

**No. 131757**

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**IN THE ILLINOIS SUPREME COURT**

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E.W., by his mother and next friend, )      Appeal from the  
Chandres Johnson, and A.M, )      Illinois Appellate Court  
by her father and next friend, )      Fifth Judicial District  
Antonio Brown, )      Case No. 5-23-0763  
 )  
Plaintiffs-Appellees, )      Appeal from the Circuit Court  
 )      of St. Clair County  
v. )      Circuit Court Case No.  
 )      2022-CH-0075  
BOARD OF EDUCATION OF EAST )  
ST. LOUIS SCHOOL DISTRICT NO. 189, )      Honorable Julie K. Katz  
 )      Judge Presiding  
Defendant-Appellant. )

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**BRIEF OF PLAINTIFFS-APPELLEES**

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## **ISSUE PRESENTED FOR REVIEW**

Whether the Appellate Court correctly found that Illinois statute 105 ILCS 5/29-4 requires Defendant school district to transport Plaintiffs, who attend a nonpublic school within the district, to and from their school, the same as Defendant does for public school children who attend schools within the district.

## **STANDARD OF REVIEW**

The crux of the dispute is the meaning of 105 ILCS 5/29-4. “Statutory construction presents a pure question of law that we review *de novo*.” *Chi. Teachers Union, Local No. 1 v. Bd. of Educ.*, 2012 IL 112566, ¶ 15. “Issues requiring statutory interpretation are questions of law subject to *de novo* review.” *Evans v. Cook Cty. State's Atty.*, 2021 IL 125513, ¶ 27. Additionally, “[w]here a case is decided through summary judgment, our review is *de novo*.” *Pielet v. Pielet*, 2012 IL 112064, ¶ 30.

## **STATUTE INVOLVED**

### **105 ILCS 5/29-4 Pupils attending a charter school or nonpublic school**

The school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools shall afford transportation, without cost, for children who attend a charter school or any school other than a public school, who reside at least 1 1/2 miles from the school attended, and who reside on or along the highway constituting the regular route of such public school bus or conveyance, such transportation to extend from some point on the regular route nearest or most easily accessible to their homes to and from the school attended, or to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children. Nothing herein shall be construed to prevent high school districts from transporting public or non-public elementary school pupils on a regular route where deemed appropriate. The elementary district in which such pupils reside shall enter into a contractual agreement with the high school district providing the service, make payments accordingly, and make claims to the State in the amount of such contractual payments. The person in charge of any charter school or school other than a public school shall certify on a form to be provided by the State Superintendent of Education, the names and addresses of pupils transported and when such pupils were in attendance at the school. If any such children reside within 1 1/2 miles from the school attended, the school board shall afford such transportation to such children on the same

basis as it provides transportation for its own pupils residing within that distance from the school attended.

Nothing herein shall be construed to preclude a school district from operating separate regular bus routes, subject to the limitations of this Section, for the benefit of children who attend a charter school or any school other than a public school where the operation of such routes is safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes.

If a school district is required by this Section to afford transportation without cost for any child who is not a resident of the district, the school district providing such transportation is entitled to reimbursement from the school district in which the child resides for the cost of furnishing that transportation, including a reasonable allowance for depreciation on each vehicle so used. The school district where the child resides shall reimburse the district providing the transportation for such costs, by the 10th of each month or on such less frequent schedule as may be agreed to by the 2 school districts.

### **STATEMENT OF FACTS**

There have been periodic disputes as to the interpretation of 105 ILCS 5/29-4 between Defendant and various students attending Sister Thea Bowman Catholic Elementary School (“Bowman School”) since 2010. See *C.E. v. Bd. of Educ.*, 2012 IL App (5th) 110390. When another dispute erupted in 2015, a preliminary injunction was entered holding that Bowman School students had the same statutory right to school bus transportation as the public school students in Defendant’s district. C166-67, C172. That Order stated “District [189] must protect the safety of the children to and from the Bowman School. This right is no more or less than the same right of transportation provided to public school students.” C166. Compelled by the 2015 injunction, Defendant did provide school bus transportation to Bowman School students. C8, C147, C308.

Following the preliminary injunction but prior to the 2022-23 school year, Defendant chose to fulfill its statutory duty by running two separate bus routes that carried Bowman School students to and from school. C147. Those routes operated on days in which Defendant operated school bus transportation for its public school students.

C147. However, beginning with the 2022-23 school year, Defendant stopped providing any transportation to Bowman School students. C149, C299.

