

No. 131757

IN THE ILLINOIS SUPREME COURT

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| E.W. , by his mother and next friend, Chandres |) | Appeal from the |
| Johnson , and A.M. , by her father and next friend, |) | Illinois Appellate Court – |
| Antonio Brown , |) | Fifth Judicial District |
| |) | Case No. 5-23-0763 |
| Plaintiffs-Appellees, |) | |
| |) | Appeal from the St. Clair |
| vs. |) | County Circuit Court |
| |) | Case No. 22-CH-75 |
| BOARD OF EDUCATION OF EAST ST. |) | |
| LOUIS SCHOOL DISTRICT NO. 189 , |) | Hon. Julie Katz, |
| |) | Judge Presiding |
| Defendant-Appellant. |) | |

REPLY BRIEF OF DEFENDANT-APPELLANT

Garrett P. Hoerner
 No. 6243119
 Becker, Hoerner & Ysursa, P.C.
 5111 West Main Street
 Belleville, Illinois 62226
 Phone: (618) 235-0020
 Fax: (618) 235-8558
 E-Mail: gph@bhyllaw.com

**ATTORNEYS FOR
 DEFENDANT-APPELLANT**

ORAL ARGUMENT REQUESTED

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ARGUMENT

I. Factually, the Brief of Plaintiffs-Appellees and the Brief of *Amici Curiae* are unsupported by the record on appeal in this case.

Initially, Defendant notes that the Statement of Facts in the Brief of Plaintiffs-Appellees cites a preliminary injunction entered in St. Clair County Circuit Court Case No. Case No. 15-CH-592, which the Circuit Court concluded in its August 31, 2023 Order is not properly considered in this case because the Circuit Court dissolved that injunction and dismissed that case for want of prosecution in its November 2, 2022 Order. (A 74; C 334, C 94). Indeed, a vacated order has no precedential effect. *Nationwide Bank & Office Management v. Industrial Commission*, 361 Ill. App. 3d 207, 836 N.E.2d 120 (1st Dist. 2005).

Furthermore, the Brief of Plaintiffs-Appellees seemingly suggests that the District did not provide a reason for terminating separate transportation routes for students of Sister Thea Bowman Catholic Grade School for the 2022-23 school year. However, that reason is expressly alleged in paragraph 21 of Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief: "Defendants have asserted that they are unable to provide bus service for students of Sr. Thea Bowman due to a shortage of bus drivers"; and it is expressly admitted in Defendant's Verified Answer. (C 8, C 118). Defendant's Director of Transportation confirmed as much at deposition. (C 299). Although Defendant terminated separate bus routes for students of Sister Thea Bowman Catholic Grade School (which are permitted but not required under Section 29-4 of the Illinois School Code (105 ILCS 5/29-4)), Defendant did confer with Plaintiffs in an attempt to identify regular existing bus route(s) on which Plaintiffs could be afforded transportation in accordance with Section 29-4 of the Illinois School Code (105 ILCS 5/29-4). Of course, as set forth in this case, Defendant and

Plaintiffs disagree as to the interpretation of the statutory requirements of such transportation.

Moreover, Defendant reiterates that the Brief of *Amici Curiae* is entirely based upon citations to various articles and statistics that “were not received into evidence and therefore are not part of the record on appeal in this case” (see *Zurich Insurance Company v. Raymark Industries, Inc.*, 118 Ill.2d 23, 60, 514 N.E.2d 150 (1987) (*Amicus Curiae* briefs relying on materials that were not received into evidence and therefore were not part of record on appeal need not be considered.)). Nor does the Brief of *Amici Curiae* and its generalized criticisms of Defendant’s performance assist this Supreme Court in the statutory interpretation of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4). Indeed, this Supreme Court’s interpretation of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) cannot turn on Defendant’s performance alone because such interpretation will apply equally to over 800 public school districts in Illinois regardless of varying size, location, performance, etc., with such data available on the Illinois State Board of Education website. See www.isbe.net/Pages/PublicSchoolDistrictLookup.aspx; see also *People v. Johnson*, 2021 IL 125738, ¶ 54, 182 N.E.3d 728 (“Illinois courts often take judicial notice of facts that are readily verifiable by referring to sources of indisputable accuracy” such as court records or public documents, including records on government website). Ultimately, however, this case turns on this Supreme Court’s legal interpretation of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) to be applied State-wide, irrespective of individualized facts related to each Illinois public school district.

