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NATURE OF THE CASE

This is an action for declaratory judgment and injunctive relief asserted by Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown, against Defendant, East St. Louis School District No. 189, specifically seeking to require 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”. Defendant appeals from the Judgment/Order of the Illinois Appellate Court – Fifth Judicial District (“Appellate Court”) entered on March 20, 2025, specifically reversing the Judgment/Order of the St. Clair County Circuit Court (“Circuit Court”) entered on August 31, 2023 granting Defendant’s Motion for Summary Judgment and denying Plaintiffs’ Cross-Motion for Summary Judgment, pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)). Questions are raised on the pleadings to the extent that summary judgment under Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)) is based upon, among other things, the pleadings on file, including the complaint which frames the parameters of summary judgment proceedings.

ISSUE PRESENTED FOR REVIEW

Whether the Judgment/Order of the Appellate Court erroneously reversed the Judgment/Order of the Circuit Court granting summary judgment on Plaintiffs’ Complaint for Declaratory and Injunctive Relief in favor of Defendant and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)).

JURISDICTION

Defendant appeals from the Judgment/Order of the Appellate Court entered on March 20, 2025, specifically reversing the Judgment/Order of the Circuit Court entered on August 31, 2023 granting Defendant's Motion for Summary Judgment and denying Plaintiffs' Cross-Motion for Summary Judgment filed by Plaintiffs, pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)). Initially, the Appellate Court had jurisdiction of Plaintiffs' appeal of the Circuit Court's August 31, 2023 Judgment/Order pursuant to Illinois Supreme Court Rule 301, which affords the Appellate Court jurisdiction over this appeal, as "[e]very final judgment of a circuit court in a civil case is appealable as of right" (Ill. S. Ct. R. 301), based upon Plaintiffs' Notice of Appeal timely filed on September 28, 2023 under Illinois Supreme Court Rule 303 (Ill. S. Ct. R. 303). Thereafter, following the Appellate Court's March 20, 2025 Judgment/Order, this Supreme Court acquired jurisdiction over this case upon Defendant's timely filing of its Petition for Leave to Appeal of Defendant-Petitioner, Board of Education of East St. Louis School District No. 189, Pursuant to Illinois Supreme Court Rule 315, on April 24, 2025, which was allowed by this Supreme Court on September 24, 2025.

STATUTES INVOLVED

Section 29-4 of the Illinois School Code (105 ILCS 5/29-4).

Section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701).

Section 2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005).

STATEMENT OF FACTS

On October 21, 2022, Plaintiffs filed their Complaint for Declaratory Judgment and Injunctive Relief (Plaintiffs' Complaint), seeking a declaratory judgment and injunctive relief against Defendant specifically 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" (A 82 – A 106; C 5 – C 34), along with a Motion for Temporary Restraining Order and Preliminary Injunction seeking the same relief on an interim basis pending resolution of this case (C 38 – C 42). On November 2, 2022, following hearing conducted on October 31, 2022, the Circuit Court entered an Order pertinently providing that "Plaintiffs' Motion for Temporary Restraining Order is partially GRANTED to the extent that, within seven (7) days of the date of this Order, Plaintiffs and Defendant are ordered to confer and 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), but partially DENIED in all other respects." (C 93 – C 99). On November 7, 2022, Plaintiffs and Defendant so conferred concerning Defendant's regular bus routes in existence at that time. (C 314). On January 9, 2023, former Plaintiff, Sr. Thea Bowman Catholic School, voluntarily dismissed its claims in this matter, leaving only the claims of Plaintiffs as pending. (C 100 – C 101, C 103). On March 28, 2023, Defendant filed its Verified Answer to Plaintiffs' Complaint. (A 107 – A 115; C 113 – C 121).

On June 28, 2023, Defendant filed its Motion for Summary Judgment, with arguments mirroring the statutory interpretation in the Circuit Court’s November 2, 2022 Order. (A 116 – A 123; C 131 – C 138). Meanwhile, on July 24, 2023, Plaintiffs filed their Response in Opposition to Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross-Motion for Summary Judgment, now seeking “bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school.” (A 124 – A 171; C 229 – C 276). On August 11, 2023, Defendant filed its Response in Opposition to Cross-Motion for Summary Judgment. (A 256 – A 293; C 277 – C 314). On August 21, 2023, Plaintiffs filed their Reply to Response in Opposition to Cross-Motion for Summary Judgment. (A 294 – A 307; C 315 – C 328). On August 22, 2023, Defendant filed its Surreply to Plaintiffs’ Reply to Response in Opposition to Cross-Motion for Summary Judgment. (A 308 – A 312; C 329 – C 333). Following hearing on August 24, 2023 (A 314 – A 328; R 2 – R 26), the Circuit Court entered an Order on August 31, 2023, specifically granting summary judgment on Plaintiffs’ Complaint in favor of Defendant and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)) (A 74 – A 81; C 334 – A 341). On September 28, 2023, Plaintiffs timely filed a Notice of Appeal. (C 343 – C 346).

On January 31, 2024, Plaintiffs filed their Brief in the Appellate Court. (A 14 – A 35). On April 3, 2024, Defendant filed its Brief in the Appellate Court. (A 36 – A 56). On April 17, 2024, Plaintiffs filed their Reply Brief in the Appellate Court. (A 57 – A 73). On March 20, 2025, the Appellate Court issued its Judgment/Order, specifically reversing

the Circuit Court's Judgment/Order granting Defendant's Motion for Summary Judgment and denying Plaintiffs' Cross-Motion for Summary Judgment. (A 1 – A 13).

On April 24, 2025, Defendant timely filed its Petition for Leave to Appeal of Defendant-Petitioner, Board of Education of East St. Louis School District No. 189, Pursuant to Illinois Supreme Court Rule 315, which was allowed by this Supreme Court on September 24, 2025.

STANDARD OF REVIEW

In the present case, this Supreme Court reviews “the propriety of a circuit court’s grant of summary judgment” and “the appellate court’s reversal of the circuit court’s grant of summary judgment”. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill.2d 455, 460-61, 939 N.E.2d 487 (2010). Section 2-1005(c) of the Illinois Code of Civil Procedure provides that summary judgment “shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c). “The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit.” *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 43, 809 N.E.2d 1248 (2004). “[I]nterpreting or construing a statute is a matter of law for the court and appropriate for summary judgment; however, such a drastic measure should be granted only if the movant's right to judgment is clear and free from doubt.” *Matsuda v. Cook County Employees' & Officers' Annuity & Benefit Fund*, 178 Ill.2d 360, 364, 687 N.E.2d 866 (1997). “When the parties file cross-motions for summary judgment, they agree that only questions of law are involved and invite the court to decide the issues based on the

record.” *State Farm Mutual Automobile Insurance Co. v. Elmore*, 2020 IL 125441, ¶ 19, 181 N.E.3d 865 (citing *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 20, 76 N.E.3d 1271). Statutory interpretation issues and summary judgment rulings are both subject to *de novo* review. *Andrews v. Metropolitan Water Reclamation District of Greater Chicago*, 2019 IL 124283, ¶ 21, 160 N.E.3d 895.

ARGUMENT

The Judgment/Order of the Appellate Court erroneously reversed the Judgment/Order of the Circuit Court granting summary judgment on Plaintiffs’ Complaint for Declaratory and Injunctive Relief in favor of Defendant and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)) because Section 29-4 of the Illinois School Code (735 ILCS 5/29-4) 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.

Plaintiffs’ Complaint seeks declaratory judgment and injunctive relief 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”. “The essential elements of a declaratory judgment action are: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.” *Beahringer v. Page*, 204 Ill.2d 363, 372, 789 N.E.2d 1216 (2003). Meanwhile, “[t]o be entitled to a permanent injunction, a party ‘must demonstrate (1) a clear and ascertainable right in need of protection, (2) that he or she will suffer irreparable harm if the injunction is not granted, and (3) that no adequate remedy at law exists.’” *Vaughn v. City of Carbondale*, 2016 IL 119181 ¶ 44, 50 N.E.3d 643, citing *Swigert v. Gillespie*, 2012 IL App (4th) 120043, ¶ 27, 976 N.E.2d 1176. It is

an “established principle that a proper injunctive order must couch its directions or prohibitions, ‘in terms so definite, clear and precise as to demand obedience, or to be capable of enforcement or execution’.” *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 839-840, 270 N.E.2d 200 (1st Dist. 1971). In other words, an injunction must “concisely and clearly advise defendant of the ruling of the court and of the precise conduct enjoined.” *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 840, 270 N.E.2d 200 (1st Dist. 1971).

In this case, the Circuit Court’s Judgment/Order properly found that 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.” Furthermore, the Circuit Court properly concluded that Plaintiffs’ interpretation of Section 29-4 is clearly erroneous in that it would necessarily require Defendant to modify an existing route (or “go out of their way”) contrary to the Circuit Court’s prior interpretation and the Appellate Court’s precedent. For the following reasons, the Circuit Court’s interpretation of Section 29-4 of the Illinois School Code is correct under Illinois law.

In statutory construction cases, the court’s primary and overriding concern is to ascertain and give effect to the intent of the legislature. *People v. Whitney*, 188 Ill. 2d 91, 97, 720 N.E.2d 225 (1999). Legislative intent is best determined from the language of the statute itself, which if unambiguous should be enforced as written. *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill. 2d 590, 595, 837 N.E.2d 876 (2005); *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*,

216 Ill. 2d 455, 473, 837 N.E.2d 1 (2005). In giving effect to the statutory intent, the court should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought. *People v. Donoho*, 204 Ill. 2d 159, 171-72, 788 N.E.2d 707 (2003). It is also true that statutes must be construed to avoid absurd results. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 183 N.E.3d 810. When a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should be rejected. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 183 N.E.3d 810.

Section 29-4 of the Illinois School Code defines the limited scope of transportation that a public school district must afford to pupils attending a charter school or nonpublic school as follows:

“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 ½ 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 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.

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.” (Emphasis added.) 105 ILCS 5/29-4.

The plain language of Section 29-4 of the Illinois School Code only requires a public school district to provide free bus transportation to non-public school students on its existing routes.¹ 105 ILCS 5/29-4. Indeed, that Section expressly limits such requirement to the public school district’s “regular routes” of transportation to be provided “on the same basis as it provides transportation to its own pupils.”² 105 ILCS 5/29-4. More specifically, it

¹ Notably, with Plaintiffs’ children residing over 1.5 miles from Sr. Thea Bowman School, the transportation contemplated for Plaintiffs’ students is distinct from Defendant’s students inasmuch as the language of Section 29-4 of the Illinois School Code applicable to non-public school students differs from the language of Section 29-3 of the Illinois School Code applicable to Defendant’s 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.

² Markedly, while addressing a different type of claim challenging its constitutionality, this Supreme Court has consistently stated that Section 29-4 of the Illinois School Code “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).

simply requires that a public school district allow nonpublic school students residing at least 1 ½ miles from the school attended to utilize the public school district's existing bus transportation by expressly providing the scope 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". 105 ILCS 5/29-4. Furthermore, it permits, but does not require, a public school district to operate separate bus routes only if such routes are "more economical and more efficient." 105 ILCS 5/29-4. This limitation is confirmed by how Section 29-4 similarly treats non-public school students who live within 1 ½ miles from the school attended: "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. Indeed, the Appellate Court has previously explained 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).

Simply put, the scope of such transportation is limited to “points” on the “regular routes” of buses servicing the public school district students; Plaintiffs’ Complaint, which is verified by both Plaintiffs, 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 a point 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.

Nevertheless, despite the foregoing analysis applying the reasoning of its prior Opinion in *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, the Appellate Court shifted its interpretation of Section 29-4 of the Illinois School Code in this case to now require 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 with its district. Initially, while expressly acknowledging that *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189* determined that Section 29-4 did not require “school buses ***to ‘go out of their way’ to transport nonpublic school students”, the Appellate Court’s Judgment/Order then attempts

to distinguish *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189* from the instant case on the basis that such case only involved transportation days and not transportation routes. However, that is a distinction without a difference in that *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189* further stated that “Section 29–4 simply allows nonpublic school students to utilize the public school district’s *existing* bus transportation *and nothing more*” (emphasis added), consistent with this Supreme Court’s decision in *Board of Education of School District No. 142 v. Bakalis*, 54 Ill. 2d 448, 452, 299 N.E.2d 737 (1973), which stated that Section 29-4 of the Illinois School Code “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.). Clearly, because it requires Defendant to provide transportation *beyond* its regular school bus routes, the Appellate Court’s Judgment/Order in this case is contrary to both 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*.

Furthermore, the Appellate Court’s Judgment/Order attempts to interpret Section 29-4 of the Illinois School Code by generally defining the term “extend” therein as follows:

“Defendant’s interpretation of the statute ignores the legislature’s inclusion of the word “extend” in the mandate requiring that “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.” (Emphasis added.) *Id.* “Extend” has multiple definitions, at least two of which are potentially applicable to section 29-4. For example, The American Heritage Dictionary of the English Language defines “extend” as follows: “extend ***. 1. a. To cause (something) to be longer, wider, or cover more area: *extended the subway line into the next town.*”

*** 2. *** b. To make available; provide: *extend credit to qualified purchasers*.” (Emphases in original.) The American Heritage Dictionary of the English Language, [Citation].

We find that, within the context of section 29-4, “extend” means “[t]o cause (something) to be longer, wider, or cover more area.” Not only is this the “plain, ordinary and popularly understood meaning” (*Powell*, 217 Ill. 2d at 135) of the word “extend,” but this conclusion is consistent with the fact “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.” *Board of Education, School District No. 142 v. Bakalis*, 54 Ill. 2d 448, 461 (1973).

Defendant’s interpretation of the statute, which would seemingly rely upon defining “extend” to mean “[t]o present; offer,” would allow defendant to designate pick-up and drop-off points without regard for the health and safety of nonpublic school children. Such a reading of the statute is at odds with the legislative purpose behind enacting the statute.” (A 11 – A 12).

Remarkably, this analysis by the Appellate Court ignores the second of the two definitions that it identified as “potentially applicable to section 29-4”, specifically “[t]o make available; provide”, and then attributes a third definition (“[t]o present; offer”) to Defendant’s interpretation. Of course, Defendant’s interpretation of Section 29-4 clearly defines “extend” to mean “make available; provide”, a definition that the Appellate Court expressly recognizes as applicable to Section 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*.

Moreover, the Appellate Court’s Judgment/Order notes a common-law duty in an attempt to bolster its statutory interpretation:

“We note that, in addition to defendant’s statutory duty to provide transportation for nonpublic school students, Illinois common law imposes ‘a duty upon school districts, their officials and employees in selecting bus routes and pick-up points as they discharge their statutory obligation to

transport pupils.’ *Posteher v. Pana Community Unit School District No. 8*, 96 Ill. App. 3d 709, 712-13 (1981). ‘It is obvious that a school district or its officers cannot select bus routes and pick-up points with impunity, they cannot act arbitrarily or capriciously, they cannot act with disregard for the safety, comfort and well-being of their pupils. More is required by law.’ *Id.* at 712.” (A 12).

However, the Appellate Court’s decision in *Posteher v. Pana Community Unit School District No. 8* explained that the imposition of such a common-law duty was subject to significant discretion and had absolutely no relation to the statutory duty of Section 29-4:

“Ill.Rev.Stat.1979, ch. 122, pars. 29-3 and 29-4, impose upon school districts a duty to transport pupils residing one and one-half miles or more from the attendance center to which they are assigned, unless public transportation is available. Transportation is also required to be furnished to pupils residing less than one and one-half miles from their attendance center if walking constitutes a serious hazard to the safety of the pupil. The statutes say nothing with regard to the selection of bus routes or pick-up points or the standards which are to be applied in the bus route selection process. The duty imposed by the statute, then, does not extend beyond that which it prescribes, and it is obvious and conceded that the respondent District has complied with the duty imposed by the statutes.

* * *

We believe the extent of the duty imposed upon a school district in the selection of its school bus routes and pick-up points is this: A school district has full discretion in establishing its school bus routes and pick-up points; it must comply with the terms of the applicable statutes and the rules, regulations and guidelines adopted by the State Board of Education; it must not act capriciously or arbitrarily, and it may not select routes or pick-up points that needlessly expose the pupils to any serious hazards to safety exceeding those that normally attend school bus operations. As a corollary, the decision of a school district in selecting bus routes and pickup points will not be set aside unless there has been an abuse of its discretion.” *Posteher v. Pana Community Unit School District No. 8*, 96 Ill. App. 3d 709, 712-13 (5th Dist. 1981).

Clearly, the Appellate Court’s reliance on *Posteher v. Pana Community Unit School District No. 8* in interpreting Section 29-4 in this case is misplaced.

Finally, the Appellate Court’s Judgment/Order attempts to support its interpretation of Section 29-4 by pointing to another sentence therein: “[i]f any such children reside

within 1½ 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. However, contrary to the Appellate Court’s interpretation, this language does not evidence a legislative 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 its district”, meaning “that the school district is obligated to pick up Bowman students in the same fashion that it does its own students” and “[s]imilarly, the school district is required to deliver those children to their school, just as it does its own students.” Rather, such sentence merely means that, if a school district provides bus transportation to its own students who reside within 1½ miles of the school attended, then that school district must transport a nonpublic school student to and from a point on those regular routes that are nearest to their homes to and from points on its regular routes that are nearest to the schools they attend.

In the obvious absence in the record of any identified existing regular routes that Plaintiffs seek to utilize, Plaintiffs simply cannot establish a legal, tangible interest as required for a declaratory judgment claim, or a clear and ascertainable right in need of protection as required for a permanent injunction; nor could the Circuit Court fashion a suitable injunctive order containing directions ‘in terms so definite, clear and precise as to demand obedience, or to be capable of enforcement or execution’”, “concisely and clearly advise defendant of the ruling of the court and of the precise conduct enjoined.” *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 839-840, 270 N.E.2d 200 (1st Dist. 1971). Therefore, Defendant remains entitled to summary

judgment on Plaintiffs' Complaint as a matter of law pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)).