Dr. Lawrence Tourijigian worked as Defendant's Director of Transportation for two years, including during the 2022-23 school year. C286, C289, C290. On June 27, 2023, Dr. Tourijigian provided deposition testimony relating to the decision to terminate bus transportation for Bowman School students. C284, C299. Dr. Tourijigian testified that prior to April 5, 2022, a parent of a student attending Unity Lutheran, another private school located within Defendant's district, inquired about Defendant providing bus service to their child's school. C306-07, C209. On April 5, 2022, Dr. Tourijigian contacted Christine Kolaz at the Illinois State Board of Education, seeking guidance on when this request must be fulfilled. C209. In response, Ms. Kolaz directed Dr. Tourijigian to 105 ILCS 5/29-4. C209. Ultimately, Dr. Tourijigian testified that Defendant did not provide transportation to the child attending Unity Lutheran because it did not want to take on another expense. C307.

Arthur Culver, the Superintendent of East St. Louis School District 189 made the decision to terminate all bus transportation for Bowman School students for the 2022-23 school year. C299. Dr. Tourijigian was not given a reason for the termination and he just did what he was told in carrying out the decision. C300-01. Dr. Tourijigian testified that he does not know why the decision was made to stop providing transportation to Bowman School students, nor was he part of the decision-making process. C300-01.

On August 4, 2022, Dr. Tourijigian emailed Francine Gordon at Bowman School and informed her that "School District 189 will not be routing STB [Sister Thea Bowman] students and providing transportation as we have in prior years. We will strictly

follow state [of] Illinois State School Code with respect to transporting children.” C213.

In his deposition testimony, Dr. Tourijigian stated that this meant Defendant would not veer from what the Illinois School Code said was allowed, but no other explanation was provided. C308.

In his deposition, Dr. Tourijigian testified that he told Jonathan Birdsong, Superintendent of Schools, Diocese of Belleville, that Defendant would not “be providing services in the upcoming school year in the manner in which they [Bowman School] had been accustomed to.” C309. Defendant knew students at the Bowman School wanted transportation, yet it did not create transportation routes for them, it did not route them on existing transportation routes, nor did it provide any alternative transportation options for the 2022-23 school year to get the students to their school. C309-10, C299, C213.

In his deposition, Dr. Tourijigian acknowledged that Defendant runs about six different buses that pick-up children at Gompers Homes, and a similar number of bus routes exist for students who live in Orr Weathers Homes. C298-99, C322, C325. Dr. Tourijigian admitted that Defendant has regular routes that pick up and drop off at Gompers Homes and at Orr Weathers Homes, and at least one route that goes past Bowman School. C310. Dr. Tourijigian also acknowledged that it appeared Route 2200 went near Gompers, Orr Weathers, and Bowman School. C310-11, C221. Despite this, Defendant testified that Bowman School students would not be allowed on a route that went near Gompers, Orr Weathers, and Bowman School. C310-11.

Attached as exhibits to Plaintiffs’ Response in Opposition to Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross-Motion for Summary Judgment were 43

routes that Defendant ran near Gompers, Orr-Weathers, and/or Bowman School during the 2022-23 school year. C234-76.

In his deposition testimony, Dr. Tourijigian explained that bus routes are created by “catchment areas” which are tied to a specific school. C292-93. However, there are circumstances where a student resides in one catchment area but is routed to a school in another catchment area. C293. These students are assigned to an “open enrollment program” and are often homeless students. C293-94, C310. Open enrollment students are transported to and from their home school by the regular bus route that runs closest to where the child lives, even if they are in a different catchment area than that of their home school. C293-94.

Defendant creates its bus routes by using VersaTrans computer software. C289, C295. This software uses student information and data to create the routes, but manual adjustments are often made to add students or correct errors. C298. Within the system, each school in the district is listed as an anchor point. C295 C297. Bowman School remains an anchor point in the system even though transportation is no longer provided to its students. C299.

On October 21, 2022, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief, seeking a declaratory judgment finding that Defendant’s refusal to provide Plaintiffs with free transportation to Bowman School violated 105 ILCS 5/29-4. C5-11. Plaintiffs also sought a Temporary Restraining Order and Preliminary Injunction to enjoin Defendants from failing to provide Plaintiffs, who resided more than one and one-half miles from Bowman School, with appropriate bus transportation to the school. C5-11, C38-42.

The hearing was conducted on October 31, 2022, and the circuit court entered an Order on November 2, 2022. C93-99. The Motion for Temporary Restraining Order and Preliminary Injunction was granted in part to the extent that Plaintiffs and Defendant were required to confer within seven days to identify “regular existing bus route(s) on which Plaintiffs shall be afforded transportation in accordance with Section 29-4 of the Illinois School Code (105 ILCS 5/29-4).” C99. It was denied in all other respects. C98-99.