II. Legally, the Brief of Plaintiffs-Appellees and the Brief of *Amici Curiae* misinterpret Section 29-4 of the Illinois School Code (735 ILCS 5/29-4) because it only requires a public school district to transport a nonpublic school student to and from a point on its regular routes that are nearest to their homes to and from points on its regular routes that are nearest to the schools they attend.

At its outset, the Brief of Plaintiffs-Appellees argues that “[t]he 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 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’” within Section 29-4 of the Illinois School Code (105 ILCS 5/29-4). (See Brief of Plaintiff-Appellee, pages 11-12.) The Brief of Plaintiffs-Appellees further contends that “[t]he 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.” (See Brief of Plaintiff-Appellee, page 23.) Glaringly omitted from Plaintiffs’ interpretation is the express limitation to “regular routes” that is referenced twice in Section 29-4 of the Illinois School Code (105 ILCS 5/29-4), the acknowledgement of which would lead Plaintiffs to a different interpretation of that statute: Plaintiffs need to be picked up from some point ***on the regular route*** near their homes and brought to some point ***on such regular route*** nearest their school. In other words, as the Circuit Court’s Judgment/Order properly found, Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) provides that “Defendant is required to transport nonpublic school students to and from stops on their regular routes that are nearest to their homes to and from points on their regular routes that are nearest to the schools they attend.”

Next, the Brief of Plaintiffs-Appellees and the Brief of *Amici Curiae* rely heavily on this Supreme Court’s decision in *Board of Education of School District No. 142 v.*

Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973). In that case, while addressing a different type of claim challenging its constitutionality, this Supreme Court consistently stated that Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) “requires a school board to provide the same transportation *along its regular school bus routes* for nonpublic school pupils as it provides for its public school pupils...” (Emphasis added.) *Board of Education of School District No. 142 v. Bakalis*, 54 Ill. 2d 448, 452, 299 N.E.2d 737 (1973). Specifically, in holding that Section 29-4 is constitutional based upon a secular purpose, this Supreme Court concluded that, “[f]rom our examination of the authorities we conclude 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; that the primary effect of the statute neither advances nor inhibits religion, that any benefit to the parochial school or church controlling it is incidental and that the statute does not foster an excessive government entanglement with religion.” *Board of Education of School District No. 142 v. Bakalis*, 54 Ill. 2d 448, 461, 299 N.E.2d 737 (1973). Of course, the transportation afforded to nonpublic school students under Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) still serves the legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools, albeit in a different manner than the transportation afforded to public school district students under Section 29-3 of the Illinois School Code (105 ILCS 5/29-3).

Nevertheless, the Brief of Plaintiffs-Appellees and the Brief of *Amici Curiae* suggest that the singular reference to the phrase “on the same basis” within Section 29-4 somehow requires Defendant to provide nonpublic school students with the same transportation afforded to public school district students under Section 29-3 of the Illinois

School Code (105 ILCS 5/29-3): “If any such children reside within 1 ½ 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). Actually, however, such phrase is restricted by its own terms to transportation provided to students residing within 1 ½ miles from the school attended, and simply requires that, if a public school district is providing transportation to its students residing within 1 ½ miles from the school attended under Section 29-3 of the Illinois School Code (105 ILCS 5/29-3), it must likewise afford transportation to nonpublic school students residing within 1 ½ miles from the school attended under Section 29-4 of the Illinois School Code (105 ILCS 5/29-4), “on the same basis” meaning “for the same reason”; indeed, The American Heritage Dictionary of the English Language defines “reason” to include “basis” as follows: “reason ***. 1. a. The basis or motive for an action, decision, or conviction ***.” The American Heritage Dictionary of the English Language, <https://ahdictionary.com/word/search.html?q=reason> (last visited Jan. 7, 2026). Contrary to the position of Plaintiffs and *Amici Curiae*, the statutory phrase “on the same basis” certainly does not mean that the statutory transportation requirement for nonpublic school students is the same as the statutory transportation requirements for public school district students, as the language of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) applicable to nonpublic school students differs from the language of Section 29-3 of the Illinois School Code (105 ILCS 5/29-3) applicable to public school district students, the latter of which provides that “[s]chool 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 for attendance maintained

within the district...” 105 ILCS 5/29-3. As referenced in the Brief of Plaintiffs-Appellees, “where 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.) Simply put, the statutory transportation requirement for nonpublic school students under Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) is not the same as the statutory transportation requirements for public school district students under Section 29-3 of the Illinois School Code (105 ILCS 5/29-3).