CONCLUSION

For the foregoing reasons, 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

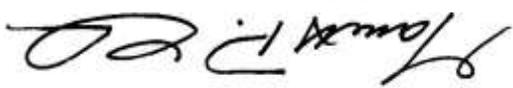
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CERTIFICATE OF COMPLIANCE

Pursuant to Illinois Supreme Court Rule 341(c), the undersigned certifies that this 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(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 17 pages.

Dated: October 29, 2025

By:


Garrett P. Hoerner

No. 131757

IN THE ILLINOIS SUPREME COURT

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.)	

APPENDIX

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NOTICE
Decision filed 03/20/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2025 IL App (5th) 230763-U

NO. 5-23-0763

IN THE

APPELLATE COURT OF ILLINOIS

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DISTRICT

E.W., by His Mother and Next Friend,	)	Appeal from the
Chandres Johnson; and	)	Circuit Court of
A.M., by Her Father and Next Friend,	)	St. Clair County.
Antonio Brown,)	
)	
Plaintiffs-Appellants,)	
)	
v.	)	No. 22-CH-75
)	
THE BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT #189,	)	Honorable
	)	Julie K. Katz,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Moore and Barberis concurred in the judgment.

ORDER

¶ 1 *Held.* The circuit court erred by granting defendant’s motion for summary judgment, where section 29-4 of the School Code (105 ILCS 5/29-4 (West 2000)) 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 its district.

¶ 2 Plaintiffs, E.W. and A.M., by their parents and next friends, Chandres Johnson and Antonio Brown, respectively, appeal the St. Clair County circuit court’s order granting summary judgment in favor of defendant, the Board of Education of East St. Louis School District #189, and denying their cross-motion for summary judgment. Plaintiffs appeal, arguing that the court erred by (1) granting defendant’s motion for summary judgment and denying plaintiffs’ cross-motion for

summary judgment; (2) declining to find that defendant acted unlawfully and continued to act unlawfully for failing to provide plaintiffs with transportation from near their homes to their school and back; and (3) failing to enjoin defendant from not providing plaintiffs with transportation from near their home to their school and back. For the reasons that follow, we reverse the judgment of the circuit court and remand this matter with directions.

¶ 3

I. BACKGROUND

¶ 4 We limit our recitation to those facts relevant to our disposition of this appeal. We will recite additional facts in the analysis section as needed to address the specific arguments of the parties.

¶ 5 This case stems from a periodic dispute between the Board of Education of East St. Louis School District #189 (defendant) and various students at the Sister Thea Bowman Catholic Elementary School (Bowman School). The dispute is based upon different interpretations of section 29-4 of the School Code (Code), which governs defendant's obligations for transporting students attending charter schools or nonpublic schools. 105 ILCS 5/29-4 (West 2000).

¶ 6 In 2015, in St. Clair County case No. 2015-CH-592,¹ parents of several students at Bowman School sued the Board of Education of East St. Louis School District #189. The school district, who previously provided transportation to Bowman students, stopped providing transportation to those students in August 2015, and the lawsuit followed. The St. Clair County circuit court issued a temporary restraining order on August 31, 2015, ordering the school district to reinstate bus services to Bowman students. On October 28, 2015, the court issued a preliminary injunction requiring the injunctive relief provided by the restraining order to remain in place until

¹Although St. Clair County case No. 2015-CH-592 is technically unrelated to the instant case, the defendant therein is the same defendant in this matter, and both cases arose from similar circumstances. Limited discussion of the 2015 lawsuit is relevant to understanding the genesis of this matter.

further order of the court. No further order was entered and the school district provided bus transportation to Bowman students until August 2022.

¶ 7 In August 2022, the school district once again told Bowman School it would no longer provide its students with bus transportation to their private school. Plaintiffs, E.W. and A.M., by their parents and next friends, Chandres Johnson and Antonio Brown, respectively, filed a complaint for declaratory judgment and injunctive relief on October 21, 2022.² Plaintiffs sought a declaratory judgment finding that defendant's refusal to provide free transportation to private school students was a violation of section 29-4 of the Code. *Id.* Plaintiff also sought a declaratory judgment finding that the preliminary injunction from the previous lawsuit, dated October 28, 2015, was still in effect and that plaintiffs were entitled to have the previous injunction enforced. Finally, plaintiff sought a temporary restraining order, and preliminary and permanent injunctions, enjoining defendant "from failing to provide appropriate bus transportation for Plaintiffs, using either a regular existing route nearest to 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 provision of 105 ILCS 5/29-4."

¶ 8 On October 21, 2022, plaintiffs also filed a motion for a temporary restraining order and a preliminary injunction asking to enjoin the defendant from failing to provide transportation to students and to restore bus transportation as it existed for the 2021-2022 school year.³ Defendant filed a motion to dismiss the complaint and a response in opposition to plaintiffs' request for a temporary restraining order on October 25, 2022. On October 31, 2022, the circuit court held a

²Sister Thea Bowman Catholic Elementary School, a nonprofit parochial school, was also a plaintiff in the current litigation. Bowman voluntarily dismissed its claim against the defendant on January 9, 2023.

³Prior to stopping bus service for the Bowman students, defendant transported the Bowman students by utilizing a separate bus route for the Bowman students. Although this was not required of defendant, it was permissible under the statute, provided the operation of the separate route is "safer, more economical and more efficient than if such school district were precluded from operating separate regular routes." 105 ILCS 5/29-4 (West 2000).

hearing on plaintiffs' motion to consolidate, motion for temporary restraining order and preliminary injunction, defendants' motion to dissolve injunction and dismiss for want of prosecution, and defendants' combined motion to dismiss. On November 2, 2022, the court issued a written order (1) denying plaintiffs' request to consolidate the 2015 matter with the current case, finding that "consolidation solely in order to allow new Plaintiffs to attempt to enforce a seven (7) year old court order to which they were not a party prejudices Defendants' substantial right to defend Plaintiffs' claims"; and (2) granting defendant's motion to dissolve the 2015 injunction and dismissing the claim for want of prosecution, determining that the 2015 "case need not be left open in order for this Court to grant relief to Plaintiffs herein."

¶ 9 Regarding defendant's combined motion to dismiss, the circuit court granted the portion that sought to dismiss Arthur Culver, superintendent of the school district, as a party to the case. The court granted in part and denied in part plaintiffs' motion for temporary restraining order and preliminary injunction. The motion was partially granted in that the court ordered the parties to confer and identify "regular existing bus route(s) that can pick up Sr. Thea Bowman School students nearest their homes and drop them off near Sr. Thea Bowman School in a safe manner, affording them transportation in accordance with Section 29-4" of the Code. The motion was denied in all other respects. On March 28, 2023, defendant filed a verified answer in response to plaintiffs' complaint.

¶ 10 Defendant filed a motion for summary judgment on June 28, 2023. On July 24, 2023, plaintiffs filed a cross-motion for summary judgment and a response to defendant's motion for summary judgment, as well as a memorandum in support of their pleadings. Thereafter, both parties filed various replies to the other's motions and memoranda. The court heard the parties' motions on August 24, 2023. At the end of the hearing, the circuit court asked both sides to submit

proposed orders by August 29, 2023. On August 31, 2023, the court entered an order in favor of defendant. This timely appeal followed.

¶ 11

II. ANALYSIS

¶ 12 On appeal, plaintiffs argue that the circuit court erred by granting defendant's motion for summary judgment and denying their cross-motion for summary judgment. Specifically, plaintiffs argue that the court's interpretation of the statute is in error, because it leads to the conclusion that section 29-4 of the Code does not require defendants to transport private school students from a bus stop near their homes to their school. For these reasons, plaintiffs contend that their cross-motion for summary judgment should have been granted. Defendant maintains that the court was correct in its interpretation of the statute and asks that this court affirm the circuit court. For the reasons that follow, we agree with plaintiffs and reverse and remand.

¶ 13 "Rulings on motions for summary judgment are reviewed *de novo*." *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34. Motions for summary judgment are governed by section 2-1005 of the Code of Civil Procedure, which provides that summary judgment should be granted only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2020).

¶ 14 "When parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. "[R]eview of an order denying a motion for summary judgment is proper where the order also granted a cross-motion for summary judgment on the same claim or claims ***." *Wolfram Partnership, Ltd. v. La Salle National Bank*, 328 Ill. App. 3d 207, 216 n.2 (2001).

¶ 15 First, we address defendant’s claim that this court should affirm the circuit court’s decision based upon defendant’s argument that plaintiffs argued, in both the circuit court and this court, an interpretation of the statute that is different from the statutory interpretation that plaintiffs pled in their verified complaint. In support of its argument, defendant relies on *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill. App. 3d 675 (2005), for the proposition that a court may not grant summary judgment on an issue not properly pled in the complaint. *Id.* at 679-80.

¶ 16 In their complaint, plaintiffs requested that the circuit court require defendant “provide appropriate bus transportation for plaintiffs, using either a regular existing route nearest to 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.” Defendant observes that plaintiff later argued that “[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student’s home located on or near a regular route to their schools; or (ii) from the student’s school located on a regular route to their homes,” and that “[t]he statute does not require that nonpublic school students must live on or near Defendant’s regular routes AND that the school be located on the same regular route.” Defendant contends that plaintiffs’ shift in their interpretation of the statute bars them from seeking relief in this court. We disagree.

¶ 17 *Gold Realty* concerns a forcible entry and detainer matter in which the plaintiff-landlord sued for unpaid rent and possession of the premises at issue for nonpayment of the rent. 358 Ill. App. 3d at 676. The plaintiff’s requested remedy was based upon paragraph 19 of the lease. *Id.* After the defendant filed an answer and asserted two affirmative defenses, the plaintiff filed a motion for use and occupancy of the premises, ultimately relying on paragraph 11 of the lease. *Id.* After the plaintiff’s motion for use and occupancy was granted, the plaintiff filed a motion for

summary judgment based upon yet another provision of the lease, paragraph 13. *Id.* at 678. The trial court granted the plaintiff's motion for summary judgment, and the defendant appealed. *Id.* Relying in part on *Pagano v. Occidental Chemical Corp.*, 257 Ill. App. 3d 905 (1994), the *Gold Realty* court reversed, finding that a trial court cannot grant a motion for summary judgment based upon an issue not properly pled in the moving party's complaint, directly or indirectly. *Id.* at 679-80. Notably, the *Gold Realty* court found that the facts alleged in the complaint were insufficient to give the defendants notice of the issue upon which the plaintiff sought relief. *Id.* at 680. Moreover, *Pagano* was a personal injury case where summary judgment was granted in favor of the defendant, and the plaintiff-appellant raised a new theory of liability for the first time on appeal. 257 Ill. App. 3d at 910-11.

¶ 18 We find *Gold Realty* and *Pagano* distinguishable. From the outset of this case, plaintiffs maintained that section 29-4 of the Code requires defendant to provide Bowman students with transportation to and from school. We do not find that plaintiffs' interpretation of the statute, from the initial complaint to their subsequent pleadings, shifted their theory of the case or that their explanations of what the statute requires are inconsistent with each other. To the extent that it can be said that plaintiffs shifted their interpretation of the statute, we find any such shift immaterial. Defendant made no claim of unfair surprise or that they were not provided notice of plaintiffs' theory. Rather, it appears that defendant attempts to avoid implementing public policy and their duty by employing a technical procedural bar to this litigation. Therefore, we find that the circuit court erred in its determination that plaintiffs are precluded from receiving summary judgment based upon their positing alternative interpretations of the statute.

¶ 19 Turning to the merits, as noted above, the dispute in this case centers on the interpretation of section 29-4 of the Code. 105 ILCS 5/29-4 (West 2000). That statute reads, in pertinent part:

“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 1½ 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. *** 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 1½ 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.” *Id.*

¶ 20 Our review of issues involving statutory construction is *de novo* and is guided by well-established rules. *In re Detention of Lieberman*, 201 Ill. 2d 300, 307 (2002). The principal objective of statutory construction is to determine and give effect to the legislature’s intent. *In re Detention of Powell*, 217 Ill. 2d 123, 135 (2005). “All other rules of statutory construction are subordinate to this cardinal principle.” *Id.* The best evidence of the legislative intent is the language of the statute itself, and the language should be “given its plain, ordinary and popularly understood meaning.” *Id.* “Where the language of a statute is clear and unambiguous, courts may not resort to aids of statutory construction. [Citation.] However, if the statutory language is ambiguous, a court may consider other interpretive aids such as legislative history to resolve the ambiguity and determine the legislative intent.” *Id.* The words and phrases contained within the language of a statute should not be considered in isolation, but must be interpreted in light of other relevant

provisions of the statute as a whole. *Williams v. Staples*, 208 Ill. 2d 480, 487 (2004). If possible, we must give effect to every word, clause, and sentence and must not construe a statute in a way that renders any part inoperative, superfluous, or insignificant. *Bauer v. H.H. Hall Construction Co.*, 140 Ill. App. 3d 1025, 1028 (1986). When construing a statute, courts “presume that the legislature, in enacting the statute, did not intend absurdity, inconvenience, or injustice.” *Powell*, 217 Ill. 2d at 135.

¶ 21 Turning to the language of the statute, by using the word “shall,” the legislature imposed a mandatory duty on public school boards who provide transportation to their students to likewise provide transportation to the students attending charter schools and any school other than a public school. *Scott v. City of Chicago*, 2015 IL App (1st) 140570, ¶ 19 (“Typically, use of the word ‘shall’ in a statutory provision indicates that the legislature intended a mandatory, rather than a directory, provision.” (Internal quotation marks omitted.)). Defendant does not deny it has this duty.

¶ 22 Rather, the crux of the dispute between the parties is the meaning of the phrase “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 (West 2000). Plaintiffs argue this language requires defendant to transport Bowman students “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 Dist[ri]ct 189 schools.” Defendant, on the other hand, argues that the circuit court was correct in its determination that section 29-4 of the Code only requires a public school district to transport nonpublic school students to and from points on its regular routes that are nearest to their homes

and to and from points on its regular routes that are nearest to the schools they attend. In support of its position, defendant relies on language from this court's decision in *C.E. v. Board of Education of East St. Louis School District No. 189*, 2012 IL App (5th) 110390, wherein this court determined that section 29-4 of the Code did not require "school buses *** to 'go out of their way' to transport nonpublic school students." *Id.* ¶ 10. However, defendant's reliance on *C.E.* is misplaced.

¶ 23 The issue facing the court in *C.E.* was separate and distinct from the issue now before this court. In *C.E.*, the appellate court was called upon to determine whether section 29-4 required the defendant to "provide bus service on days when the district schools are not in session but the Catholic school is in session." *Id.* ¶ 8. This court concluded "that the legislative intent is that transportation be provided to nonpublic school students only on the same basis on which it is provided to public school students, and that the purposes of the statute be effected while minimizing cost to the public school district and without interfering with its convenience or efficiency." *Id.* ¶ 9. The *C.E.* court discussed the legislative intent behind section 29-4:

"This legislative intent is evident in the statute's requirement that nonpublic school 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 1½ 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." *Id.* ¶ 10.

¶ 24 Ultimately, the *C.E.* court concluded 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." *Id.* ¶ 12.

¶ 25 We agree with *C.E.*'s conclusion that a school district need not operate buses for private school students on days when the public schools are not in session. Defendant, however, interprets the language in *C.E.* too broadly. For example, *C.E.*'s statement that section 29-4 is written to ensure "that the transportation of nonpublic school students [does] not increase the school district's cost or interfere with its convenience or efficiency" is certainly true within the context of the issue that was before it: whether the public school district was required to provide transportation to private school students on days when the public schools were not in session. It is axiomatic that transporting private school students is going to increase a school district's costs. Under the statute, these additional costs only become a consideration when a public school district has determined that the establishment of separate routes for the private school children is "safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes." 105 ILCS 5/29-4 (West 2000).

¶ 26 Defendant's interpretation of the statute ignores the legislature's inclusion of the word "extend" in the mandate requiring that "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." (Emphasis added.) *Id.* "Extend" has multiple definitions, at least two of which are potentially applicable to section 29-4. For example, The American Heritage Dictionary of the English Language defines "extend" as follows: "extend ***. 1. a. To cause (something) to be longer, wider, or cover more area: *extended the subway line into the next town.* *** 2. *** b. To make available; provide: *extend credit to qualified purchasers.*" (Emphases in

original.) The American Heritage Dictionary of the English Language, <https://ahdictionary.com/word/search.html?q=extend> (last visited Mar. 7, 2025).

¶ 27 We find that, within the context of section 29-4, “extend” means “[t]o cause (something) to be longer, wider, or cover more area.” Not only is this the “plain, ordinary and popularly understood meaning” (*Powell*, 217 Ill. 2d at 135) of the word “extend,” but this conclusion is consistent with the fact “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.” *Board of Education, School District No. 142 v. Bakalis*, 54 Ill. 2d 448, 461 (1973).

¶ 28 Defendant’s interpretation of the statute, which would seemingly rely upon defining “extend” to mean “[t]o present; offer,” would allow defendant to designate pick-up and drop-off points without regard for the health and safety of nonpublic school children. Such a reading of the statute is at odds with the legislative purpose behind enacting the statute. We note that, in addition to defendant’s statutory duty to provide transportation for nonpublic school students, Illinois common law imposes “a duty upon school districts, their officials and employees in selecting bus routes and pick-up points as they discharge their statutory obligation to transport pupils.” *Posteher v. Pana Community Unit School District No. 8*, 96 Ill. App. 3d 709, 712-13 (1981). “It is obvious that a school district or its officers cannot select bus routes and pick-up points with impunity, they cannot act arbitrarily or capriciously, they cannot act with disregard for the safety, comfort and well-being of their pupils. More is required by law.” *Id.* at 712.