On June 28, 2023, Defendant filed a Motion for Summary Judgment. C131-38. Plaintiffs filed their Response in Opposition to Defendant’s Motion for Summary Judgment and Cross-Motion for Summary Judgment and supporting Memorandum of Law on July 24, 2023, maintaining the position that Plaintiffs are entitled to bus transportation to and from Bowman School pursuant to 105 ILCS 5/29-4. C145-276. Defendant filed its Response in Opposition to Cross-Motion for Summary Judgment on August 11, 2023. C277-314. On August 21, 2023, Plaintiffs filed their Reply to Response in Opposition to Plaintiffs’ Cross-Motion for Summary Judgment and, on August 22, 2023, Defendant filed its Surreply to Plaintiffs’ Reply to Response in Opposition to Cross-Motion for Summary Judgment. C315-28, C329-32.

Hearing was held before the circuit court on August 24, 2023. C334. On August 31, 2023, the circuit court issued its written order granting summary judgment in favor of Defendant and against Plaintiffs. C334-41. Plaintiffs filed their Notice of Appeal on September 28, 2023. C343-48.

After briefing and oral argument, the Appellate Court for the Fifth Judicial District issued its judgment on March 20, 2025, pursuant to Supreme Court Rule 23.

RAC 4.<sup>1</sup> The Appellate Court reversed the circuit court's grant of summary judgment for Defendant and against Plaintiffs and entered summary judgment in favor of Plaintiffs. RAC 16. The matter was ordered to be remanded to the circuit court with directions to grant Plaintiffs' request for declaratory judgment and injunctive relief in accordance with the requirements of section 29-4 of the School Code and consistent with the Court's Order. RAC 16.

Defendant timely filed its Petition for Leave to Appeal to the Illinois Supreme Court on April 24, 2025. Leave to Appeal was allowed on September 24, 2025.

### **ARGUMENT**

#### **THE APPELLATE COURT CORRECTLY DECIDED THAT 105 ILCS 5/29-4 REQUIRES DEFENDANT TO PROVIDE TRANSPORTATION FOR PLAINTIFF BOWMAN STUDENTS FROM NEAR THEIR HOMES TO THEIR SCHOOL ATTENDED.**

There is no question that Defendant provides transportation for children to and from their public schools. C290. There is no question that Defendant stopped providing transportation for Plaintiffs and other Bowman School students in August 2022 because Superintendent Culver directed Dr. Tourijigian not to route the students. C299-300, C309. There is no dispute that Plaintiffs reside more than one and one-half miles from Bowman School and near Defendant's regular bus routes. C298-99, C321, C324. There is no dispute that Bowman School is on or near Defendant's regular bus routes. C310, C255-76.

The crux of the dispute regards the meaning of "such transportation to extend from some point on the regular route nearest or most easily accessible to their homes to

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<sup>1</sup> RAC refers to the Record of the Appellate Court of Illinois Fifth Judicial District filed September 25, 2025.

and from the school attended, or to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children.” 105 ILCS 5/29-4.

Plaintiffs maintain that this sentence in the statute requires Defendant to transport Plaintiffs from or near their homes to their school OR to a point which is nearest or most easily accessible to their school - just as Defendant transports their students from or near their homes to and from their District 189 schools. Defendant maintains that it is only obligated to use one of the regular routes it creates to pick up Plaintiffs from or near their homes and drop them off at some other point - a point not at or near the school they attend. C279, R9. Defendant’s interpretation would have buses dropping off Bowman students at points that are without regard for how far that drop off point is from Bowman School and without regard to the health and safety of schoolchildren.

The Appellate Court correctly decided the issue in *E.W. v. Bd. of Educ. Of E. St. Louis Sch. Dist. #189*, 2025 IL App (5th) 230763-U.

**A. THE HEALTH AND SAFETY OF ALL SCHOOL CHILDREN TO AND FROM THEIR SCHOOL IS THE PARAMOUNT LEGISLATIVE INTENT OF 105 ILCS 5/29-4.**