Next, the Brief of Plaintiffs-Appellees argues that “[t]he statute mandates that Defendant’s regular route must extend from pick up near Plaintiffs’ school, Bowman School, OR at the very least, to a point near or most easily accessible to Bowman School.” (See Brief of Plaintiffs-Appellees, page 17). Again, Plaintiffs’ position disregards “regular routes” by seeking to require Defendant to modify its existing routes (or “go out of their way”) contrary to the Circuit Court’s prior interpretation and the Appellate Court’s precedent. Again, Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) clearly defines “extend” to simply mean “make available; provide”, a definition that the Appellate Court expressly recognizes as applicable to Section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and that is consistent with this Supreme Court’s decision in *Board of Education of School District No. 142 v. Bakalis* as well as the Appellate Court’s own decision in *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*.

Finally, the Brief of Plaintiffs-Appellees contends that “Defendant’s convenience and cost is not relevant to its statutory duty.” (Brief of Plaintiffs-Appellees, page 24).

However, the Appellate Court has previously addressed cost and convenience in relation to Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) in holding that, based upon clear legislative intent, Section 29-4 “simply allows nonpublic school students to utilize the public school district's existing bus transportation and nothing more”:

“This legislative intent is evident in the statute's requirement that nonpublic students who wish to use school district transportation reside on or along the highway constituting the regular route of the school bus. The school buses are not required to “go out of their way” to transport nonpublic school students. This legislative intent is also evident in the statute's permission for school districts to establish a separate route for nonpublic school students, but only if the operation of such routes is safer, more economical, and more efficient for the school district. Finally, this legislative intent is evident in the statute's provision that the school district may transport nonpublic school students who live within 1 ½ miles of their school only “on the same basis as it provides transportation to its own pupils residing within that distance from the school attended.” To require the public school district to transport nonpublic school students even on days when the public schools are not in session is not consistent with this legislative intent.

Turning to extrinsic evidence of the legislative intent, we note that the Illinois State Board of Education has promulgated its rules consistent with our perceived legislative intent, expressly providing for reimbursement eligibility for “[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.” [Citation]. Legislative history of discussion on the floor of the legislature indicates that the legislature intended to allow school districts to run separate bus routes for nonpublic school students only if it will be less costly for the school district.

It seems to us that the legislature took care to ensure that nonpublic school students received no more in the way of transportation than do public school students and that the transportation of nonpublic school students not increase the school district's cost or interfere with its convenience or efficiency. Section 29–4 simply allows nonpublic school students to utilize the public school district's existing bus transportation and nothing more. The public school district need not increase its transportation services to accommodate a different, or potentially longer, nonpublic school calendar. Such a construction of section 29–4 would be inconsistent with what we perceive to be the intent of the legislature.

We will not read into the statute a requirement which the legislature did not expressly include, especially one which places such a heavy additional burden on our already burdened public school districts. ***.” *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, 970 N.E.2d 1287, 1290 (5th Dist. 2012).

The law remains that the scope of transportation under Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) is limited to “points” on the “regular routes” of buses servicing the public school district students; Plaintiffs’ Complaint for Declaratory Judgment and Injunctive Relief acknowledges as much by expressly seeking a declaratory judgment and injunction requiring Defendant to provide transportation for Plaintiffs to Sister Thea Bowman Catholic Grade School by “using either a regular existing route *nearest* to the Plaintiffs’ homes *and* to Sister Thea Bowman, or by a separate regular bus route if that is found to be safer, more economical and more efficient, in accordance with the provisions of 105 ILCS 5/29-4” (emphasis added). Conversely, Plaintiffs’ belated position belies the plain language of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) in that it would necessarily require Defendant to modify an existing route (or “go out of their way”) contrary to the Appellate Court’s precedent, and the Circuit Court’s interpretation thereof. Again, the law remains that Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) “simply allows nonpublic school students to utilize the public school district’s existing bus transportation and nothing more.” *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, 970 N.E.2d at 1290-91. In other words, “[t]he school buses are not required to ‘go out of their way’ to transport nonpublic school students.” *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, 970 N.E.2d at 1290. Simply put, Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) only requires a public school district to transport a nonpublic school student

to and from points on the regular routes that are nearest to their homes to and from points on the regular routes that are nearest to the schools they attend.