¶ 29 We find further support for our determination in the language of the statute itself. Section 29-4 provides that “[i]f any such children reside within 1½ 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 (West 2000). This language 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 its district. Contrary to defendant's interpretation of the statute, this means that the school district is obligated 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. Dropping the Bowman students off at a location other than their school is contrary to the statute, and contrary to the "legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools." *Bakalis*, 54 Ill. 2d at 461.

¶ 30 Accordingly, the circuit court erred by granting defendant's motion for summary judgment and denying plaintiffs' cross-motion for summary judgment. As such, we vacate the court's order granting summary judgment to defendants, enter judgment in favor of plaintiffs on their motion for summary judgment, and remand to the circuit court with directions.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we reverse the order of the circuit court of St. Clair County granting summary judgment in favor of Board of Education of East St. Louis District #189 and denying plaintiffs' motion for summary judgment. Summary judgment is entered in favor of plaintiffs. We remand to the circuit court with directions to grant plaintiffs' requests for declaratory judgment and injunctive relief in accordance with the requirements of section 29-4 of the Code and consistent with the order of this court.

¶ 33 Reversed and remanded with directions.

5-23-0763

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APPELLATE COURT 5TH DISTRICT

No. 5-23-0763
APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

FROM THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,)	
Chandres Johnson, and A.M,	)	Appeal from the
by her father and next friend,	)	Circuit Court of St. Clair County
Antonio Brown,	)	Case No. 2022-CH-75
)	
Plaintiffs,	)	Honorable Julie K. Katz
	)	Judge Presiding
v.)	
)	
BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT #189,)	
)	
Defendants.)	

BRIEF OF PLAINTIFFS-APPELLANTS E.W. AND A.M.

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

This is an action for declaratory and injunctive relief. C5. The complaint alleges Defendant illegally denied statutorily required bus transportation to Plaintiffs. C8. Cross motions for summary judgment were filed by both parties. C131, C229, A13, A21. The trial court granted Defendant's motion for summary judgment and Plaintiffs appeal. C334, C343, A1, A9. No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether the trial court erred in holding that the Defendant is not required to provide bus transportation for Plaintiffs from near their home to the nonpublic elementary school they attend.

JURISDICTION

This is an appeal under Illinois Supreme Court Rules 301 and 303 from a final order. The trial court granted summary judgment in favor of Defendant on August 31, 2023. C334, A1. On September 28, 2023, Plaintiffs filed their notice of appeal. C343, A9.

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.

105 ILCS 5/29-4.

STATEMENT OF FACTS

In 2015, parents of Sr. Thea Bowman students filed suit against Defendant District 189 seeking transportation to their school in a safe and timely manner. C146, A70. That action resulted in a preliminary injunction Order entered October 28, 2015, which held that Sr. Thea Bowman students had the same statutory right to bus transportation to school as Defendant's public school students. C166, A90. "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, A90. Compelled by the 2015 Order, Defendant provided regular bus transportation to the students of Sr. Thea Bowman from near their home to their school and back until the 2022-23 school year. C8, C308, A184.

Until the 2022-23 school year, Defendant chose to fulfill its mandatory obligation to provide transportation to Sr. Thea Bowman students by operating two separate bus routes that carried only Sr. Thea Bowman students. C147, A71. Those routes operated on school days when Defendant operated bus transportation for its students. C147, A71.

At the time of his deposition on June 27, 2023, Dr. Lawrence Tourijigian was the Director of Transportation for Defendant and had held that position for two years. C284, C289, A160, A165. Sometime prior to April 5, 2022, a parent of a child attending Unity Lutheran, a private school also located within Defendant's boundaries, inquired about bus service to their school. C306, C209, A182, A133. On April 5, 2022, Dr. Tourijigian emailed his contact at the Illinois State Board of Education, Christine Kolaz, seeking guidance on how soon the request for transportation must be fulfilled and Ms. Kolaz directed Dr. Tourijigian to 105 ILCS 5/29-4. C209, A133. Dr. Tourijigian testified that transportation was not provided to the Unity Lutheran student because Defendant did not want to take on another expense. C307, A183.

In early Summer 2022, Arthur Culver, the Superintendent of East St. Louis School District 189, made the decision not to create any routes for Sr. Thea Bowman students for school year 2022-23. C299, A175. Dr. Tourijigian was not part of the decision and just did what he was told. C300, A176. No reason was given. C300, A176. Dr. Tourijigian thought the decision was related to bus drivers but he does not know why Superintendent Culver made the decision to stop bus service for Sr. Thea Bowman students. C300, A176.

On July 29, 2022, Dr. Tourijigian informed Ms. Jefferies, the Director of the SIU Charter school that the District would not be transporting her students. C308, A184.

On August 4, 2022, Dr. Tourijigian emailed Francine Gordon at Sr. Thea Bowman and told her that “School District 189 will not be routing STB [Sr. 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, A137. At deposition, Dr. Tourijigian stated this meant that Defendant would not veer from what the Illinois School Code said was allowable. C308, A184. No other explanation was offered.

On August 11, 2022, Dr. Tourijigian exchanged emails with Jonathan Birdsong, Superintendent of Schools, Diocese of Belleville. C215-217, A139-141. At his deposition, Dr. Tourijigian said he told Mr. Birdsong what the District could and could not do based on the school code. C309, A185. When pressed, Dr. Tourijigian stated he told Mr. Birdsong that the District would not “be providing services in the upcoming school year in the manner in which they had been accustomed to.” C309, A185. Dr. Tourijigian concluded by stating “I was told not to route Sister Thea Bowman students, and I didn’t.” C309, A185. Dr. Tourijigian received his order from Superintendent Arthur Culver. C309, A185. No transportation options were offered to Sr. Thea Bowman students. C309-310, A185-186. No routes were created that included Sr. Thea Bowman students for school year 2022-23. C299, A175. Defendant knew Sr. Thea Bowman students wanted transportation but did not route them on any of their existing routes. C213, A137.

Dr. Tourijigian acknowledged that Defendant runs about six different buses picking up children at Gompers Homes, where Plaintiff A.M. lives, and a similar number of bus routes exist for students who live in Orr Weathers Homes, where Plaintiff E.W. lives. C298-299, C321, C324, A174-175, A197, A200. 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 Sr. Thea Bowman. C310. Dr. Tourijigian also acknowledged that it appeared Route 2200 went near Gompers, Orr Weathers, and Sr. Thea Bowman. C310, C221, A186, A145. Forty-three (43) routes near Gompers, Orr-Weathers, and/or Sr. Thea Bowman from school year 2022-2023 were attached as exhibits to Plaintiffs' Response in Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment. C231-276, A23-68.

Bus routes are created by catchment area. C292-293, A168-169. A catchment area is tied to a specific school. C293, A169. There are circumstances when a child who lives in one catchment area is taken to another school's catchment area. C293, A169. These students are usually but not always homeless students. C293, C294, C310, A169, A170, A186. Such students are assigned to the "open enrollment program." C293, A169. Open enrollment students who are homeless may live within the boundaries of East St. Louis in one catchment area but have their home school in a different catchment area. C293, C294, A169, A170. These students are transported to their home school by the regular route bus that runs closest to where the child lives. C293, A169. That regular route bus brings the child to school in the different catchment area and brings them back. C293, A169.

Defendant utilizes the VersaTrans computer software system to create the bus routes for students each year. C289, C295, A165, A171. Each summer, VersaTrans uses student information from the previous year, as well as new and updated student data, to create the bus routes for the next school year. C296, C299, A172, A175. The routes are automatically made using the One Touch Routing feature within VersaTrans software.

C295, A171. Manual adjustments are often made to correct errors or add students. C298 A174. Each school is listed as an anchor point for the routes within the system. C295, A171. Sr. Thea Bowman remains as an anchor point for routes within the VersaTrans system. C299, A175. Sr. Thea Bowman students that were in the VersaTrans system from previous years remain in the system. C299, A175. In the summer of 2022, the Sr. Thea Bowman students were not assigned to any routes as they had been in prior years. C299, A175.

Plaintiffs identified routes that were produced by Defendant from the 2022-23 school year that ran near either Orr Weathers, Gompers, or Sr. Thea Bowman. C310-311, C221, C321, C324, A186-187, A145, A197, A200. Dr. Tourijigian advised that Plaintiffs would not be allowed on a route that went near Gompers, Orr Weathers, and Sr. Thea Bowman. C310, A186.

Again, Dr. Tourijigian was told by Superintendent Culver “not to route Sr. Thea Bowman students and [he] didn’t.” C309, A185. No options for transportation were offered to Sr. Thea Bowman. C309-310, A185-186.

STANDARD OF REVIEW

This appeal raises a question of statutory interpretation that was decided on motions for summary judgment. Questions of statutory interpretation are reviewed *de novo*. *Hawkins v. Voss*, 2015 IL App (5th) 140001, *P12, 29 N.E.3d 1233; *Northern Ill. Gas Co. v R.W. Dunteman Co.*, 301 Ill. App. 3d 689, 693, 704 N.E.2d 960, 963 (2nd Dist. 1989). Further, an order granting summary judgment is reviewed *de novo*. *Northern Ill. Gas Co. v R.W. Dunteman Co.*, 301 Ill. App. 3d at 692.

ARGUMENT

THE TRIAL COURT ERRED IN FINDING 105 ILCS 5/29-4 DOES NOT REQUIRE DISTRICT 189 TO PROVIDE TRANSPORTATION TO PLAINTIFFS ON BUS ROUTES FROM NEAR THEIR HOMES TO THEIR NONPUBLIC SCHOOL ATTENDED.

- I. 105 ILCS 5/29-4 REQUIRES DEFENDANT TO TRANSPORT PLAINTIFFS FROM SOME POINT ON THE REGULAR ROUTE NEAREST TO OR MOST EASILY ACCESSIBLE FROM THEIR HOME TO THE SCHOOL THEY ATTEND OR TO A POINT ON SUCH REGULAR ROUTE WHICH IS NEAREST OR MOST EASILY ACCESSIBLE TO THEIR SCHOOL.**

The parties dispute the interpretation of the first sentence of the statute:

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).

There is no question that Defendant provides transportation for children to and from their public schools. C290, A166. There is no question that Plaintiffs reside more than 1 ½ miles from the school they attend, Sr. Thea Bowman. C321, C324, A197, A200.

There is no question that Defendant stopped providing transportation for Plaintiffs and other students of Sr. Thea Bowman in August 2022 because Superintendent Culver directed Dr. Tourijigian not to route the students. C299-300, C309, A175-176, A185.

There is no dispute that Plaintiffs reside near Defendant's regular bus routes. C298-299, C321, C324, A174-175, A197, A200. There is no dispute that Sr. Thea Bowman is on or near regular bus routes. C310, C255-276, A186, A47-A68.

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 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.”

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 Dist. 189 schools. Defendant maintains that its only obligation is to pick up Plaintiffs from or near their homes and drop them off at some other point that is not the school they attend or near the school they attend on the route Defendant has created. C279, R9, A155. Defendant’s interpretation would have buses dropping off Plaintiffs at points that are without regard for how far that drop off point is from Sr. Thea Bowman and without regard to Plaintiffs’ safety.

“The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” *Forus Mortg. Corp. v. Dwyer*, 214 Ill. 2d 253, 258, 824 N.E.2d 614 (2005). “The most reliable indicator of such intent is the language of the statute, which is to be given its plain and ordinary meaning.” *Solon v. Midwest Med. Records Ass’n*, 236 Ill. 2d 433, 440, 925 N.E.2d 1113, 1117 (2010) (citing *Blum v. Koster*, 235 Ill. 2d 21 (2009)).

“We do not view words and phrases in isolation but consider them in light of other relevant provisions of the statute.” *Forus Mortg. Corp.*, 214 Ill. 2d at p. 258. “When the spirit and intent of the legislature are clearly expressed and the objects and purposes of a statute are clearly set forth, the courts are not bound by the literal language of a particular

clause of the statute that might defeat such clearly expressed legislative intent.” *Id.* at pg. 259. “Ambiguity caused by a literal and confined construction of a statute may be modified, changed or rejected to conform to an otherwise clear legislative intent.” *Id.*

“[I]f a statute is capable of being understood by reasonably well-informed persons in two or more different ways, the statute will be deemed ambiguous. If the statute is ambiguous, the court may consider extrinsic aids of construction in order to discern the legislative intent. We construe the statute to avoid rendering any part of it meaningless or superfluous.” *Solon v. Midwest Medical Records Ass’n*, 236 Ill. 2d at 440-441 (internal citations omitted) (*see also*, *In re Marriage of Main*, 2020 IL App (2d) 200131, *P27).

“We may also consider the consequences that would result from construing the statute one way or the other. In doing so, we presume the legislature did not intend absurd, inconvenient, or unjust consequences.” *Id.* at 441.

A. Illinois Public Policy is to ensure all school children receive safe and appropriate bus transportation to and from their schools.

Enacted in 1933, (Laws of 1933, P. 1048), 105 ILCS 5/29-4 provides for transportation for charter and nonpublic students using public funding. In 1973, the Illinois Supreme Court upheld the constitutionality of Sec. 29-4 of the Illinois School Code noting that “the bussing of nonpublic students at public expense was a well-recognized and long-established practice.” *Board of Education v. Bakalis*, 54 Ill. 2d 448, 465, 299 N.E.2d 737, 745 (1973). The Court found that Sec. 29-4 was enacted for the “secular legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools.” *Board of Education v. Bakalis*, 54 Ill. 2d at 461.

“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, 680 N.E.2d 380 (1997). “This court has recognized that Illinois has a strong interest in preserving and promoting the welfare of children.” *Id.* at 431.

The Illinois Administrative Code makes clear that pupil 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 Sec. 120.30(a)(3) (emphasis added). The public policy of reimbursing schools for transporting all students confirms a public policy of safeguarding all students regardless of what school they attend in the district.

In 2018, the Illinois General Assembly amended the School Code to allow free transportation for all students residing within 1 ½ miles of the school they attended where conditions of walking constituted a serious safety hazard to the student either due to a course or pattern of criminal activity or due to vehicular traffic or rail crossings. 105 ILCS 5/29-3. Defendant took advantage of this amendment and a portion of the district was approved for the serious safety hazard grant. C305-306, A181-182. This serious safety hazard area included students from Sr. Thea Bowman for whom Defendant received reimbursement. C305 C225, C227, A181, A149, A151.

Despite the public policy of Illinois to protect all schoolchildren and despite Illinois providing reimbursement for the transportation of nonpublic students at the same rate as public school students, and despite the safety hazards that exist in the District, Defendant chose to terminate all school bus transportation for Plaintiffs without regard to

the health and safety of Sr. Thea Bowman students residing in East St. Louis, leaving Plaintiffs and other nonpublic school students to fend for themselves.

B. 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 1 ½ miles from where the student is “normally unloaded **at the school attended.**” (Emphasis added.) 23 Ill. Admin. Code Sec. 120.30 measures the distance 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 student will be dropped off at the school they attend, not some random point far from their school.

The District 189 elementary school nearest to Plaintiff E.W. is 8.4 miles away from Sr. Thea Bowman elementary school that E.W. attends. C321, A197. Similarly, the District 189 elementary school nearest to Plaintiff A.M. is 4.1 miles away from Sr. Thea Bowman. C324, A200. Defendant’s interpretation of the statute would have Plaintiffs dropped off miles away from their school at distances the Legislature has deemed unsafe for at least 50 years when *Bakalis* was decided.

The statute mandates that Defendant’s regular route must extend from pick up near Plaintiffs’ homes to Plaintiffs’ school, Sr. Thea Bowman, OR at the very least, to a point near or most easily accessible to Sr. Thea Bowman. 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, A196, A173.

C. Defendant's actions violate the plain language of 105 ILCS 5/29-4.

Defendant's decision to stop routing all Sr. Thea Bowman students contravenes their mandatory obligation under the statute.

"The school board...**shall provide 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, 738 N.E.2d 163 (2000) citing *Andrews v. Foxworthy*, 71 Ill. 2d 13, 21, 373 N.E.2d 1332 (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, 373 N.E.2d 1332 (1978).

Here, the statute's purpose is the health and safety of nonpublic school students during the period in which they are being transported to and from school. The statute enacts 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" is a mandate from the legislature to the Defendant school district 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, the 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.

II. *C.E. v. Bd. of Educ.* DID NOT INVOLVE A DECISION TO TERMINATE BUS TRANSPORTATION FOR THE ENTIRE SCHOOL YEAR.

Defendant's heavy reliance on *C.E. v. Bd. of Educ.*, 2012 IL App (5th) 1103690, is misplaced because that case involved the question of whether bus transportation had to be provided on days when the public school was not in session. In 2011, parents of students attending Sr. Thea Bowman Catholic Elementary School filed suit against Defendant over the meaning of 105 ILCS 5/29-4 when Defendant denied transportation on days when District 189 was not in session but Sr. Thea Bowman was in session. That case resulted in a decision by the Fifth District Appellate Court in *C.E. v. Bd. of Educ.*, 2012 IL App (5th) 1103690.

"There is no question that the plaintiffs meet the requirements of the statute in terms of their distance from their school and their location on or along the regular route of the public school bus. The only question is whether the district must provide bus service on days when the district schools are not in session but the Catholic school is in session." *C.E. v. Bd. of Educ.*, 2012 IL App (5th) 110390, *P8. Finding that "the legislative intent is that transportation be provided to nonpublic school students only on the same basis on which it is provided to public school students," the Court found that to require the District to transport Sr. Thea Bowman students on days when District 189 was not in session was not consistent with the legislative intent. *C.E. v. Bd. of Educ.*, at *P9, *P10. Defendant seeks to expand the holding of *C.E.* to bus service on days when District 189 is in session.