“It is well-established that the primary objective of this court when construing the meaning of a statue is to ascertain and give effect to the legislature’s intent.” *Mich. Ave. Nat'l Bank v. County of Cook*, 191 Ill. 2d 493, 503-04 (2000). “All other rules of statutory construction are subordinate to this cardinal principle.” *People v. Powell (In re Powell)*, 217 Ill. 2d 123, 135 (2005) (citing *People v. Lieberman (In Re Lieberman)*, 201 Ill. 2d 300, 307 (2002)). “The statutory language is to be given its plain, ordinary and popularly understood meaning and we are to afford the statutory language the fullest, rather than the narrowest, possible meaning to which it is susceptible.” *In Re Lieberman*, 201 Ill. 2d at 308 (internal citations omitted). “Statutes must be construed in the most

beneficial way which their language will permit so as to prevent hardship or injustice, and to oppose prejudice to public interests.” *Id.* at 309 (citing *Mulligan v. Joliet Regional Port District*, 123 Ill. 2d 303, 313 (1988)). “In construing a statute, courts presume that the General Assembly, in the enactment of legislation, did not intend absurdity, inconvenience, or injustice.” *Mich. Ave. Nat'l Bank*, 191 Ill. 2d at 504.

This Court is asked to interpret the first sentence of the statutory provision at issue, specifically:

The school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools **shall afford transportation**, without cost, for children who attend a charter school or any school other than a public school, who reside at least 1 1/2 miles from the school attended, and who reside on or along the highway constituting the regular route of such public school bus or conveyance, **such transportation to extend from some point on the regular route nearest or most easily accessible to their homes to and from the school attended, or to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children.**

105 ILCS 5/29-4 (emphasis added).

In construing this phrase, “[t]he court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another.” *Chi. Teachers Union, Local No. 1 v. Bd. Of Educ.*, 2012 IL 112566, ¶ 15. See *Williams v. Staples*, 208 Ill. 2d 480, 486 (2004).

Long ago, this Court made clear that the legislative purpose of 105 ILCS 5/29-4 is to protect the health and safety of school children as they go to school and return home after school. *Board of Education v. Bakalis*, 54 Ill. 2d 448, 461 (1973). In *Bakalis*, the Plaintiff school district had three schools that were grades 1 through 8 inclusive. *Id.* at 452. The dispute involved bus transportation of 76 students who were enrolled at two parochial schools, St. Damian and St. Christopher. *Id.* Plaintiff complained that they had

no seats available on their buses to bring the children to their schools and would be required to hire two additional buses. *Id.* Plaintiff sought declaratory judgment that section 5/29-4 was unconstitutional. *Id.* at 453.

In determining the constitutionality of section 5/29-4, the *Bakalis* Court wrote “the trend of judicial opinion is that transportation at public expense of parochial school students *on the same basis as public school students* is considered primarily a health-and-safety measure for the benefit of all students, and that any aid to the parochial school, or the church supporting it, is incidental.” *Id.* at 460 (emphasis added). The U.S. Supreme Court had previously held that school bus transportation for nonpublic school students was “...legislation, as applied, [that] does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.” *Everson v. Board of Education*, 330 U.S. 1, 18 (1947).

The *Bakalis* Court found that “section 29-4 was enacted for the secular legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools...” *Id.* at 461. The Court noted that section 29-4 was enacted in 1933 and that “the bussing of nonpublic students at public expense was a well-recognized and long-established practice.” *Id.* at 465. “[T]he transportation of school children, public or nonpublic, is a public purpose.” *Id.* at 466.

“This court has long recognized that what is for the public good and what are public purposes are questions which the legislature must in the first instance decide.” *In re the Marriage of Lappe*, 176 Ill. 2d 414, 429 (1997). “This court has recognized that Illinois has a strong interest in preserving and promoting the welfare of children.” *Id.* at 431.

In subsequent litigation between the same parties, this Court upheld the refusal to reimburse the *Bakalis* school district for school bus transportation because the school district failed to comply with section 5/29-4 which “requires that any school district which elects to provide transportation for its public school pupils must also provide transportation without charge for children attending nonpublic schools.” *People ex rel. Board of Education v. State Board of Education*, 62 Ill. 2d 517, 518 (1976).

Taken together, *Bakalis* and *People ex rel. Board of Education* make it clear that if a school district provides school bus transportation to its public school students, it must also provide transportation to nonpublic school students on the same basis in order to protect all students’ health and safety.

**B. THE STATUTORY AND REGULATORY SCHEME VALIDATE AN INTENT TO PROVIDE FOR THE HEALTH AND SAFETY OF ALL SCHOOL CHILDREN.**

That health and safety of all school children is the paramount legislative purpose is clear from the statutory scheme. 105 ILCS 5/29-3 provides for transportation of public school students and states that “School boards....**shall** provide free transportation for pupils residing at a distance of one and one-half miles or more from any school to which they are assigned....” *Id.* (emphasis added). The one and one-half mile distance is measured from the pupil’s residence “to the point where pupils are normally unloaded at the school attended.” *Id.*

In 2018, the Illinois General Assembly amended the School Code and provided that school boards “**may** provide free transportation for any pupil residing [less than] 1 1/2 miles from the school attended where conditions are such that walking, either to or from the school...or to and from the pick-up point or bus stop, constitutes a serious

hazard to the safety" of students either due to a course or pattern of criminal activity or due to vehicular traffic or rail crossings. 105 ILCS 5/29-3 (emphasis added).