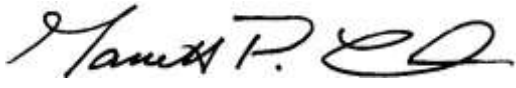
Essentially, the statutory interpretation posited by Plaintiffs and *Amici Curiae* seeks to rewrite Section 29-4 of the Illinois School Code (105 ILCS 5/29-4). However, it is well settled that a court must interpret and apply statutes in the manner in which they are written and cannot rewrite them to make them consistent with its own idea of orderliness and public policy. *Schultz v. Illinois Farmers Ins. Co.*, 237 Ill. 2d 391, 406, 930 N.E.2d 943, 952 (2010). “Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise.” (Internal quotation marks omitted.) *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 557, 243 Ill.Dec. 224, 723 N.E.2d 256 (1999). Such consequences can only be remedied by a change in the law. *Id.* Unless and until the Illinois General Assembly amends Section 29-4 of the Illinois School Code (105 ILCS 5/29-4), its plain language only requires a public school district to provide free bus transportation to non-public school students on its existing routes.

CONCLUSION

For the foregoing reasons and those contained in its original Brief, Defendant-Appellant, Board of Education of East St. Louis School District No. 189, respectfully requests that this Supreme Court reverse the Judgment/Order of the Appellate Court and affirm the Judgment/Order of the Circuit Court, thereby granting summary judgment on Plaintiffs’ Complaint for Declaratory Judgment and Injunctive Relief in Defendant’s favor and against Plaintiffs, pursuant to Section 2-1005 of the Illinois Code of Civil Procedure

(735 ILCS 5/2-1005), and order such other relief as this Supreme Court deems just and proper.

BECKER, HOERNER & YSURSA, P.C.

By: 

Garrett P. Hoerner
No. 6243119

ATTORNEYS FOR DEFENDANT-APPELLANT

5111 West Main Street
Belleville, Illinois 62226
Phone: (618) 235-0020
Fax: (618) 235-8558
E-Mail: gph@bhyllaw.com

CERTIFICATE OF COMPLIANCE

Pursuant to Illinois Supreme Court Rule 341(c), the undersigned certifies that this reply brief conforms 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(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10 pages.

Dated: January 7, 2026

By:


Garrett P. Hoerner

No. 131757


IN THE ILLINOIS SUPREME COURT

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| Case No. 22-CH-75 |) | BOARD OF EDUCATION OF EAST ST. LOUIS SCHOOL DISTRICT NO. 189, |
| Hon. Julie Katz, |) | Defendant-Appellant. |
| Judge Presiding |) | |

NOTICE OF FILING

PLEASE TAKE NOTICE that on January 7, 2026, the undersigned electronically filed with the Clerk of the Illinois Supreme Court, Reply Brief of Defendant-Appellant, with Notice of Filing, a copy of which is hereby served upon you.

BECKER, HOERNER & YSURSA, P.C.

By:  Garrett P. Hoerner
No. 6243119

ATTORNEYS FOR DEFENDANT-APPELLANT


5111 West Main Street
Belleville, Illinois 62226
Phone: (618) 235-0020
Fax: (618) 235-8558
E-Mail: gph@bhyllaw.com

PROOF OF SERVICE

Pursuant to Illinois Supreme Court Rules 12(b), 315(h) and 341(e), the undersigned certifies that, on January 7, 2026, the foregoing Brief of Defendant-Appellant, with Notice of Filing, was served upon the following attorneys of record via e-mail:

| | |
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| Susan M. Simone | Ellen A. Dauber |
| Paige N. Hume | Join Hands ESL |
| Land of Lincoln Legal Aid | Post Office Box 1429 |
| Dorothy O. Cook Community Law Center | East St. Louis, IL 62202 |
| 8787 State Street, Suite 201 | ellenamnie@sbcglobal.net |
| East St. Louis, Illinois 62203 | |
| ssimone@lincolnlegal.org | |
| phume@lincolnlegal.org | |
| etlingCRO@lincolnlegal.org | |
| | Sheila Burton |
| | Every Child Education Equity Project |
| | Post Office Box 133 |
| | East St. Louis, IL 62202 |
| | sburton@everychilddedequity.org |

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned further certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By:  Garrett P. Hoerner