Here, Defendant has not provide bus transportation service to students of Sr. Thea Bowman since August of 2022, and seemingly indefinitely, while maintaining bus

transportation service for District 189 students. This is prohibited by the statute.

Defendant must provide bus service to students who reside on its regular routes to their schools on the same basis that Defendant provides bus transportation to its own students.

C.E. must be construed narrowly in light of the Illinois Supreme Court’s decision in *Bakalis*. In *Bakalis*, the public school complained that in order to accommodate the 76 nonpublic school students, it would be required to hire two additional buses at a substantial annual cost. *Board of Education v. Bakalis*, 54 Ill. 2d 448, 452, 299 N.E.2d 737 (1973). The additional cost was of no consequence to the Court’s reading of the statute in upholding its constitutionality.

While the Order entered in the 2015 prior litigation has no precedential or estoppel value, the analysis employed by Judge LeChien is persuasive. C164-173, A88-97. As Judge LeChien noted, many of the statements in *C.E.* upon which Defendant relies are *obiter dictum* and not *judicial dictum*.

“The term ‘*dictum*’ is generally used as an abbreviation of *obiter dictum*, which means a remark or opinion uttered by the way. Such an expression or opinion as a general rule is not binding as authority or precedent within the *stare decisis* rule. On the other hand, an expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause, if *dictum*, is a *judicial dictum*.[A] *judicial dictum* is entitled to much weight, and should be followed unless found to be erroneous.”

Cates v. Cates, 156 Ill. 2d 76, 80 619 N.E.2d 715, 717 (1993) (internal citations omitted).

In light of the Illinois Supreme Court’s ruling in *Bakalis*, which involved transportation to nonpublic schools on school days, the ruling of *C.E. v Bd. of Educ.* is properly limited to the issue before that Court – transportation on days when the public school was not in session.

III. COST CAN ONLY BE CONSIDERED IF DEFENDANT CHOOSES TO PROVIDE A SEPARATE ROUTE.

The General Assembly provided school districts such as Defendant with the option to operate a separate regular bus route for nonpublic school students. When contemplating this option, school districts are to consider whether separate routes are “safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes.” 105 ILCS 5/29-4. The cost of a separate route is to be compared to the cost of transporting nonpublic school students to their school without a separate route.

The statute does not mention any kind of cost-benefit analysis when directing school districts to provide transportation for 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, 899 N.E.2d 578, 581 (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. *P47, 190 N.E.3d. 886.

Defendant is reimbursed for transportation services provided to Sr. Thea Bowman students at the same rate and on the same basis as public school students. 23 Ill. Admin. Code Sec. 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 Court: (i) find that the trial court erred in granting Defendant's Motion for Summary Judgment and denying Plaintiff's Cross-Motion for Summary Judgment; (ii) find that the trial court erred in not holding that Defendant acted unlawfully and continues to act unlawfully for failing to provide Plaintiffs with transportation from near their homes to their school and back; (iii) find that the trial court erred in failing to enjoin Defendant from not providing Plaintiffs with transportation from near their home to their school and back; (iv) remand this matter to the trial court with instructions to grant Plaintiffs' request for declaratory and injunctive relief in accordance with the requirements of 105 ILCS 5/29-4; and (v) for such other and further relief as justice and equity may require.

RESPECTFULLY SUBMITTED:

E.W. AND A.M.,

By their mother and father, respectively,
Plaintiffs-Appellants,

BY: /s/ Susan M. Simone

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No. 5-23-0763
 APPEAL TO THE APPELLATE COURT OF ILLINOIS
 FIFTH DISTRICT

FROM THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,)	
Chandres Johnson, and A.M,	)	Appeal from the
by her father and next friend,	)	Circuit Court of St. Clair County
Antonio Brown,	)	Case No. 2022-CH-75
)	
Plaintiffs,	)	Honorable Julie K. Katz
	)	Judge Presiding
v.)	
)	
BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT #189,)	
)	
Defendants.)	

CERTIFICATE OF COMPLIANCE

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 17 pages or words.

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ST. LOUIS SCHOOL DISTRICT #189,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 735 ILCS 5/1-109 and Supreme Court Rule 341, that the Brief and Appendix of Plaintiffs-Appellants, E.W. and A.M. was served upon Garrett P. Hoerner, attorney for Defendant-Appellee Board of Education of East St. Louis School District 189, at email address gph@bhyllaw.com by electronic transmission at approximately 11:45 p.m. on January 31, 2024.

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NATURE OF THE CASE

This is an action for declaratory judgment and injunctive relief asserted by Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown, against Defendant, East St. Louis School District No. 189, specifically seeking to require 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”. Plaintiffs appeal from the St. Clair County Circuit Court’s Order granting Defendant’s Motion for Summary Judgment pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)). Questions are raised on the pleadings, specifically the impropriety of Plaintiffs’ assertion of a statutory interpretation position that was never pled in Plaintiffs’ Complaint for Declaratory and Injunctive Relief.

JURISDICTION¹

Plaintiffs appeal the Circuit Court’s June 27, 2022 Order granting Defendant’s Motion for Summary Judgment pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)). (C 226-231). Illinois Supreme Court Rule 301 affords this Appellate Court jurisdiction over this appeal, as “[e]very final judgment of a circuit court in a civil case is

¹ While the Brief of Plaintiffs-Appellants expressly states that Plaintiffs only appeal the Circuit Court’s summary-judgment order entered on August 31, 2023, the Notice of Appeal makes a singular reference to the Circuit Court’s August 2, 2022 Order denying Plaintiffs’ Motion for Temporary Restraining Order (C 93-99; C 343-346); of course, any appeal of the August 2, 2022 must have been taken within two days of its entry under Illinois Supreme Court Rule 307(d). Ill. S. Ct. R. 307(d).

appealable as of right.” Ill. S. Ct. R. 301. Plaintiffs’ Notice of Appeal was timely filed on September 28, 2023 under Illinois Supreme Court Rule 303. Ill. S. Ct. R. 303.

STATUTES INVOLVED

Section 29-4 of the Illinois School Code (105 ILCS 5/29-4).

Section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701).

Section 2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005).

ISSUE PRESENTED FOR REVIEW

Whether the Circuit Court properly granted summary judgment on Plaintiffs’ Complaint for Declaratory and Injunctive Relief in favor of Defendant and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)).

STATEMENT OF FACTS²

On October 21, 2022, Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, A.M., by her father and next friend, Antonio Brown, and Sr. Thea Bowman Catholic Elementary School, filed their Complaint for Declaratory Judgment and Injunctive Relief (Plaintiffs’ Complaint), seeking a declaratory judgment and injunctive relief against Defendant, East St. Louis School District No. 189, 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’

² Defendants object to the Statement of Facts in the Brief of Plaintiffs-Appellants to the extent that same improperly contains matters beyond this case in violation of Illinois Supreme Court Rule 341(h)(6) (Ill. S. Ct. R. 341(h)(6)), specifically referencing a Temporary Restraining Order in St. Clair County Circuit Court Case No. 15-CH-592, which the Circuit Court noted is not properly considered in this case because the Circuit Court dissolved that Temporary Restraining Order and dismissed that case for want of prosecution in its November 2, 2022 Order. 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).

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” (C 5-34), along with a Motion for Temporary Restraining Order and Preliminary Injunction seeking the same relief on an interim basis pending resolution of this case (C 38-42). On November 2, 2022, following hearing conducted on October 31, 2022, the Circuit Court entered an Order pertinently providing that “Plaintiff’s Motion for Temporary Restraining Order is partially GRANTED to the extent that, within seven (7) days of the date of this Order, Plaintiffs and Defendants are ordered to confer and 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), but partially DENIED in all other respects.” (C 93-99). On November 7, 2022, Plaintiffs and Defendant so conferred concerning Defendant’s regular bus routes in existence at that time. (C 314). On January 9, 2023, Plaintiff, Sr. Thea Bowman Catholic School, voluntarily dismissed its claims in this matter, leaving only the claims of Plaintiffs, E.W., by and his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown, as pending. (C 100-101, 103). On March 28, 2023, Defendant filed its Verified Answer to Plaintiffs’ Complaint. (C 113-121).

On June 28, 2023, Defendant filed its Motion for Summary Judgment, with arguments mirroring the statutory interpretation in the Circuit Court’s November 2, 2022 Order. (C 131-138). Meanwhile, on July 24, 2023, Plaintiffs filed their Response in Opposition to Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross-Motion for Summary Judgment, shifting their position away from their contention in Plaintiffs’ Complaint, which is verified by both Plaintiffs, and now seeking “bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school.” (C 229-

276). More specifically, contrary to their Complaint, Plaintiffs' Response in Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment now contends that "[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student's home located on or near a regular route to their schools; or (ii) from the student's school located on a regular route to their homes", and that [t]he statute does not require that nonpublic school students must live on or near Defendant's regular routes AND that the school be located on the same regular route"; notably, Plaintiffs also abandons their prayer for a separate bus route, thereby effectively conceding the Circuit Court's interpretation that "Section 29-4 permits but does not require separate routes." (C 229-276). On August 11, 2023, Defendant filed its Response in Opposition to Cross-Motion for Summary Judgment. (C 277-314). On August 21, 2023, Plaintiffs filed their Reply to Response in Opposition to Cross-Motion for Summary Judgment. (C 315-328). On August 22, 2023, Defendant filed its Surreply to Plaintiffs' Reply to Response in Opposition to Cross-Motion for Summary Judgment. (C 329-333). Following hearing on August 24, 2023 (R 2-26), the Circuit Court entered an Order on August 31, 2024, specifically granting summary judgment on Plaintiffs' Complaint in favor of Defendant and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)) (C 334-341). On September 28, 2023, Plaintiffs timely filed a Notice of Appeal. (C 343-346).

STANDARD OF REVIEW

Section 2-1005(c) of the Illinois Code of Civil Procedure provides that summary judgment "shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). Summary

judgments are encouraged to summarily dispose of litigation where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Shelter Mut. Ins. v. Bailey*, 160 Ill.App.3d 146, 513 N.E.2d 490 (5th Dist. 1987). “[I]nterpreting or construing a statute is a matter of law for the court and is appropriate for summary judgment.” *In re A.M.F.*, 311 Ill.App.3d 1049, 1051, 726 N.E.2d 661 (5th Dist. 2001). “Statutory interpretation issues and summary judgment rulings are both reviewed *de novo*.” *DesPain v. City of Collinsville*, 382 Ill.App.3d 572, 577, 888 N.E.2d 163 (5th Dist. 2008). An appellate court may affirm the trial court’s summary-judgment decision for any reason in the record. *Openlands v. Department of Transportation*, 2018 IL App (1st) 170340, ¶ 16.

ARGUMENT

THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT ON PLAINTIFFS’ COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFFS PURSUANT TO SECTION 2-1005(c) OF THE ILLINOIS CODE OF CIVIL PROCEDURE (735 ILCS 5/2-1005(c)).

Plaintiffs’ Complaint seeks declaratory judgment and injunctive relief 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”. “The essential elements of a declaratory judgment action are: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.” *Behringer v. Page*, 204 Ill.2d 363, 372, 789 N.E.2d 1216 (2003). Meanwhile, “[t]o be entitled to a permanent injunction, a party ‘must demonstrate (1) a clear and ascertainable right in need of protection, (2) that he or she will suffer irreparable harm if the injunction is not granted,

and (3) that no adequate remedy at law exists.” *Vaughn v. City of Carbondale*, 2016 IL 119181 (2016, ¶ 44, 50 N.E.3d 643, citing *Swigert*, 2012 IL App (4th) 120043, ¶ 27, 976 N.E.2d 1176. It is an “established principle that a proper injunctive order must couch its directions or prohibitions, ‘in terms so definite, clear and precise as to demand obedience, or to be capable of enforcement or execution’.” *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 839-840, 270 N.E.2d 200 (1st Dist. 1971). In other words, an injunction must “concisely and clearly advise defendant of the ruling of the court and of the precise conduct enjoined.” *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 840, 270 N.E.2d 200 (1st Dist. 1971). For either or both of the following reasons, the Circuit Court’s summary judgment in favor of Defendant should be affirmed.

- A. Procedurally, this Appellate Court should affirm the Circuit Court’s summary judgment because Plaintiffs only argue a statutory interpretation contention not asserted in Plaintiffs’ Complaint rather than the statutory interpretation position actually pled in Plaintiffs’ Complaint.

Again, Plaintiffs’ Complaint, which is verified by both Plaintiffs, expressly seeks a declaratory judgment and injunctive relief 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”. (C 9-10). Conversely, Plaintiffs’ Response in Opposition to Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross-Motion for Summary Judgment shifts their position away from their contention in Plaintiffs’ Complaint, which is verified by both Plaintiffs, and now seeks “bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school.” (C 232).

More specifically, contrary to Plaintiffs' Complaint, Plaintiffs' Response in Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment argues, for the first time, a different statutory interpretation, particularly that "[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student's home located on or near a regular route to their schools; or (ii) from the student's school located on a regular route to their homes", and that [t]he statute does not require that nonpublic school students must live on or near Defendant's regular routes AND that the school be located on the same regular route"; notably, Plaintiffs also abandon their prayer for a separate bus route, thereby effectively conceding the Circuit Court's interpretation that "Section 29-4 permits but does not require separate routes." (C 230). The Circuit Court properly rejected such shifting position, but Plaintiffs still maintain their newfound statutory interpretation on appeal.

At the summary-judgment stage, a plaintiff is limited to assertions pled in the complaint. The purpose of a complaint is to crystallize the issues in controversy, so that a defendant will know what claims it has to meet. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 679, 832 N.E.2d 403 (1st Dist. 2005), quoting *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 911, 629 N.E.2d 569 (1st Dist. 1994). In other words, the issues in controversy and the theories upon which recovery is sought are fixed in the complaint. *Kincaid v. Ames Department Stores*, 283 Ill.App.3d 555, 568, 670 N.E.2d 1103 (1st Dist. 1996). When ruling on a motion for summary judgment, the trial court looks to the pleadings to determine the issues in controversy. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 679, 832 N.E.2d 403 (1st Dist. 2005), quoting *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 911, 629 N.E.2d 569 (1st Dist. 1994). A party cannot seek summary judgment on a theory that was never

pled in the complaint. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 680, 832 N.E.2d 403 (1st 2005).

Therefore, at the summary-judgment stage, Plaintiffs are limited to asserting their verified interpretation of Section 29-4 of the Illinois School Code – that it requires Defendant to provide transportation for Plaintiffs 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”, and, without amending their Complaint, Plaintiffs cannot assert their new interpretation that “[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student’s home located on or near a regular route to their schools; or (ii) from the student’s school located on a regular route to their homes”, and that “[t]he statute does not require that nonpublic school students must live on or near Defendant’s regular routes AND that the school be located on the same regular route”. Nevertheless, even an attempted amendment would not have relieved Plaintiffs of their original statutory interpretation in Plaintiffs’ Complaint considering that it was verified by Plaintiffs. Indeed, Illinois law is well established that, when a pleading is verified, it remains part of the record even upon the filing of an amended pleading. *Robins v. Lasky*, 123 Ill.App.3d 194, 198, 462 N.E.2d 774 (1st Dist. 1984). A party's admissions contained in an original verified pleading are judicial admissions that still bind the pleader even after the filing of an amended pleading that supercedes the original. *Yarc v. American Hospital Supply Corp.*, 17 Ill.App.3d 667, 670, 307 N.E.2d 749 (2nd Dist. 1974). Simply put, Plaintiffs cannot shift their original interpretation of Section 29-4 of the Illinois School Code at the summary judgment stage.

Nor can Plaintiffs shift that statutory interpretation position on appeal. Indeed, the Illinois Appellate Court has explained that an appeal is limited to presenting claims actually pled in the

Complaint in the Circuit Court, and the failure to argue a claim so pled constitutes a waiver of that claim:

“When a plaintiff pleads a claim in the circuit court, but fails to argue it on appeal, such conduct amounts to a waiver of that claim. [Citation]. Burys has failed to argue the claims he pled in the circuit court in any of his briefs. Consequently, he has waived the theories pled in counts II and III.

Burys now argues two theories that he did not plead below. In the first place, Burys apparently claims that First Bank breached a good faith duty to notify him that it would not renew the bearer notes when they were due. He raised this theory before the circuit court at the hearing on First Bank's motion for summary judgment. The circuit court rejected the claim, concluding that First Bank had no duty to notify Burys of that which was expressly stated in the real estate sales contract: namely, the notes would not be extended if they were in default. Burys did not seek leave to amend his complaint in order to plead this, or any other, theory. Since it was not pled below, it falls within the rule prohibiting presentation of new theories on appeal. [Citation].” *Burys v. First Bank of Oak Park*, 187 Ill.App.3d 384, 387, 543 N.E.2d 253, 255 (1st Dist. 1989).

Similarly, in the instant appeal, Plaintiffs only argue a newfound statutory interpretation not asserted in Plaintiffs’ Complaint rather than their original statutory interpretation actually pled in Plaintiffs’ Complaint.³

Therefore, the Circuit Court properly concluded that, “procedurally, Plaintiffs cannot seek summary judgment on their newfound statutory interpretation position because same was never pled in Plaintiffs’ Complaint.”⁴ Accordingly, this Appellate Court should affirm the Circuit Court’s summary judgment Plaintiffs’ Complaint in favor of Defendant.

³ Defendant notes that Plaintiffs forfeit any future argument concerning the statutory interpretation actually pled in Plaintiffs’ Complaint under Illinois Supreme Court Rule 341(h)(7), which pertinently provides that “[p]oints not argued [in the appellant's brief] are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.” Ill. S. Ct. R. 341(h)(7); see *In re P.S.*, 2021 IL App (5th) 210027, 186 N.E.3d 503 (5th Dist. 2021).