Defendant took advantage of this amendment and a portion of District 189 was approved for the serious safety hazard grant, specifically for criminal gang activity. C305-06. Bowman School students reside within this serious safety hazard area. C305, C225, C227.

Section 5/29-4 provides that if any nonpublic school "children reside within 1 1/2 miles from the school attended, the school board shall afford such transportation to such children **on the same basis as it provides transportation for its own pupils** residing within that distance from the school attended." 105 ILCS 5/29-4 (emphasis added).

Further, Illinois provides reimbursement for bus transportation to school districts like Defendant. The Illinois Administrative Code states that transportation services eligible for reimbursement include "[t]ransportation services provided for nonpublic school pupils when pupil transportation services for the nonpublic school pupils are provided **on the same basis** as the transportation services for public school pupils as provided in section 29-4 of the School Code." 23 Ill. Admin. Code §120.30(a)(3) (emphasis added). Dr. Tourijigian acknowledged that Defendant received reimbursement for transporting Bowman students. C305.

Despite Illinois' public policy to protect all schoolchildren, despite Illinois providing reimbursement for the transportation of nonpublic school students at the same rate as public school students, and despite the safety hazards that exist within Defendant's district, Defendant terminated all school transportation for Bowman School students without regard for their health and safety, and leaving them to fend for themselves.

**C. ILLINOIS REQUIRES THAT ALL STUDENTS TRANSPORTED BY DEFENDANT BE BROUGHT TO OR NEAR THE SCHOOL THEY ATTEND.**

105 ILCS 5/29-3 requires that Defendant provide free transportation for students who reside more than one and one-half miles from where the student is “normally unloaded at the school attended.” The distance is measured from the student’s home “to the point where pupils are normally unloaded at the attendance center to which they are assigned.” 23 Ill. Admin. Code § 120.30(a)(1)(A). The definition for measuring distance in both provisions presumes students will be dropped off at the school they attend, not some random point far from their school. Defendant’s interpretation of the statute would have Plaintiffs dropped off miles away from their school at distances the legislature has deemed unsafe for more than 50 years when *Bakalis* was decided.

The statute mandates that Defendant’s regular route must extend from pick up near Plaintiffs’ homes to and from Plaintiffs’ school, Bowman School, OR at the very least, to a point near or most easily accessible to Bowman School. This is what Defendant does for open enrollment students – picks them up using regular routes created such that the routes run near their home and extend to their school in the different catchment area. C293, C297.

The Appellate Court correctly held that the statute obligates Defendant "to pick up Bowman students in the same fashion that it does its own students. Similarly, the school district is required to deliver those children to their school, just as it does its own students." *E.W. v. Bd. of Educ. Of E. St. Louis Sch. Dist.* #189, 2025 IL App (5th) 230763-U, ¶ 29, RAC 16. Again, the relevant portion of section 29-4 states:

The school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools shall afford transportation, without cost, for children who attend a charter school or any

school other than a public school, who reside at least 1 1/2 miles from the school attended, and who reside on or along the highway constituting the regular route of such public school bus or conveyance, **such transportation to extend from some point on the regular route nearest or most easily accessible to their homes to and from the school attended, or to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children.** 105 ILCS 5/29-4 (emphasis added).

The plain language requires that transportation “extend” from some point on a regular bus route that is nearest or most easily accessible to non-public school students’ homes **to and from** the school they attend. As the Appellate Court found, the plain, ordinary and popularly understood meaning of the word “‘extend’ means ‘[t]o cause (something) to be longer, wider, or cover more area.’” *E.W. v. Bd. of Educ. of E. St. Louis Sch. Dist. #189*, 2025 IL App (5th) 230763-U, ¶ 27, RAC 15. The Appellate Court found that this definition of “extend” is consistent with the statutory purpose of keeping all children safe as they travel to and from school. *Id.* at ¶¶ 27-28, RAC 15. See *Lake County Bd. of Review v. Property Tax Appeal Bd.*, 119 Ill. 2d 419, 423 (1988) (holding that because the term “refund” was not defined by statute, it “must be given its ordinary and popularly understood meaning.... [and] [m]oreover, the term must be giving its full meaning, not the narrowest meaning of which it is susceptible.”) (Citations omitted). Black’s Law Dictionary notes that “extend” is a “[t]erm that lends itself to great variety of meanings, which must in each case be gathered from context. It may mean to expand, enlarge, prolong, lengthen, widen, carry or draw out further than the original limit.” Black’s Law Dictionary 523 (5th ed. 1979)

