriers to educational success.<sup>196</sup> The areas include: (1) early childhood education, (2)



community has an underlying distrust and fear of school officials which, along with a lack of resources in the schools and inherent bureaucratic barriers, creates a situation that is not conducive to productive community and school interaction.<sup>200</sup> One scholar described how a lack of “vibrant community-school relationships” can prevent improvement in academic performance:

[T]eachers simply do not teach effectively when they hold inaccurate deficit visions of children, families, and communsu/TT2 1 Tf24 th1oor t isucotmff27217tf24nvision



school district. The problem of unaccredited school districts and poor academic performance is a long-standing issue that deserves a comprehensive solution as the past efforts of DESE and the legislature have failed to fix this problem. Attempting to avoid the UDTS through a change in application of the terminology flies in the face of the legislature's intent. Creating a long-term solution needs to involve the legislature as sucpan[(gisl)5.Riphlanlrequoie s(m)8.1e.

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lawsuit, DESE sent a letter to Dr. McNichols, Normandy's superintendent, stating the expenses relating to the lawsuit "have not been and will not be approved by [DESE]."<sup>218</sup> Normandy responded by filing a motion seeking a temporary restraining order against DESE.<sup>219</sup> Normandy also sought to prevent DESE from withholding \$2 million in funding which DESE would use to pay Normandy's outstanding tuition bills from April, May, and June.<sup>220</sup> A hearing on the motion was scheduled for June 20, 2014.<sup>221</sup>

The transfer situation ended for most students on June 20, 2014, prior to the motion hearing being held. That day, Francis Howell School District announced their decision to revert to their prior policy of only accepting transfer students if required by law.<sup>222</sup>





likely to turn around a failing school district. When the problem is beyond the walls of the school buildings, the solutions must include a focus on the community and its role in supporting the education of students.<sup>232</sup> Simply shipping a portion of the students to another school district twenty miles away does not solve the problem.

Students who chose to stay in Normandy schools in hopes of being part of a resurgence of the district are now left with an uncertain future due to the crippling financial effects of the UDTs. One such student was Raquan Smith, a senior who had already endured the closing of Wellston schools before being transferred to Normandy.<sup>233</sup> Throughout his senior year, Raquan faced the prospect that Normandy would also be dissolved, and, yet again, he would be sent to a different school district. After hearing about Normandy's decision to close an elementary school and lay off over 100 employees, Raquan described Normandy's situation in the following way: "[The situation is] heart-breaking. It's gut-wrenching. I feel like I'm about to lose a part of me . . . I don't want teachers to be laid off."<sup>234</sup> One homeowner described the district's situation as "torment for all of us."<sup>235</sup> Students were left wondering if they would have

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their new schools. Even with the UDTS potentially no longer applicable to Normandy, the statute still disrupts the education of the students at the struggling school district by allowing Francis Howell to reject these transfer students.

Now that Normandy School District has experienced the same fate as Wellston, it remains to be seen whether the school administrators, state education officials, the legislature, and the community will rally together to create a plan for long-term academic improvement in Normandy or whether everyone will watch another plan fail, just like the UDTS failed the students of Normandy. While the UDTS may no longer apply to Normandy, the statute is still applicable to the other unaccredited school districts and will likely continue to disrupt the education of students in the most troubled school districts.

The superintendent of the Pattonville School District (which is accredited) may have said it best: “Taking money away from [unaccredited school districts] is not going to help them. The focus should be on helping communities, particularly communities of high levels of poverty. You don’t do that by dismantling the public schools. You do that by helping those schools get better.”<sup>239</sup>

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