⁴ Remarkably, the Brief of Plaintiffs-Appellants does not even address this procedural ruling of the Circuit Court; therefore, Plaintiffs are likewise prohibited from raising any future argument concerning same under Illinois Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7).

- B. Substantively, this Appellate Court should affirm the Circuit Court’s summary judgment on Plaintiffs’ Complaint because Section 29-4 of the Illinois School Code (735 ILCS 5/29-4) 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.

Although it properly rejected Plaintiffs’ newfound statutory interpretation position on procedural grounds, the Circuit Court alternatively found that, “[e]ven if such an argument had been made in the initial Complaint, ...Defendant’s interpretation of Section 29-4 is the correct interpretation” in 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.” Furthermore, the Circuit Court concluded that Plaintiffs’ newfound interpretation of Section 29-4 of the Illinois School Code is clearly erroneous in that it would necessarily require Defendant to modify an existing route (or “go out of their way”) contrary to the Circuit Court’s prior interpretation and this Appellate Court’s precedent. For the following reasons, the Circuit Court’s interpretation of Section 29-4 of the Illinois School Code is correct under Illinois law.

In statutory construction cases, the court’s primary and overriding concern is to ascertain and give effect to the intent of the legislature. *People v. Whitney*, 188 Ill. 2d 91, 97, 720 N.E.2d 225 (1999). Legislative intent is best determined from the language of the statute itself, which if unambiguous should be enforced as written. *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill. 2d 590, 595, 837 N.E.2d 876 (2005); *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 473, 837 N.E.2d 1 (2005). In giving effect to the statutory intent, the court should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought. *People v. Donoho*, 204 Ill. 2d 159, 171-72, 788 N.E.2d 707 (2003). It is also true that statutes must be

construed to avoid absurd results. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 183 N.E.3d 810. When a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should be rejected. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 183 N.E.3d 810.

Section 29-4 of the Illinois School Code defines the limited scope of transportation that a public school district must afford to pupils attending a charter school or nonpublic school as follows:

“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 ½ 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 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.

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.” (Emphasis added.) 105 ILCS 5/29-4.

The plain language of Section 29-4 of the Illinois School Code only requires a public school district to provide free bus transportation to non-public school students on its existing routes.⁵ 105 ILCS 5/29-4. Indeed, that Section expressly limits such requirement to the public school district’s “regular routes” of transportation to be provided “on the same basis as it provides transportation to its own pupils.”⁶ 105 ILCS 5/29-4. More specifically, it simply requires that a public school district allow nonpublic school students residing at least 1 1/2 miles from the school attended to utilize the public school district’s existing bus transportation by expressly providing the scope 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”. 105

⁵ Notably, with Plaintiffs’ children residing over 1.5 miles from Sr. Thea Bowman, the transportation contemplated for Plaintiffs’ students is distinct from Defendant’s students inasmuch as the language of Section 29-4 of the Illinois School Code applicable to non-public school students differs from the language of Section 29-3 of the Illinois School Code applicable to Defendant’s 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.

⁶ Plaintiffs’ reliance on *Board of Education of School District No. 142 v. Bakalis*, 54 Ill. 2d 448, 452, 299 N.E.2d 737 (1973), is misplaced, as it actually supports Defendant’s position. Indeed, while addressing a different type of claim challenging its constitutionality, the Illinois Supreme Court consistently stated that Section 29-4 of the Illinois School Code “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).

ILCS 5/29-4. Furthermore, it permits, but does not require, a public school district to operate separate bus routes only if such routes are “more economical and more efficient.” 105 ILCS 5/29-4. This limitation is confirmed by how Section 29-4 similarly treats non-public school students who live within 1 1/2 miles from the school attended: “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.” 105 ILCS 5/29-4. Indeed, this Appellate Court has explained 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).

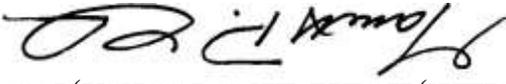
Simply put, the scope of such transportation is limited to “points” on the “regular routes” of buses servicing the public school district students; Plaintiffs’ Complaint, which is verified by both Plaintiffs, acknowledges as much by expressly seeking a declaratory judgment and injunction requiring Defendant 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’ newfound 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 this 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 (735 ILCS 5/29-4) only requires a public school district to transport a nonpublic school student to and from a point 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.

In the obvious absence in the record of any identified existing regular routes sought to be utilized by Plaintiffs, Plaintiffs simply cannot establish a legal, tangible interest as required for a declaratory judgment claim, or a clear and ascertainable right in need of protection as required for a permanent injunction; nor could the Circuit Court fashion a suitable injunctive order containing directions 'in terms so definite, clear and precise as to demand obedience, or to be capable of enforcement or execution', 'concisely and clearly advise defendant of the ruling of the court and of the precise conduct enjoined.' *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 839-840, 270 N.E.2d 200 (1st Dist. 1971). Accordingly, Defendant remains entitled to summary judgment on Plaintiffs' Complaint as a matter of law pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)).

CONCLUSION

For the foregoing reasons, Defendant, East St. Louis School District No. 189, respectfully requests that this Court affirm the St. Clair County Circuit Court's 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 Court deems just and proper.

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CERTIFICATE OF COMPLIANCE

Pursuant to Illinois Supreme Court Rule 341(c), the undersigned certifies that this 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(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 16 pages.

Dated: April 3, 2024

By:  Garrett P. Hoerner

No. 5-23-0763
APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

FROM THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,)	
Chandres Johnson, and A.M,	)	Appeal from the
by her father and next friend,	)	Circuit Court of St. Clair County
Antonio Brown,	)	Case No. 2022-CH-75
)	
Plaintiffs,	)	Honorable Julie K. Katz
	)	Judge Presiding
v.)	
)	
BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT #189,)	
)	
Defendants.)	

REPLY BRIEF OF PLAINTIFFS-APPELLANTS E.W. AND A.M.

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ORAL ARGUMENT REQUESTED

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ARGUMENT

I. PLAINTIFFS HAVE NOT CHANGED THEIR THEORY OF THE CASE.

Plaintiffs have always maintained that Defendant is required by statute to provide bus transportation to Plaintiffs from their homes to their school, Sr. Thea Bowman Catholic Elementary School (“Sr. Thea Bowman”). 735 ILCS 5/2-603(c) requires that “[p]leadings shall be liberally construed with a view to doing substantial justice between the parties.” *Sider v. Outboard Marine Corp.*, 160 Ill. App. 3d 290, 299 (2nd Dist. 1987).

In their Complaint, Plaintiffs alleged that Defendant had been providing bus transportation to children attending Sr. Thea Bowman since 2007. C7. Plaintiffs alleged that Defendant suspended bus transportation for Plaintiffs to their school, Sr. Thea Bowman. C6. Plaintiffs alleged in their Complaint that Illinois statute 105 ILCS 5/29-4 provides that:

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.

C7.

Plaintiffs alleged that Defendant’s refusal to provide bus transportation to Plaintiffs was in violation of 105 ILCS 5/29-4. C8. Plaintiffs’ prayer for relief included a request for declaratory judgment holding that Defendant’s refusal to provide free bus transportation violated Illinois statute. C9. Plaintiffs also requested injunctive relief that enjoined Defendants from failing to provide appropriate bus transportation for Plaintiffs,

either using a regular existing route nearest to Plaintiffs' homes and to Sr. Thea Bowman, or by separate regular bus route if it is found to be safer, more economical and more efficient, in accordance with the provisions of 105 ILCS 5/29-4. C9-10.

In their Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiffs averred that Defendant's refusal to provide bus transportation was in violation of 105 ILCS 5/29-4 and prayed for injunctive relief that enjoined Defendant from "failing to provide appropriate transportation for Plaintiffs to and from their homes and Sr. Thea Bowman Catholic School..." C41. In Plaintiffs' Reply to Defendant's Response Opposing Motion for Temporary Restraining Order, Plaintiffs stated that they resided at Orr Weathers and Gompers housing complexes in East St. Louis where Defendant afforded school bus transportation to numerous other children residing in the complexes but who attend Defendant's school. C64. Plaintiffs stated that since they reside on the regular routes and that Defendant also operated routes on or near Sr. Thea Bowman, Defendant was required to provide Plaintiffs with transportation. C65-66. Further, Plaintiffs' Reply to Defendant's Response Opposing Motion for Temporary Restraining Order noted numerous routes that existed in 2015¹ that could transport Plaintiffs to school. C67.

Plaintiffs have consistently sought Defendant's compliance with 105 ILCS 5/29-4 which requires Defendant to provide Plaintiffs with bus transportation from their home to their school. Plaintiffs have not changed their theory. C5-10, C38-41, C61-69, C145-158, C315-320.

¹ The exhibit to affidavit filed in 2015-CH-592 was referenced prior to the trial court dissolving the 2015 injunction and denying the motion to consolidate. Additionally, the Reply was filed prior to discovery.

It is interesting to note that Defendant admitted telling Sr. Thea Bowman that it would no longer provide bus transportation to Sr. Thea Bowman students because of a bus driver shortage. C8, C118 (paras. 20-21). Its Answer to Plaintiffs' Complaint was verified by Dr. Tourijigian. C120. This turned out to be a falsehood. In fact, Dr. Tourijigian admitted in his deposition that he made up the driver shortage and the real reason bus transportation was stopped for Plaintiffs was because he was directed by Defendant's Superintendent to stop routing Sr. Thea Bowman students. C299-300, C309; A175-176, A185. Defendant knew Plaintiffs and other Sr. Thea Bowman students wanted bus transportation, but Defendant intentionally did not create any routes and did not offer transportation options to Plaintiffs and others. C219, C299, C309-310; A137, A175. A185-186. It was through discovery that Plaintiffs understood Defendant had intentionally misled about the reason for stopping bus transportation. When Plaintiffs pointed out a route that went near both Plaintiffs' homes and Sr. Thea Bowman, Dr. Tourijigian said no, Plaintiffs would not be allowed on that bus. C310.

At all times, Plaintiffs have pled, briefed, and argued that Defendant is required to provide Plaintiffs with bus transportation on the same basis that Defendant provides bus transportation to District 189 students. This is what Illinois law requires. 105 ILCS 5/29-4. The statute grants Defendant's discretion as to how to provide the statutorily required bus transportation. Defendant can transport along regular routes that are closest to the Plaintiffs' homes and run to Sr. Thea Bowman, routes that are closest to Sr. Thea Bowman and run near Plaintiffs' homes, a combination of those routes, or, if it is more efficient, by a separate Sr. Thea Bowman route.

The trial court's finding that Plaintiffs "shifted their position away from their contention in Plaintiff's Complaint" (C340), which Plaintiffs deny, was a finding made upon motion for summary judgment and is therefore, reviewed by this Court under the *de novo* standard of review. "Since the trial court passing on a motion for summary judgment makes a determination as a matter of law, it is entitled to no deference and this court reviews its grant of summary judgment *de novo*." *Jarke v. Jackson Prods.*, 258 Ill. App. 3d 718, 721 (1st Dist. 1994); *see also, Northern Ill. Gas Co. v R.W. Dunteman Co.*, 301 Ill. App. 3d, 689, 692 (2nd Dist. 1989).

That Plaintiffs have restated the statutory obligation in different ways and pointed out options available to Defendant does not mean Plaintiffs have changed their theory of relief. It is not a newfound statutory interpretation.

Defendant cites *Pagano v. Occidental Chemical Corp.*, 257 Ill. App. 3d 905 (1st Dist. 1994) and *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill. App. 3d 675 (1st Dist. 2005), in its allegation that Plaintiffs have pled multiple interpretations of the Illinois bus transportation statute. In *Pagano*, plaintiff filed a suit asserting various theories of recovery for negligence. On appeal, plaintiff argued for the first time a theory of premises liability. The court on appeal rejected the premises liability argument because plaintiff had not included it in his complaint, had not raised the theory at any stage in the trial court proceedings, and the argument had no merit. *Pagano*, 257 Ill. App. 3d at 911.

In *Gold Realty*, the landlord filed for eviction for unpaid rent and requested possession based upon paragraph 19 of the lease. Landlord later filed a motion for summary judgment abandoning its theory of recovery based on unpaid rent and seeking possession based on different paragraphs of the lease because a fire had rendered the

premises untenable and the tenants had abandoned the premises. The court on appeal reversed the grant of summary judgment in the landlord's favor because it was based on an issue that was absent from the pleadings. *Gold Realty*, 358 Ill. App. 3d 679-680.

Pagano and *Gold Realty* are inapposite. *Pagano* involved raising an entirely new theory for the first time on appeal. Here, Plaintiffs have consistently asserted their interpretation of the Illinois bus transportation statute that requires Defendant to provide transportation from near Plaintiffs' homes to their school, Sr. Thea Bowman. In *Gold Realty*, the element of unfair surprise was dispositive but here there is no surprise. Defendant has been litigating with parents of Sr. Thea Bowman students over the same issue in different contexts for over 13 years.² Defendant does not and cannot claim surprise. Plaintiffs have not changed their interpretation of the Illinois statute. Rather, Defendant is trying to confuse the issue by imposing its interpretation on Plaintiffs.

² Defendant objected to Plaintiffs' Statement of Facts which included reference to 2015 litigation between Defendant and other parents of Sr. Thea Bowman students. Plaintiffs do not cite the Preliminary Injunction issued in Case No. 15-CH-592 for precedential effect. The Preliminary Injunction is included in the statement of facts as a logical starting point for the relevant facts of the current case. It shows that this is not the first time this dispute has arisen and provides context for how it was resolved last time. The Preliminary Injunction from the 2015 case is included in the record on appeal. C14-23. Including the Preliminary Injunction in the statement of facts was not argumentative or conclusory and was done with the proper citations to the record. Ill. S. Ct. R. 341(h)(6). Further the case Defendant cites, *Nationwide Bank & Office Management v. Industrial Comm'n*, involved an appellate opinion that was withdrawn by the same appellate court prior to the opinion's publication. The Preliminary Injunction in 15-CH-592 was never withdrawn by the trial court that issued it. It reflects the opinion of the trial court at that time. The Preliminary Injunction was dissolved for want of prosecution seven years later when the current case was filed. Defendant does not suggest, and the trial court did not find, that the 2015 Preliminary Injunction was wrongfully issued, only that inaction required its dissolution and "[t]hat case need not be left open for this Court to grant relief to the Plaintiffs herein." C93-94. The 2015 order, when cited in the Plaintiffs' opening Brief, is cited for its persuasive effect.

Here, Plaintiffs have always sought the same relief, bus transportation to school, based upon the same statutory provision. The issue in controversy and theories were fixed by Plaintiffs' Complaint; 105 ILCS 5/29-4 imposes a statutory mandate upon Defendant to provide bus transportation to Plaintiffs and Defendant refuses to do so.

II. DEFENDANT'S PROPOSED LIMITATIONS ON THE SCOPE OF 105 ILCS 5/29-4 RENDER THE STATUTE MEANINGLESS.

The rules of statutory construction are well-known.

Our primary objective in statutory construction is to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. A court must view and give effect to the entire statutory scheme. Therefore, words and phrases must be construed in relation to other relevant statutory provisions and not in isolation. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. The 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. [Internal citations omitted].

Bd. of Educ. v. Moore, 2021 IL 125785, *P20. Further, “[s]tatutes must be construed to avoid absurd or unjust results.” *Evans v. Cook Cty. State’s Atty.*, 2021 IL 125513, *P35 (2021).

A. The purpose of 105 ILCS 5/29-4 is to protect the health and safety of nonpublic school children.

In upholding the constitutionality of 105 ILCS 5/29-4, the Illinois Supreme Court made clear that 5/29-4 “was enacted for the secular legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools.” *Board of Education v. Bakalis*, 54 Ill. 2d 448, 461 (1973). The Court noted defendant’s assertion, in arguing that the statute is a health and safety measure, “that travel by school bus is safer than by automobile or on foot, that children traveling by school bus are protected from

inclement weather and from persons who might do them harm.” *Board of Education v. Bakalis* at 460-461.

The most relevant portion of 105 ILCS 5/29-4 for this matter 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.

For the health and safety of all school students, Illinois requires that bus transportation for nonpublic students be provided on the same terms as provided to public school students. The first three lines of the statute cited above requires the school board that provides bus transportation to public school students, shall afford the same transportation to children who attend a charter or other nonpublic school. 105 ILCS 5/29-4. Similarly, the last sentence of the same paragraph states “[i]f any such [nonpublic school] 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.” *Id.* (emphasis added). It is clear that 105 ILCS 5/29-4 requires nonpublic school students be provided the same bus transportation that is provided to public school students.

Public school students are picked up near their homes and brought to the school they attend. The same is required for Plaintiffs. Depositing Sr. Thea Bowman students at some point along a bus route that is not the school they attend puts their health and safety at risk and violates the statute.

B. The plain language and statutory and regulatory scheme support the public policy of safeguarding all schoolchildren.

The public policy of providing bus transportation to protect all school children is borne out by the Illinois Administrative Code which states that pupil 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 Sec. 120.30(a)(3) (emphasis added). The public policy of reimbursing schools for transporting all students confirms a public policy of safeguarding all students regardless of what school they attend in the district. Further, the reimbursement scheme requires that transportation for nonpublic school children be provided on the same basis as transportation provided to public school children. Nothing in the statutory or regulatory scheme indicates an intention that nonpublic school students can be dropped off anywhere on a route besides the school they attend while public school children are entitled to transportation from near their homes to and from the school attended.