This interpretation supports the paramount legislative intent of section 29-4 – to protect the health and safety of school children. As noted by this Supreme Court in *Bakalis*, section 29-4 was enacted to protect the health and safety of school children

traveling **to and from** school. *Bakalis*, 54 Ill. 2d at 461. Ensuring that students are picked up and dropped off at the points nearest or most easily accessible to their schools and home advances this purpose.

In *Posteher v. Pana Community Unit School Dist.*, the appellate court was asked to determine the duty imposed by sections 29-3 and 29-4 in the selection of bus routes. The court noted that it was “undisputed that respondent [school district] complied with its statutory duty to provide petitioners’ children with free bus transportation to the parochial school they attended.” *Posteher v. Pana Community Unit School Dist.*, 96 Ill. App. 3d 709, 710 (5th Dist. 1981). The court determined that while the school district had full discretion to establish school bus routes and pick up points, it must comply with the terms of the applicable statutes and regulations, it must not act capriciously and arbitrarily, and it may not select routes and pick up points that needlessly expose the pupils to any serious safety hazards. *Id.* at 713.

**D. THE GRAMMATICAL STRUCTURE OF 105 ILCS 5/29-4 REQUIRES DEFENDANT TO PROVIDE TRANSPORTATION TO NONPUBLIC SCHOOL STUDENTS FROM NEAR THEIR HOMES AND TO THEIR SCHOOL ATTENDED.**

The grammatical structure of section 29-4 supports the interpretation that transportation must extend to or from a point which is nearest or most easily accessible to non-public school children’s homes to and from the school attended.

A preposition is a word or phrase that is used to “identify the spatial (in space), directional (the direction in which something is moving), or temporal (in time) relationship of one or more people or things to other people or things.”<sup>2</sup> As such,

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<sup>2</sup> Purdue University, Purdue Online Writing Lab, [https://owl.purdue.edu/owl/multilingual/multilingual\\_students/prepositions/index.html](https://owl.purdue.edu/owl/multilingual/multilingual_students/prepositions/index.html) (last visited Dec. 2, 2025).

prepositional phrases are used to modify preceding verbs, adverbs, or adjective.<sup>3</sup> In section 29-4, the phrases “from some point on the regular route nearest or most easily accessible to their homes to and from the school attended” and “to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children” are both prepositional phrases. The nearest verb to both prepositional phrases is the infinitive verb “to extend.” Therefore, both prepositional phrases modify this verb and, as such, “to extend” applies to both phrases.

Further, the word “or” is a coordinating conjunction that “joins elements of equal grammatical status.” Deborah E. Bouchoux, Aspen Handbook for Legal Writers: A Practical Reference, 28 (3d ed. 2013). The prepositional phrases in the statute are connected by a coordinating conjunction, which indicates they are on the same grammatical level and should be treated equally.

Therefore, the grammatical structure of the statute confirms that the language requires Defendant to provide transportation along a regular route for non-public school children to extend from the point nearest or most easily accessible to their homes to and from their school attended. In other words, even along its regular routes, Defendant is required to pick up and drop off non-public school children at a point nearest or most easily accessible to their homes and schools. As the Appellate Court stated, the language of section 29-4 “evidences the legislature’s intent that a school district must treat the nonpublic school children (who otherwise qualify to use the school district’s transportation) the same as it does the public school children attending the schools within

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<sup>3</sup> Purdue University, Purdue Online Writing Lab, [https://owl.purdue.edu/owl/general\\_writing/grammar/prepositions/index.html](https://owl.purdue.edu/owl/general_writing/grammar/prepositions/index.html) (last visited Dec. 2, 2025).

its district.” *E.W. v. Bd. of Educ. Of E. St. Louis Sch. Dist.* #189, 2025 IL App (5th) 230763-U, ¶ 29; RAC 16.

#### **E. DEFENDANT’S ACTIONS VIOLATE THE PLAIN LANGUAGE OF 105 ILCS 5/29-4.**

Defendant’s decision to stop routing all Bowman School students contravenes their mandatory obligation under the statute.