When the Illinois General Assembly amended the School Code in 2018 to allow free transportation for all students residing within 1 ½ miles of the school they attended when conditions of walking constituted a serious safety hazard to the student either due to a course or pattern of criminal activity or due to vehicular traffic or rail crossings, Defendant took advantage of this amendment. 105 ILCS 5/29-3. A portion of the district was approved for the serious safety hazard grant. C305-306, A181-182. This serious safety hazard area included students from Sr. Thea Bowman for whom Defendant received

reimbursement when Defendant was still providing Sr. Thea Bowman students with bus transportation. C305 C225, C227, A181, A149, A151.

Despite the public policy of Illinois to protect all schoolchildren, despite the requirement that transportation for nonpublic school children be provided on the same basis as transportation provided to nonpublic school students, despite Illinois providing reimbursement for the transportation of nonpublic students at the same rate as public school students, and despite the safety hazards that exist in the District, Defendant chose to terminate all school bus transportation for Plaintiffs without regard to the health and safety of Sr. Thea Bowman students residing in East St. Louis, leaving Plaintiffs and other nonpublic school students to fend for themselves.

C. Defendant’s interpretation renders part of the statute superfluous and meaningless.

“The school board...**shall provide 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). “[T]he use of the word ‘shall’ is regarded as mandatory.” *Armstrong v. Hedlund Corp.*, 316 Ill. App. 3d 1097, 1106, 738 N.E.2d 163 (2000).

The plain language requires that Defendant provide transportation for Plaintiffs from near their homes “**to and from the school attended**,” Sr. Thea Bowman. 105 ILCS 5/29-4 (emphasis added). The statute does not say that Defendant can drop off Plaintiffs anywhere on the route that, notably, the Defendant designs. The Defendant must take the Plaintiffs to the school they attend. Defendant’s interpretation reads “to and from the school attended” out of the statute which violates the rules of statutory construction.

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.

In *Bakalis*, the plaintiff-district had 3 schools in the Village of Oak Forest and were being asked to provide bus transportation for 76 students enrolled in a parochial school, one in Oak Forest and one in neighboring Midlothian. Plaintiff complained the additional students would require more buses. *Bakalis* at pg. 452. Even so, the Illinois Supreme Court upheld the constitutionality of the statute. *Id.*

In subsequent litigation, the same plaintiff-district sued for bus transportation reimbursement that was denied based upon the plaintiff's refusal to transport nonpublic school students. In deciding the case, the Illinois Supreme Court noted that "Section 29-4 of the School Code...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).

Further, Defendant's interpretation renders the statute meaningless. Districts like Defendant are in control of the design and assignment of bus routes. Upholding Defendant's interpretation – that it need only drop off nonpublic school students somewhere on the route it designs and not at the school attended – allows districts to intentionally exclude nonpublic school students from bus transportation. The interpretation also allows Defendant to do what it has done here – refuse to provide transportation because the Defendant has deemed it inconvenient. That interpretation

defeats the legislative intent of the statute to provide safe transportation to and from school to all students in the school district.

Defendant's contention is that it does not have to provide transportation to Plaintiffs because the routes that Defendant created after removing Sr. Thea Bowman and its students from the active routing database do not run directly from Plaintiffs' home to Sr. Thea Bowman without adjustment. Defendant asserts that it need not "go out of their way" citing *C.E and C.L. v. Board of Education of East St. Louis District No. 189*, 2012 Ill App (5th) 110390. Defendant fails to acknowledge that it creates new routes each year and even updates them throughout the semester to accommodate students that attend its public schools. C290, C297. Defendant's interpretation ignores the mandate imposed on it by the Illinois legislature to provide safe transportation to and from school to the students within their district regardless of whether they go to a public or nonpublic school.

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.

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 clear that Plaintiffs need to be picked up from some point near their homes and brought to and from their school.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court: (i) find that the trial court erred in granting Defendant's Motion for Summary Judgment and denying Plaintiff's Cross-Motion for Summary Judgment; (ii) find that the trial court erred in not holding that Defendant acted unlawfully and continues to act unlawfully for failing to provide Plaintiffs with transportation from near their homes to their school and back; (iii) find that the trial court erred in failing to enjoin Defendant from not providing Plaintiffs with transportation from near their home to their school and back; (iv) remand this matter to the trial court with instructions to grant Plaintiffs' request for declaratory and injunctive relief in accordance with the requirements of 105 ILCS 5/29-4; and (v) for such other and further relief as justice and equity may require.

RESPECTFULLY SUBMITTED:
E.W. AND A.M.,
By their mother and father, respectively,
Plaintiffs-Appellants,

BY: /s/ Susan M. Simone
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No. 5-23-0763
 APPEAL TO THE APPELLATE COURT OF ILLINOIS
 FIFTH DISTRICT

FROM THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,)	
Chandres Johnson, and A.M,	)	Appeal from the
by her father and next friend,	)	Circuit Court of St. Clair County
Antonio Brown,	)	Case No. 2022-CH-75
)	
Plaintiffs,	)	Honorable Julie K. Katz
	)	Judge Presiding
v.)	
)	
BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT #189,)	
)	
Defendants.)	

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this reply 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 12 pages or words.

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)	
BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT #189,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 735 ILCS 5/1-109 and Supreme Court Rule 341, that the Reply Brief of Plaintiffs-Appellants, E.W. and A.M. was served upon Garrett P. Hoerner, attorney for Defendant-Appellee Board of Education of East St. Louis School District 189, at email address gph@bhylaw.com by electronic transmission at approximately 11:00 p.m. on April 17, 2024.

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,
CHANDRES JOHNSON, and A.M., by her
father and next friend, ANTONIO BROWN,

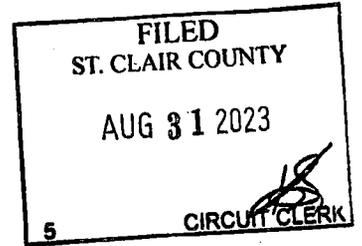
Plaintiffs,

vs.

BOARD OF EDUCATION OF EAST ST.
LOUIS SCHOOL DISTRICT NO. 189,

Defendant.

No. 22-CH-75



ORDER

This matter comes before the Court on Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross Motion for Summary Judgment, with arguments heard on August 24, 2023; the Court, being fully advised in the premises, finds as follows:

I. Background

On October 21, 2022, Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, A.M., by her father and next friend, Antonio Brown, and Sr. Thea Bowman Catholic Elementary School, filed their Complaint for Declaratory Judgment and Injunctive Relief (Plaintiffs’ Complaint) seeking a declaratory judgment and injunctive relief against Defendant, East St. Louis School District No. 189 (District), requiring the District 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”¹, along with a Motion for Temporary Restraining Order and Preliminary Injunction seeking the same relief on an interim basis pending resolution of this case. On November 2, 2022, following hearing conducted on October 31, 2022, this Court entered an Order pertinently providing that “Plaintiff’s Motion for Temporary Restraining Order is partially GRANTED to the extent that, within seven (7) days of the date of this Order, Plaintiffs and Defendants are ordered to confer and 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

¹To the extent that Plaintiffs’ Complaint cites a Temporary Restraining Order in St. Clair County Circuit Court Case No. 15-CH-592, the District correctly notes that same is not properly considered in this case because this Court dissolved that Temporary Restraining Order and dismissed that case for want of prosecution in its November 2, 2022 Order. 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).

ILCS 5/29-4), but partially DENIED in all other respects.” On November 7, 2022, Plaintiffs and the District so conferred concerning the District’s regular bus routes in existence at that time. On January 9, 2023, Plaintiff, Sr. Thea Bowman Catholic School, voluntarily dismissed its claims in this matter by Court Order, leaving only the claims of Plaintiffs, E.W., by and his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown, as pending.

On June 28, 2023, the District filed its Motion for Summary Judgment, with arguments mirroring the statutory interpretation in this Court’s November 2, 2022 Order. Meanwhile, on July 24, 2023, Plaintiffs filed their Response in Opposition to Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross-Motion for Summary Judgment, shifting their position away from their contention in Plaintiffs’ Complaint, which is verified by both Plaintiffs, and now seeking “bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school.” Essentially, contrary to their Complaint, Plaintiffs now contend that “[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student’s home located on or near a regular route to their schools; or (ii) from the student’s school located on a regular route to their homes”, and that [t]he statute does not require that nonpublic school students must live on or near Defendant’s regular routes AND that the school be located on the same regular route.” Notably, Plaintiffs’ Response in Opposition to Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross-Motion for Summary Judgment abandons their prayer for a separate bus route, thereby effectively conceding this Court’s interpretation that “Section 29-4 permits but does not require separate routes.” On August 11, 2023, the District filed its Response in Opposition to Cross-Motion for Summary Judgment. On August 21, 2023, Plaintiffs filed their Reply to Response in Opposition to Cross-Motion for Summary Judgment. On August 22, 2023, the District filed its Surreply to Plaintiffs’ Reply to Response in Opposition to Cross-Motion for Summary Judgment.

II. Legal Standard

Section 2-1005(c) of the Illinois Code of Civil Procedure provides that summary judgment “shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c). Summary judgments are encouraged to summarily dispose of litigation where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Shelter Mut. Ins. v. Bailey*, 160 Ill.App.3d 146, 513 N.E.2d 490 (5th Dist. 1987). “[I]nterpreting or construing a statute is a matter of law for the court and is appropriate for summary judgment.” *In re A.M.F.*, 311 Ill.App.3d 1049, 1051, 726 N.E.2d 661 (5th Dist. 2001).

In statutory construction cases, the court’s primary and overriding concern is to ascertain and give effect to the intent of the legislature. *People v. Whitney*, 188 Ill. 2d 91, 97, 720 N.E.2d 225 (1999). Legislative intent is best determined from the language of the statute itself, which if unambiguous should be enforced as written. *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill. 2d 590, 595, 837 N.E.2d 876 (2005); *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 473, 837 N.E.2d

1 (2005). In giving effect to the statutory intent, the court should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought. *People v. Donoho*, 204 Ill. 2d 159, 171-72, 788 N.E.2d 707 (2003). It is also true that statutes must be construed to avoid absurd results. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 183 N.E.3d 810. When a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should be rejected. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 183 N.E.3d 810.

The purpose of a complaint is to crystallize the issues in controversy, so that a defendant will know what claims it has to meet. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 679, 832 N.E.2d 403 (1st Dist. 2005), quoting *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 911, 629 N.E.2d 569 (1st Dist. 1994). In other words, the issues in controversy and the theories upon which recovery is sought are fixed in the complaint. *Kincaid v. Ames Department Stores*, 283 Ill.App.3d 555, 568, 670 N.E.2d 1103 (1st Dist. 1996). When ruling on a motion for summary judgment, the trial court looks to the pleadings to determine the issues in controversy. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 679, 832 N.E.2d 403 (1st Dist. 2005), quoting *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 911, 629 N.E.2d 569 (1st Dist. 1994). A party cannot seek summary judgment on a theory that was never pled in the complaint. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 680, 832 N.E.2d 403 (1st Dist. 2005).

Furthermore, Illinois law is well established that, when a pleading is verified, it remains part of the record even upon the filing of an amended pleading. *Robins v. Lasky*, 123 Ill.App.3d 194, 198, 462 N.E.2d 774 (1st Dist. 1984). A party's admissions contained in an original verified pleading are judicial admissions that still bind the pleader even after the filing of an amended pleading that supercedes the original. *Yarc v. American Hospital Supply Corp.*, 17 Ill.App.3d 667, 670, 307 N.E.2d 749 (2nd Dist. 1974).

“The essential elements of a declaratory judgment action are: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.” *Behringer v. Page*, 204 Ill.2d 363, 372, 789 N.E.2d 1216 (2003). Meanwhile, “[t]o be entitled to a permanent injunction, a party ‘must demonstrate (1) a clear and ascertainable right in need of protection, (2) that he or she will suffer irreparable harm if the injunction is not granted, and (3) that no adequate remedy at law exists.’” *Vaughn v. City of Carbondale*, 2016 IL 119181 (2016, ¶ 44, 50 N.E.3d 643, citing *Swigert*, 2012 IL App (4th) 120043, ¶ 27, 976 N.E.2d 1176. It is an “established principle that a proper injunctive order must couch its directions or prohibitions, ‘in terms so definite, clear and precise as to demand obedience, or to be capable of enforcement or execution.’” *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 839-840, 270 N.E.2d 200 (1st Dist. 1971). In other words, an injunction must “concisely and clearly advise defendant of the ruling of the court and of the precise conduct enjoined.” *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill. App. 2d 833, 840, 270 N.E.2d 200 (1st Dist. 1971).

III. Legal Analysis

Section 29-4 of the Illinois School Code defines the limited scope of transportation that a public school district must afford to pupils attending a charter school or nonpublic school as follows:

“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 1½ 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** (emphasis added). 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 1½ 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.” (Emphasis added.) 105 ILCS 5/29-4.

The plain language of Section 29-4 of the Illinois School Code only requires a public school district to provide free bus transportation to non-public school students on its existing routes.² 105 ILCS 5/29-4. Indeed, that Section expressly limits such requirement to the public school district's "regular routes" of transportation to be provided "on the same basis as it provides transportation to its own pupils."³ 105 ILCS 5/29-4. More specifically, it simply requires that a public school district allow nonpublic school students residing at least 1½ miles from the school attended to utilize the public school district's existing bus transportation by expressly providing the scope 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". 105 ILCS 5/29-4. Furthermore, it permits, but does not require, a public school district to operate separate bus routes only if such routes are "more economical and more efficient." 105 ILCS 5/29-4. This limitation is confirmed by how Section 29-4 similarly treats non-public school students who live within 1½ miles from the school attended: "If any such children reside within 1½ 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. Indeed, our Illinois Appellate Court has explained 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 1½ miles of their school only "on the same basis as it provides

² Notably, with Plaintiffs' children residing over 1.5 miles from Sr. Thea Bowman, the transportation contemplated for Plaintiffs' students is distinct from District students inasmuch as the language of Section 29-4 of the Illinois School Code applicable to non-public school students differs from the language of Section 29-3 of the Illinois School Code applicable to 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.

³ Plaintiff's reliance on *Board of Education of School District No. 142 v. Bakalis*, 54 Ill. 2d 448, 452, 299 N.E.2d 737 (1973), is misplaced, as it actually supports the District's position. Indeed, while addressing a different type of claim challenging its constitutionality, the Illinois Supreme Court consistently stated that Section 29-4 of the Illinois School Code "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).

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).

Simply put, the scope of such transportation is limited to “points” on the “regular routes” of buses servicing the public school district students; Plaintiffs’ Complaint, which is verified by both Plaintiffs, acknowledges as much by expressly seeking a declaratory judgment requiring the District 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). Indeed, consistent with precedent of our Illinois Appellate Court – Fifth Judicial District in *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, 970 N.E.2d 1287 (5th Dist. 2012), this Court’s November 2, 2022 already concluded:

“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.”

Nevertheless, Plaintiffs’ Cross-Motion for Summary Judgment shifts their position away from their contention in Plaintiffs’ Complaint, which is verified by both Plaintiffs, and now seeks “bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school.” Essentially, contrary to their Complaint, Plaintiffs now contend that “[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student’s home located on or near a regular route to their schools; or (ii) from the student’s school located on a regular route to their homes”, and that [t]he statute does not require that nonpublic school students must live on or near Defendant’s regular routes AND that the school be located on the same regular route.” However, procedurally, Plaintiffs cannot seek summary judgment on their newfound statutory interpretation position because same was never pled in Plaintiffs’ Complaint. See *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 680, 832 N.E.2d 403 (1st. 2005). And, substantively, Plaintiffs’ newfound interpretation of Section 29-4 of the Illinois School Code is clearly erroneous in that it would necessarily require the District to modify an existing route (or “go out of their way”) contrary to this Court’s prior interpretation and our Appellate Court’s precedent, an obviously absurd result that this Court must avoid under Illinois law.

Even if such an argument had been made in the initial Complaint, the Court finds that the Defendant’s interpretation of Section 29-4 is the correct interpretation. The 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. If any nonpublic student chooses to utilize existing bus routes traveled by the Defendant’s buses in order to be transported to their nonpublic school, the Defendant must allow any such student to do so.

IV. Conclusion

While Plaintiffs submit a sympathetic argument as to their reasons for choosing to attend private school and their financial need for free transportation, our Illinois Appellate Court explained that such circumstances are irrelevant to the construction of the statutory requirements of Section 29-4 of the Illinois School Code:

“We are not unsympathetic to the plight of these young plaintiffs who certainly deserve access to quality education. Nor are we unmindful of the failing state of the defendant school district, a fact which was in evidence before the circuit court and no doubt gives rise to the plaintiffs’ desires to attend a parochial school. Nevertheless, like the circuit court, our hands are tied and we cannot grant the plaintiffs the relief for which they pray.” *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, 970 N.E.2d at 1290.

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.

Clearly, Plaintiffs' newfound 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 the District to modify an existing route (or "go out of their way") contrary to our Appellate Court's precedent, and this Court's previous interpretation thereof. Moreover, in the obvious absence of identified existing routes sought by Plaintiffs in the record, Plaintiff cannot establish a legal, tangible interest as required for a declaratory judgment claim, or a clear and ascertainable right in need of protection as required for a permanent injunction; nor could this Court fashion a suitable injunction order containing directions 'in terms so definite, clear and precise as to demand obedience, or to be capable of enforcement or execution'", "concisely and clearly advise defendant of the ruling of the court and of the precise conduct enjoined." *Illinois School Bus Co. v. South Suburban Safeway Lines, Inc.*, 132 Ill.App.2d 833, 839-840, 270 N.E.2d 200 (1st Dist. 1971). Accordingly, the District is entitled to summary judgment on Plaintiff's Complaint as a matter of law pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), and Plaintiffs are not.

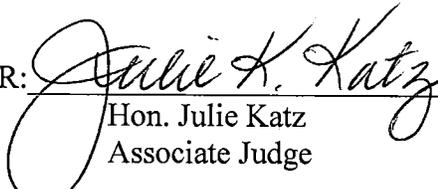
IT IS HEREBY ORDERED THAT, pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), Defendant's Motion for Summary Judgment is hereby GRANTED and Plaintiffs' Cross-Motion for Summary Judgment is hereby DENIED;

IT IS FURTHER ORDERED THAT summary judgment on Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief is hereby entered in favor of Defendant, East St. Louis School District No. 189, and against Plaintiffs, Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, A.M., by her father and next friend, Antonio Brown.

SO ORDERED.

DATE: August 31, 2023.

ENTER:


 Hon. Julie Katz
 Associate Judge

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**IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS**

E.W., by his mother and next friend,
Chandres Johnson, and A.M,
by her father and next friend,
Antonio Brown, and SR. THEA BOWMAN)
CATHOLIC ELEMENTARY SCHOOL,)

Plaintiffs,)

v.)

BOARD OF EDUCATION OF EAST)
ST. LOUIS SCHOOL DISTRICT #189,)
and ARTHUR R. CULVER,)
Superintendent, East St. Louis School)
District #189, in his official capacity,)

Defendants.)

No. 2022-CH-0075

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME Plaintiffs, E.W. and A.M., by their parents and next friends, Chandres Johnson and Antonio Brown, respectively; through their attorneys, Susan M. Simone, Land of Lincoln Legal Aid; and Plaintiff Sr. Thea Bowman Catholic Elementary School, by and through its attorney, John Baricevic, Chatham & Baricevic; and for their Complaint for Declaratory and Injunctive Relief, state as follows:

1. This action is brought under Article II, Part 7, 735 ILCS 5/2-701, an action for Declaratory Judgment, and Article XI, Part 1, 735 ILCS 5/11-101, *et seq*, an action for Injunctive Relief.

2. Plaintiff, E.W., is a 9-year-old boy who is in fourth grade at Sr. Thea Bowman Catholic Elementary School. E.W. has attended Sr. Thea Bowman since the kindergarten.

3. E.W. lives more than 1 ½ miles from Sr. Thea Bowman and needs assistance with transportation to and from school. E.W.'s mother is employed with limited income and cannot afford gas to bring E.W. to school every day. E.W.'s mother has had great difficulties juggling her work schedule with transporting her son to and from school and has had to rely on friends whom she must pay to help with transportation for E.W..

4. Since Defendant East St. Louis School District 189 suspended bus transportation to Sr. Thea Bowman in August 2022, E.W. has missed approximately 5 days of school, because his mother is unable to provide daily transportation.

5. Plaintiff, A.M., is a 6-year-old girl in the first grade at Sr. Thea Bowman.

6. A.M. lives more than 1 ½ miles from Sr. Thea Bowman and needs assistance with transportation to and from school. A.M.'s father has a very limited income and cannot afford gas to bring A.M. to school every day.

7. Since Defendant East St. Louis School District 189 suspended bus transportation to Sr. Thea Bowman, A.M. has missed approximately 2 half days of school, because her father was unable to provide transportation.

8. Plaintiff Sr. Thea Bowman Catholic Elementary School is a small private Catholic elementary school in East St. Louis. Currently approximately 110 students are enrolled there and more than 30 of those students rely on School District 189 to provide bus transportation to and from school. Its mission is to “inspire, prepare, and empower kindergarten through grade 8 students in East St. Louis and surrounding communities, to become the next generation of wholesome, responsible, and dedicated leaders of their communities and of our world”.

9. Defendant Arthur R. Culver ("Mr. Culver") is the Superintendent of East St. Louis School District 189. He is the chief administrative officer of the District and has charge and control of all the departments and employees of the schools within the District.

10. Defendant Board of Education of East St. Louis School District 189 ("the Board") is a body corporate and politic which is organized pursuant to the Illinois School Code. Its main office is in the City of East St. Louis, Illinois. It is the local governmental unit responsible for the delivery of educational services to children within the area it serves. Defendant Board is an elected body which has responsibility for the policies and operations of the District. It may sue and be sued pursuant to 105 ILCS 5/10-2.

11. The parents of the Plaintiffs-students have chosen Sr. Thea Bowman Catholic School in the hope of providing a better future for their children.

12. Plaintiffs-students are low-income persons, struggling to help their children escape poverty through education.

13. Plaintiffs-students do not have sufficient financial means for constant reliable transportation to send their children to school at Sr. Thea Bowman.

14. Illinois statute 105 ILCS 5/29-4 provides that:

"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 ½ 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."

15. Pursuant to this statute, Defendant has been providing bus transportation to children attending Sr. Thea Bowman Catholic School since 2007.

16. In August 2015, Defendants ceased bus services to Sr. Thea Bowman at the beginning of the 2015-2016 school year. A suit was brought on behalf of several Sr. Thea Bowman parents against Defendants in St. Clair County Case Number 2015-CH-592.

17. A Temporary Restraining Order was issued in 2015-CH-592 on August 31, 2015, ordering Defendants to reinstate bus services to Sr. Thea Bowman students in such a way that students would “arrive at their school in a timely fashion and be able to remain there until the end of the school day” within seven days. *See* Temporary Restraining Order attached and marked Exhibit A.

18. Thereafter, a Preliminary Injunction was issued in 2015-CH-592 on October 28, 2015, requiring the injunctive relief already in place should continue until further order of the court. *See* Order attached and marked Exhibit B.

19. No further order was issued and Defendants continued to provide bus transportation to students of Sr. Thea Bowman until August 2022.

20. In August of 2022, the acting principal of Plaintiff Sr. Thea Bowman Catholic School, Mr. Birdsong, was informed by Defendants that they would no longer be providing bus service to the children of East St. Louis who attend Sr. Thea Bowman.

21. Defendants have asserted that they are unable to provide bus service for students of Sr. Thea Bowman due to a shortage of bus drivers. However, Defendants have continued to provide bus service to students who attend District 189 schools.

22. Defendants' refusal to provide transportation to Plaintiffs-students and other students of Plaintiff Sr. Thea Bowman is in violation of 105 ILCS 5/29-4.

23. Defendants' refusal to provide transportation to Plaintiffs is a violation of the preliminary injunction order of October 28, 2015.

24. On information and belief, more than 30 students are affected by the Defendants refusal to provide bus transportation.

25. Plaintiffs are asking the Court to order Defendant to comply with 105 ILCS 5/29-4 and the prior Court Orders issued in strikingly similar prior litigation.

26. Plaintiffs and other students are suffering and will continue to suffer irreparable harm if their children cannot attend Sr. Thea Bowman Catholic School because of their inability to afford transportation unless Defendants are enjoined from refusing to provide free transportation to private school students in accordance with 105 ILCS 5/29-4.

27. Plaintiffs are likely to succeed on the merits of this cause.

28. No adequate remedy at law exists.

29. The Plaintiff-students in this cause are low-income persons and are unable to furnish bond in this cause. Plaintiff Sr. Thea Bowman is a non-profit parochial school and is unable to furnish bond in this cause.

WHEREFORE, Plaintiffs respectfully request that this Court:

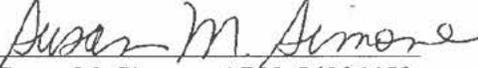
A. Enter a declaratory judgment holding that Defendants' refusal to provide free transportation to private school students violates 105 ILCS 5/29-4.

B. Enter a declaratory judgment holding that the Order of October 28, 2015, Preliminary Injunction is still in force and that Plaintiffs are entitled to have the Preliminary Injunction enforced.

C. Grant a Temporary Restraining Order, and a Preliminary and Permanent Injunction, without bond, enjoining Defendants and their officers, agents, employees and attorneys, and all other persons in active concert or participation with them, from failing to provide appropriate bus transportation for Plaintiffs, 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.

D. Grant such other relief as the Court deems just and proper.


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john@chathamlaw.org
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VERIFICATION BY CERTIFICATION

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

Chandres Johnson
Chandres Johnson

VERIFICATION BY CERTIFICATION

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

Antonio Brown
Antonio Brown

VERIFICATION BY CERTIFICATION

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

Sr. Thea Bowman Catholic Elementary School

By: Michelle Ruppel

Its: Principal at Sr. Thea Bowman

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

R.T., by her Guardian and next friend,
Willie Britton, K.W., by his mother
and next friend, Sharnese Willis,
and J.B., J.B., and J.B.,
by their mother and next
friend, Norkisha Epps,

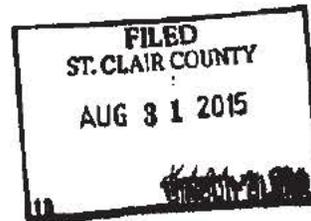
Plaintiffs,

v.

BOARD OF EDUCATION OF EAST
ST. LOUIS SCHOOL DISTRICT #189,
and ARTHUR CULVER,
Superintendent, East St. Louis School
District #189, in his official capacity,

Defendants.

No. 15CH592



TEMPORARY RESTRAINING ORDER

This matter coming before the Court for a hearing on Plaintiff's Motion for a Temporary Restraining Order, Preliminary and Permanent Injunction, the Court being fully advised in the premises and having considered the argument and evidence presented to it, FINDS THAT:

1. Plaintiffs will suffer irreparable injury for which there is no adequate remedy at law if Defendant does not immediately resume bus service for Plaintiffs in such a manner that the children actually reach their school in a timely fashion.
2. Counsel for Defendant received notice of Plaintiffs' Motion and is present in Court.
3. The harm Plaintiffs will suffer if this Court delays consideration of the Motion far outweighs the harm Defendant will suffer if this Court grants the Motion.
4. Plaintiffs have a protected interest and a claim for relief that will likely succeed on the merits.

WHEREFORE, IT IS HEREBY ORDERED THAT:



- A. Plaintiffs' Motion for a Temporary Restraining Order is granted, and Defendant is ordered to ~~immediately~~ restore bus service to Plaintiffs in such a way that they will actually arrive at their school in a timely fashion and be able to remain there until the end of the school day. *w/in 7 days (9/7/15 for bus service)* -
- B. This order is binding upon Defendant, its owners, agents, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order.
- C. For good cause shown, Plaintiff does not have to post bond as security for the issuance of this order.
- D. The Temporary Restraining Order shall remain in full force and effect until further order of this Court.
- E. This matter is set down for hearing on the Plaintiff's Motion for a Preliminary Injunction, at which time all parties are ordered to appear before this Court.
- F. *September 16*⁵, 2015, at *10:00am* before the Honorable Judge Robert LeChien, or any judge sitting in his stead in Courtroom #401 of the St. Clair County Courthouse, #10 Public Square, Belleville, Illinois.
- G. That copies of this Order, Plaintiff's Verified Complaint, together with proper summons issued by the Clerk of this Court, be immediately served upon said Defendant.

There is no just reason to delay enforcement of or appeal from this Order. This injunction order shall take effect immediately.

ENTERED this 31st day of August 2015, at *3:00 PM*


 JUDGE
LeChien

THIS IS THE ORDER OF THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL
 CIRCUIT, ST CLAIR COUNTY, ILLINOIS.
 Failure to obey this order could result in punishment for
 contempt of court.

91100 for Defendants over objection.
Ashley B...

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

R.T., by her Guardian and next friend,)
Willie Britton, K.W., by his mother)
and next friend, Sharnese Willis,)
and J.B., J.B., and J.B.,)
by their mother and next)
friend, Norkisha Epps,)

Plaintiffs,)

v.)

BOARD OF EDUCATION OF EAST)
ST. LOUIS SCHOOL DISTRICT #189,)
and ARTHUR CULVER,)
Superintendent, East St. Louis School)
District #189, in his official capacity,)

Defendants.)

No. 15 CH 592

FILED
ST. CLAIR COUNTY
OCT 28 2015
H. H. H. on Clerk
CIRCUIT CLERK

ORDER

This matter comes before the court on Defendant's Motion for Preliminary Injunction, with arguments heard on September 23, 2015; the Court, being fully advised in the premises, finds as follows:

Plaintiffs (Bowman students) seek a preliminary injunction requiring that Defendant, East St. Louis School District No. 189 (District) to provide bus transportation to students at Sr. Thea Bowman Catholic School (Bowman) "The party seeking a preliminary injunction is required to establish four factors before an injunction will be granted: (1) a clearly ascertained right in need of protection, (2) an irreparable injury in the absence of an injunction, (3) an inadequate remedy at law, and (4) a likelihood of success on the merits."

EXHIBIT
B

Kalbfleisch v. Columbia Community Unit School District No. 4, 396 Ill. App. 3d 1105, 1113, 920 N.E.2d 651, 658 (5th Dist. 2009).

The Bowman children will suffer irreparable injury if they do not have transportation to school. Specifically, failure to provide bus service will disrupt their education.. In the absence of education there is ignorance. When the children miss school in whole or in part it is obviously harmful.

The issue here is do the Bowman students have a right to transportation that is in need of protection and can they establish there is a likelihood of success on the merits. The District denies that the Bowman children have a clear right in need of protection. The Bowman students disagree and claim they have a right to transportation in the same manner as the public school students. The court is mindful of the need of the Bowman children to get to school in a safe and timely manner. The court is also cognizant of the financial distress that confronts the District and the burden placed on the taxpayers' of the District to provide bus service to the Bowman students.

Transportation for non-public students is controlled by the Illinois School Code (Code.) (105 ILCS 5/29-4.) Section 29-4 provides in pertinent part as follows:

"Pupils attending a charter school or non-public 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 1½ 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. * * * If any such children reside within 1½ miles from the school attended, the school board shall afford such transportation to such children on the same basis as it provides transportation to 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." 105 ILCS 5/29-4.

The plain meaning of the words of the statute express the legislative intent. Extrinsic evidence is unnecessary to resolve the dispute before the court. However, it is necessary to break the text into pieces in order to rebuild its whole substance.

Preliminarily, the Illinois Supreme Court has held that "section 29-4 was enacted for the secular legislative purpose of protecting the health and safety of the children traveling to and from non-public schools... ." *Board of Education, School District No. 142, Cook County v. Bakalis*, 54 Ill. 2d 448, 299 N.E.2d 737 (1973.) The use of the word "shall" in the passage "... shall afford transportation, without cost ... 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 ... " creates a mandatory duty. The Bowman students have established that they have a clearly ascertained right in need of protection. Therefore, based on the public policy expressed by the Supreme Court in *Bakalis* and the Court's determination of legislative intent of section 29-4, the court finds that the District 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.

Further, the District argues that the Bowman students are not likely to have success on the merits of their complaint. The District contends that its obligation is limited to pick up and drop off along its "regular routes." As stated by the District's counsel: "The plain language of Section 29-4 of the Illinois School Code only requires public-school district's to

provide free bus transportation to non-public school students on its existing routes, which are inherently based upon the public-school district's daily time schedule." Consequently, as the Bowman school is not located on the public school bus route, the District has adopted a daily bus schedule that delivers the students to a public school and causes the elementary school children to risk the walk to their school without policing.

This approach steers around that the District "shall afford transportation, without cost, for children that attend ... any school other than a public school ... "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." (Emphasis added.) Again, the use of the word "shall" imposes a mandatory duty to comply with the legislative directives of the statute. The public school locus is not the nearest or most easily accessible place to the Bowman school.

The act of using only those bus stops that are provided for public school students is not safe for the Bowman students and is in contradiction of the public policy of the State of Illinois as set forth by the Supreme Court in *Bakalis*. The District may not abrogate its duty under section 29-4. Therefore, the District does not have authority to limit its non-public school bus service in the manner it contends.

Additionally, nothing in the statute allows the District to ignore the Bowman school schedule and impose its daily time schedule for public schools. If imposed, the public school schedule makes the students over an hour late for school and requires them leave school before classes are completed. The duty created by section 29-4 necessarily implies that the District's adapt transport to a commonsensical school schedule of the Bowman school. This

is because timely bus service promotes the public purpose of section 29-4. Moreover, the job of getting the children to the parochial school on time is no more than what is provided to the public school students to convey its students to and from school in a safe and timely manner.

The District contends that under *C.E. and C.L.* its' transportation expenditures need not be increased to discharge its obligation under section 29-4. The District concludes that its bus service for the Bowman students can be limited to the same time and place as adopted for daily schedule of the public school so that its costs are minimized. The District is wrong. There is no mention of money in the statute except when the District contemplates establishing a separate regular bus service route for the Bowman children. When a separate route is considered the school district must determine if the operation of a separate route is "safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes." Section 29-4 means that only when a school district exercises its' discretion to adopt a separate route for the non-public school students may it take into account its transportation expenditures. Also, the cost of providing a separate regular bus service to non-public students must be compared to expenditures required for transportation non-public students without separate regular bus service.

In this case, the District chose to provide separate regular service to the Bowman school children. The District then decided that it is more economical to terminate all mandated bus service "to and from" the Bowman school by limiting bus service to only the route and schedule in place for its students. Section 29-4 does not support the decision to limit the Bowman students' right to bus transportation because compliant service costs

more. Compliance with section 29-4 regarding nonpublic school students does not exceed the bus service provided for the District's own pupils. Cost does not abrogate compliance.

In *C.E. and C.L.*, the appellate court was confronted with the demand of non-public school students' for transportation on days when the public schools did not hold classes. The appellate court held that the legislative intent of section 29-4 was that the District did not have to transport the Bowman students "...on days when the public schools are not in session..." The District seeks to extend this holding to apply to Bowman school bus service on days when public school *are* in session. The District takes the holding in *C.E. and C.L* to permit it to severely restrict the service to the Bowman school from what it was in the 2014 -2015 school year. The District points out that the appellate court construed section 29-4 to mean that "... the legislature took care to ensure that non-public school students received no more in the way of transportation than do public school students."Continuing, the court went elsewhere to append this *dicta*: "and that the transportation of non-public school students not increase the school district's cost or interfere with its convenience or efficiency."