“The school board...**shall afford transportation**, without cost, for children who attend a charter school or any other school other than a public school ...” 105 ILCS 5/29-4 (emphasis added). “Generally, the use of the word ‘shall’ is regarded as mandatory. Where ‘shall’ is used in reference to any right or benefit to anyone, and the right or benefit depends on giving a mandatory meaning to the word, it cannot be given a permissive meaning.” *Armstrong v. Hedlund Corp.*, 316 Ill. App. 3d 1097, 1106 (1st Dist. 2000) (citing *Andrews v. Foxworthy*, 71 Ill. 2d 13, 21 (1978)). “[W]hen a statute prescribes the performance of an act by a public official or a public body, the question of whether it is mandatory or directory depends on its purpose.” *Andrews v. Foxworthy*, 71 Ill. 2d 13, 21 (1978).

Here, the statute’s purpose is to ensure the health and safety of nonpublic school students during the period in which they are being transported to and from school. The statute achieves its purpose by providing the nonpublic school students with the right to school bus transportation on the same basis as the public school students. “Shall” mandates Defendant to provide nonpublic school students with the transportation on the same basis as public school students.

The statute details how school districts like Defendant can accomplish that objective. Transportation for nonpublic school students is to start from some point on the

regular route near the student's home and go to the student's school. The students need only live on or near a regular District route in order to be eligible for transportation to their school. Alternatively, the school district may use a regular route near the nonpublic school and transport the students to near their homes. 105 ILCS 5/29-4.

This first part focuses on transportation of nonpublic school students from near their homes to their schools, just as the Defendant provides transportation to its own students. This is what Defendant does for homeless and other open enrollment students. The statute does not require that the regular route the student lives on or near also be a route that goes near the student's school. Such a narrow interpretation thwarts the intention of the statute and would defeat the public policy of Illinois.

Picking up nonpublic school students on Defendant's routes that are near their home, but not transporting them to near their school, does not provide transportation on the same basis as public school students. Defendant's interpretation that drops Plaintiffs off at a point nowhere near their school does not provide safe transportation to Plaintiffs and renders the statutory purpose and the statutory language "nearest or most easily accessible to their homes to and from the school attended" superfluous. It is an absurd interpretation that allows Defendant to avoid its mandatory duty to provide Plaintiffs with safe transportation to their school.

Alternatively, Defendant may look to the regular routes near the school the student attends and provide transportation to and from near their homes and school with one or more of those routes.

The statute contemplates that the regular route on which a student's school is located may not also be the route on which the student lives but the statute still imposes a

mandatory obligation on public school districts to provide nonpublic school students with transportation on the same basis that the district provides transportation for its own students. The plain language of the statute is very clear that Plaintiffs need to be picked up from some point near their homes and brought to some point nearest their school.

Defendant asserts that it is merely required to provide free transportation for non-public school students to “points” on its existing routes. However, as the Appellate Court noted, Defendant’s interpretation of the statute would allow it to “designate pick-up and drop-off points without regard for the health and safety of nonpublic school children.”

*E.W. v. Bd. of Educ. of E. St. Louis Sch. Dist. #189*, 2025 IL App (5th) 230763-U, ¶ 28, RAC 15. Such interpretation would potentially result in pick-up or drop-off points that are unsafe, inaccessible, or a far distance from a student’s school or home, thereby jeopardizing their health, safety, and well-being. Not only is this interpretation contrary to the plain language of the statute, but it clearly runs afoul of the legislature’s intent in enacting section 29-4.

Defendant states that the Appellate Court’s interpretation of section 29-4 now requires “a school district to treat nonpublic school children, who otherwise qualify to use the school district’s transportation, the same as it does the public school children attending the schools within the district.” Brief of Defendant-Appellant, page 12. Equal treatment is precisely what the statute already requires. Section 29-4 states that “[i]f any such children reside within 1 1/2 miles from the school attended, the school board shall afford such transportation to such children **on the same basis** as it provides transportation for its own pupils residing within that distance from the school attended.” 105 ILCS 5/29-4 (emphasis added). This language indicates that the legislature intended

for a school district to treat non-public school students who reside within the district and qualify for transportation the same as it treats its own students.

Moreover, the Appellate Court's interpretation of section 29-4 ensures that school bus transportation is aimed at protecting the health, safety, and well-being of all students, regardless of whether a student attends a public or private school. After all, this is the principal legislative intent in enacting section 29-4.

To give section 29-4 the construction that Defendant seeks would run directly counter to the intent of the statute. To hold as Defendant asserts would allow school districts to construct bus routes to avoid their duty to transport all students thus rendering section 29-4 meaningless.

Defendant's interpretation of *Bakalis* and section 29-4 shifts the focus away from the safety of school children and instead tries to wring out an interpretation that would completely thwart the legislative intention. See *Board of Education v. Bakalis*, 54 Ill. 2d 448 (1973). Given the Act's goal of keeping all school children safe, the legislature could not have intended such a short-circuiting of the Act.

#### **F. DEFENDANT'S CONVENIENCE AND COST IS NOT RELEVANT TO ITS STATUTORY DUTY.**

Defendant argues that its convenience and cost considerations are paramount over and above the health and safety of Bowman School's students. This is wrong. The statute does not mention any kind of cost-benefit analysis when directing school districts to transport nonpublic school students from their homes near regular routes to their schools or from their schools on regular routes to their homes.

When the legislature amended 105 ILCS 5/29-3 in 2018, it could have added "more economical and more efficient" language to the first paragraph of 105 ILCS 5/29-4

but it did not. The legislature left the “more economical and more efficient” language as a consideration **only** when a school district contemplates a separate route. It is not appropriate to read a limitation into a statute that the legislature did not provide. *Wood v. N. Wamac Sch. Dist. No. 186*, 386 Ill. App. 3d 874, 877 (5th Dist. 2008). Adding cost considerations where none exists results in the second paragraph being exalted over the first, an interpretation that must be rejected. *Performance Food Grp., Inc., v. Estate of Aryeh*, 2021 IL App (1st) 192418, ¶ 47.

Defendant relies heavily on *C.E. v. Bd. of Educ.*, 2012 IL App (5<sup>th</sup>) 110390, to argue that the paramount consideration should be the cost to Defendant. But Defendant ignores the different language that the legislature used in the first and second paragraph. “[W]here legislature uses certain language in one instance and wholly different language in another, settled rules of statutory construction require [courts] to assume different meanings or results were intended.” *Evans v. Cook Cty. State’s Atty.*, 2021 IL 125513, ¶ 39 (citing *Illinois State Treasurer v. Illinois Workers’ Compensation Comm’n.*, 2015 IL 117418, ¶ 28.)

Defendant is reimbursed for transportation services provided to Bowman students at the same rate and on the same basis as public school students. 23 Ill. Admin. Code § 120.30(a)(3). It makes sense that cost is not a consideration in transporting nonpublic students who either live on a regular route or whose school is on a regular route, because the transportation is reimbursed at the same rate received by Defendant for transporting its students. To read in a cost consideration where none exists would result in school districts readily frustrating the legislative intent to allow all students safe transportation to their schools.

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Supreme Court affirm the Judgment of the Appellate Court granting summary judgment in favor of Plaintiffs and remanding the matter to the circuit with directions to grant Plaintiffs requests for declaratory judgment and injunctive relief in accordance with the requirement of 105 ILCS 5/29-4 and consistent with findings of the Appellate Court judgment and for such other and further relief as justice and equity may require.

Respectfully submitted,

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No. 131757

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**IN THE ILLINOIS SUPREME COURT**

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E.W., by his mother and next friend,	)	Appeal from the
Chandres Johnson, and A.M.,	)	Illinois Appellate Court
by her father and next friend,	)	Fifth Judicial District
Antonio Brown,	)	Case No. 5-23-0763
	)	
Plaintiffs-Appellees,	)	Appeal from the Circuit Court
	)	of St. Clair County
v.	)	Circuit Court Case No.
	)	2022-CH-0075
BOARD OF EDUCATION OF EAST	)	
ST. LOUIS SCHOOL DISTRICT NO. 189,	)	Honorable Julie K. Katz
	)	Judge Presiding
Defendant-Appellant.	)	

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**CERTIFICATE OF COMPLIANCE**

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I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 22 pages or words.

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No. 131757

**IN THE ILLINOIS SUPREME COURT**

E.W., by his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown, Plaintiffs-Appellees, v. BOARD OF EDUCATION OF EAST ST. LOUIS SCHOOL DISTRICT NO. 189, Defendant-Appellant.	)	Appeal from the Illinois Appellate Court Fifth Judicial District Case No. 5-23-0763 Appeal from the Circuit Court of St. Clair County Circuit Court Case No. 2022-CH-0075 Honorable Julie K. Katz Judge Presiding
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## **CERTIFICATE OF SERVICE**

The undersigned certifies that pursuant to 735 ILCS 5/1-109 and Supreme Court Rule 341, that the Brief of Plaintiffs-Appellees, E.W. and A.M. was served upon Garrett P. Hoerner, attorney for Defendant-Appellee Board of Education of East St. Louis School by electronic mail at email address [gph@bhylaw.com](mailto:gph@bhylaw.com) and [stacy@bhylaw.com](mailto:stacy@bhylaw.com) at approximately 3:00 p.m. on December 3, 2025.

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