The appellate court's resolution of the problem before it does not translate to the problem here. That court was not asked to consider the everyday operation of the buses to the public school and to the non-public school. The notion that the school buses are not required to "go out of their way" to transport non-public school students to elementary school is indifferent to the safety and educational needs of the children of East St. Louis who attend Sr. Thea Bowman School. Consequently, the appellate court's statement of public policy can not be meant to apply here. The plain language of the statute provides for right of non-public school students to transportation to and from school at no cost. The

plain English does not require elementary school students to fend for themselves on the streets in order to connect with school and home. While the District counsel's presents judicious defense maintaining that the holding in *C.E. and C.L.* should be extended, the factual and legal findings necessary here are clearly distinguishable.

Many of the statements made in *C.E. and C.L.* that are asked to be applied here are *obiter dictum*, and not *judicial dictum*. As explained in *Cates v. Cates*, 156 Ill 2d 76, 619 N.E. 2d 715 (1993):

"The term "*dictum*" is generally used as an abbreviation of *obiter dictum*, which means a remark or opinion uttered by the way. Such an expression or opinion as a general rule is not binding as authority or precedent within the *stare decisis* rule. (Citations omitted.) On the other hand, an expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause, if *dictum*, is a *judicial dictum*. (Citations omitted)... 'such *dictum* should be considered a *judicial dictum* as distinguished from a mere *obiter dictum*...' And further, a *judicial dictum* is entitled to much weight, and should be followed unless found to be erroneous. (Citations omitted) 'where expression of opinion considered to be *judicial dictum* held to have force of judicial determination.'" *Cates*, 619 N.E. 2d at 717.

The *C.E. and C.L.* opinion does not reveal that the mixed questions of fact and law presented here were addressed by the attorneys in that appeal. Additionally, the court did not deliberately articulate the legislative intent of the segment of section 29-4 that states a school district shall afford transportation of the non-public school children "... 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." (Emphasis added.) The legislative intent of this passage was not within the appellate court's judicial pronouncements.

In *Cates v. Cates*, Justice Miller wrote a dissent that thoroughly summarized the courts role in determining legislative intent. The Justice wrote:

"Expressions of public policy are found primarily in the constitution and statutes of the state, and only secondarily in its judicial decisions. (Citations omitted.) The preferred role of the legislature as an expositor of public policy simply reflects the basic principle that a court, constrained by the particularity of the specific controversy before it, is singularly ill-suited to making broad pronouncements of policy. The legislature, with its vastly different functions and resources, is better able to undertake a thorough examination of the different concerns that underlie a matter such as this. The judicial branch is not equipped to perform that mission." *Cates v. Cates*, 719 N.E.2d at 731.

Based on the foregoing, this court can rightly conclude that the remarks of the appellate court made in connection with the issues in the case were *obiter dictum* and are not precedent on the issues here.

There are conflicting themes running through the cases cited in this order. One theme implies that the non-public school students are freeloaders on the back of the taxpayer. This school of thought is summarized in the statement (I)t seems to us that the legislature took care to ensure ... that the transportation of non-public school students not increase the school district's cost or interfere with its convenience or efficiency." *C.E and C.L.*, 970 N.E. 2d at 1290.

The other theme is stated by the controlling authority of Illinois courts, the Illinois Supreme Court. In *In re Marriage of Lappe*, 176 Ill.2d 414, 680 N.E.2d 380, 389 (1997), the Court cited *Bakalis*, and observed "that a public purpose was served by a provision of the School Code which required school boards to provide free transportation to school to non-

public school students." The Court concluded "that the transportation of school children, public or non-public, is a public purpose."

This court finds that *Bakalis* and *Lappe* are settled law that declares the legislative intent of section 29-4. As a consequence of the Supreme Court's analysis, this court finds that *C.E* and *C.L* are not *stare decisis* as applied to Plaintiffs' case. Since the law is bus transportation of non-public school students serves the public interest, it follows that the Bowman students do not take a back seat to the District's students. They both get a ride to school.

The court finds that the hardship to Bowman children outweighs the harm to District to provide bus service in such a manner that the Bowman children actually reach their school in a safe and timely fashion and are allowed to remain there to the end of their school day.

Notwithstanding the above, there is an avenue to an adequate remedy at law. The St. Clair County local rules provide for court-annexed mediation of civil disputes. These rules give the court to refer the case to mediation on its own motion. However, given the status of the case after trial of Plaintiffs' complaint on September 23, 2015, and the noteworthy professional presentation and cooperation of counsel, the court strongly advises the attorneys confer with their clients, and each other, regarding referral to mediation.

The goal is to have the parties sit down and take up a conference on a unified system of transportation which protects the health and safety of all students traveling to and from their schools in a timely fashion. After such, the parties will report to the court the result of their deliberation with respect to amelioration of the dispute by November 23, 2015. If in

the judgment of the court, the parties have engaged in discussions in good faith, and it is unlikely that mediation will not be successful, the court will rule that there is no adequate remedy at law for the Plaintiffs.

The injunctive relief already in place shall continue until further order of court. Final order will follow.

(As a convenience to the parties, attached hereto is Part VIII of the local rules that pertain to court- annexed mediation.)

October 28, 2015



Robert P. LeChien, Circuit Judge

c.c and e.c. to all lawyers

PART 8: COURT-ANNEXED MEDIATION IN ST. CLAIR COUNTY**8.01 Court-annexed Mediation**

In an effort to provide an expeditious and expense-saving alternative to traditional litigation in the resolution of controversies, there is hereby established a program of court-annexed mediation, which shall operate in cases pending in the Law Division of the Circuit Court of St. Clair County. In order to further this purpose, there is a presumption in favor of court-annexed mediation for all cases eligible under these rules. Mediation pursuant to this Rule involves a confidential process by which a neutral mediator, selected by the parties or selected by or with the assistance of the Court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstandings, exploring and clarifying the parties' respective interests and priorities, and identifying and exploring possible solutions that will satisfy the interests of all parties and thereby resolve some or all of the issues in dispute. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. Parties and their representatives are required to mediate in good faith, but are not compelled to reach any agreement. A person approved by the Court to act as a mediator under this Rule shall, pursuant to Supreme Court Rule 99, have judicial immunity in the same manner and to the same extent as a judge.

8.02 Civil Actions Eligible for Mediation

All civil actions seeking claims exclusively for money damages in an amount in excess of eligibility for Mandatory Arbitration under Part 7 of these Rules shall be eligible for court-annexed mediation. In all civil actions eligible for court-annexed mediation, the complaint and all summonses shall state in upper case letters on the upper right-hand corner, "**THIS CASE IS ELIGIBLE FOR COURT-ANNEXED MEDIATION.**"

8.03 Referral by Judge or by Stipulation for Order of Referral

The presiding judge may order any contested civil matter pending in the Law Division referred to mediation by entering an Order of Referral. An Order of Referral may be entered by the presiding judge *sua sponte* or upon the motion of any party. Standard case management orders shall include a section addressing when the matter will be considered for mediation. In addition, the parties to any such matter may file a written stipulation to mediate any case or issue between them at any time. Any stipulation shall be incorporated into the Order of Referral.

8.04 Case Management of Cases for Mediation

A. In all cases filed in the Law Division the presiding judge shall use the initial or subsequent case management conferences under Illinois Supreme Court Rule 218 to consult with the parties regarding entry of an Order of Referral to mediation. Referrals to

mediation should occur at the earliest possible time that the parties are able to make an informed choice about their participation in mediation.

B. If the case is referred to mediation, the presiding judge shall schedule a case management conference in order audit the outcome of the mediation.

C. The Clerk of the Circuit Court shall assure that a case referred to mediation is properly coded to reflect the referral, the result of mediation of the case and the continuation of the case for any necessary future court dates.

8.05 Discovery While Case Is Being Mediated

Discovery shall proceed as in all other civil actions. Whenever possible, the parties are encouraged to design discovery to develop information necessary for the parties to evaluate their case and to facilitate an early referral to court-annexed mediation.

8.06 Mediator Qualifications

A. Circuit Court Mediators. The Chief Judge shall maintain a list of mediators who have been certified by the court and who have registered for appointment. For certification as mediator the applicant must:

- (1) Complete a mediation training program approved by the Chief Judge of the 20th Judicial Circuit; and
- (2) Be a member in good standing of the Illinois Bar with at least eight (8) years of trial practice or be a retired judge; and
- (3) Be of good moral character; and
- (4) Submit an approved application form with the Chief Judge. Such applicant shall certify that he or she is licensed to practice law in the State of Illinois, that his or her license is in good standing, and that he or she has engaged in litigation for not less than eight (8) years, and that he or she has filed proof of legal malpractice insurance.

B. Mediator General Standards. In each case, the mediator shall comply with such general standards as may be established and promulgated in writing by the Chief Judge of the 20th Judicial Circuit. The Chief Judge may revise these Rules by administrative order to include continued legal education for all certified mediators.

C. Mediator by Agreement. Notwithstanding section A. (1) above, the presiding judge may appoint a mediator nominated by agreement of all the parties, if the nominee, by virtue of experience or training, has skills that are particular to the nature of the case.

D. Decertification of Mediators. The Chief Judge may periodically review the eligibility of each mediator to retain the status of a certified mediator. Failure to adhere to these Rules may result in the decertification of the mediator.

8.07 Mediator Confidentiality

A. General Rule of Mediator Confidentiality. All oral and written communications made during the mediation process at any time, other than executed settlement agreements, shall be deemed confidential and privileged in accordance with the provisions of the Uniform Mediation Act [710 I.L.C.S. 35/1-99 (2004)]. All such communications are subject to an evidentiary privilege and shall be exempt from discovery and inadmissible as evidence in any action or proceeding. However, evidence that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation session.

B. Exceptions to General Rule of Mediator Confidentiality. The general rule of confidentiality does not apply:

1. In situations where professional misconduct reporting rules, such as the Rules of Professional Conduct, require reporting of a mediation communication;
2. As necessary to defend against a lawsuit or claim for malpractice or other misconduct; or
3. In the case of threat of a prospective crime or of serious imminent harm to any person.

In such circumstances, the reporting party may testify to or report only the necessary information to the appropriate authorities. The mediator shall not be compelled to provide evidence of a mediation communication in any lawsuit or claim against an attorney or party participating in the mediation.

8.08 Compensation of the Mediator

Unless otherwise agreed in writing, the mediator shall be compensated at the rate of \$200 per hour with each party responsible for a proportionate share of the total fees of the mediator. The mediator's fee shall be subject to appropriate order or judgment for enforcement. Each court-certified mediator shall agree to mediate one case without compensation when a Court has determined that mediation might be beneficial and that none of the parties has the resources to compensate a mediator.

8.09 Appointment of the Mediator

A. Appointment by Stipulation. Within fourteen days of the Order of Referral, the parties are to make a good faith effort to agree upon a mediator taken from court-certified list of mediators.

B. Appointment by Motion. If the parties cannot agree upon a mediator from the court-certified list of mediators, the parties shall join in a motion directed to the presiding judge who shall appoint a mediator from the court-certified list of mediators.

C. Appointment of Noncertified Mediator in Specialized Cases. The presiding judge may appoint a licensed attorney who does not meet the certification requirement of Rule 8.06 if, by training or experience, the attorney has specialized qualifications to mediate some or all of the issues in the particular case.

8.10 Scheduling and Conduct of Mediation

A. Scheduling Mediation. Unless otherwise ordered by the Court, the first mediation session shall be held within sixty (60) days of the date of entry of the Order of Referral. When the date, time and place of the initial mediation session have been agreed upon, the mediator shall send written confirmation of the date, time and place to all parties as well as of any other requirements of the mediation.

B. Conduct of Mediation

[1] Parties to Prepare Pre-Mediation Submission. At least ten (10) days before the session, each side shall present to the mediator a brief, written summary of the case containing a list of issues as to each party, unless the mediator has requested a different procedure to be followed. If the attorney filing the summary wishes its contents to remain confidential she/he should advise the mediator in writing at the same time the summary is delivered to the mediator. The summary shall include the facts of the occurrence, opinions on liability, all damage and injury information, and any offers or demands regarding settlement. Names of all participants and their relationship to the parties in the mediation shall be disclosed to the mediator in the summary prior to the session.

[2] Mandatory Appearance. All parties, attorneys, representatives with settlement authority and other individuals necessary to facilitate settlement of the dispute shall be present at each mediation conference unless excused by court order or by the mediator. A party is deemed to appear at a mediation conference if the following persons are physically present:

- (a) The party or its representative having full authority to settle without further consultation, and in all instances, the plaintiff must appear at the mediation conference; and
- (b) The party's counsel of record, if any; and
- (c) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to negotiate and recommend settlements to the limits of the policy or the most recent demand, whichever is lower, without further consultation; and,
- (d) If a party is a public entity, that party shall be deemed to appear at a mediation session by the physical presence of a representative of the party with full authority to negotiate on behalf of the party and to recommend settlement to the appropriate decision-making body and the party's counsel of record.

[3] Failure to appear. If a party fails to appear at mediation session without good cause, the Court upon motion may impose sanctions against the party failing to appear. Such sanctions may include an assessment against the party failing to appear of the attorneys' fees incurred by the other parties in preparing for and attending the mediation session and the fees of the mediator for preparing for and attending the mediation session.

[4] Communication with Parties. The mediator may, during the course of the mediation, speak privately to one or more of the parties outside the presence of other parties.

[5] Counsel. Parties and their respective counsel shall be permitted to confer privately at any time.

[6] Adjournments. The mediator may adjourn the mediation session at any time and may set times for reconvening the adjourned session. The mediator may suggest that specific additional discovery be completed on an expedited schedule in order to aid in arriving at a settlement of some or all of the issues. The mediator shall confirm in writing any stipulation regarding additional discovery and confirm to all parties the date, time, and place for reconvening the adjourned session. Mediation shall be completed within ninety (90) days of the first mediation session unless extended by order of the court or by stipulation of the parties.

C. Parties to Expend Good Faith Effort to Settle. The parties and their representatives are required to mediate in good faith but are not compelled to reach and agreement. Settlement agreement must result from the parties' assent, and not as the result of the mediator's decision or coercion.

8.11 Completion of Mediation

A. Duties of the Parties and the Mediator upon Completion of Mediation by Settlement. If agreement is reached it shall be reduced to writing by the parties and signed by each of the parties. Following execution of the written settlement agreement by all parties, the parties shall file with the Court a Memorandum of Agreement. The mediator shall file a Mediator Report with the Office of Court Administrator, 10 Public Square, Belleville, IL 62220-1623 and with the presiding judge of the case.

B. Completion of Mediation upon Mediator's Certification of No Agreement. If the parties have reached no agreement and the mediator concludes that further mediation would not be likely to result in agreement, the mediator shall file a Memorandum of No Agreement and a Mediator Report with the presiding judge. The presiding judge shall then call the matter for case management conference.

C. Termination of Mediation by Court Order. Upon the motion of a party, the Court may enter an order terminating mediation upon good cause shown. The presiding judge shall then call the matter for case management conference.

D. Mediated Agreement as a Contract Among the Parties. In the event of a breach or failure to perform under the written settlement agreement, the presiding judge may impose sanctions, including costs, attorneys' fees, or other appropriate remedies including entry of judgment on the agreement. The mediator may only testify to the existence or lack of existence of a fully executed written settlement agreement and shall not agree to or be compelled to testify as to any mediation communication or give interpretation of any mediation communication.

8.12 Reports to the Administrative Office of Illinois Courts

The Circuit Court of St. Clair County through the Office of the Chief Judge shall report the number of cases submitted to mediation pursuant to this rule to the Supreme Court. This report shall also contain the type of case and the outcomes of the mediation i.e., whether settled, not settled, or partially settled. This report shall also contain the type of case and the outcomes of the mediation i.e., whether settled, not settled, or partially settled. Said report shall be submitted in conformity with the direction of the Administrative Office of Illinois Courts.

8.13 Forms

The following shall be used in conjunction with court-annexed mediation:

- Form 1: COURT-ANNEXED MEDIATION REFERRAL ORDER**
- Form 2: CONFIDENTIALITY AGREEMENT AND NONREPRESENTATION ACKNOWLEDGEMENT**
- Form 3: MEMORANDUM OF AGREEMENT/NO AGREEMENT**
- Form 4: MEDIATION AGREEMENT**
- Form 5: MEDIATOR REPORT**

Other forms may be promulgated by the Chief Judge to aid in reporting on or evaluating the mediation process as required by Supreme Court Rule 99.

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend, **CHANDRES**)
JOHNSON, A.M., by her father and next friend,)
ANTONIO BROWN,)

Plaintiffs,)

vs.)

No. 22-CH-75

BOARD OF EDUCATION OF EAST ST. LOUIS)
SCHOOL DISTRICT NO. 189,)

Defendants.)

DEFENDANT'S VERIFIED ANSWER

Comes now Defendant, **Board of Education of East St. Louis School District No. 189**, by and through its attorneys, **Becker, Hoerner & Yursa, P.C.**, and for its Verified Answer to Plaintiff's Complaint for Declaratory and Injunctive Relief (Plaintiff's Complaint), states as follows:

1. Defendant can neither admit nor deny the allegations contained in paragraph 1 of Plaintiff's Complaint because same consist of legal conclusions.

2. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 2 of Plaintiff's Complaint and, therefore, denies same.

3. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 3 of Plaintiff's Complaint and, therefore, denies same; Defendant further notes that, with the exception of the allegation that E.W. lives more than 1.5 miles from Sr. Thea Bowman Catholic Elementary School, the remaining allegations of paragraph 3 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus

transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

4. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 4 of Plaintiff's Complaint and, therefore, denies same; Defendant further notes that the allegations of paragraph 4 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

5. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 5 of Plaintiff's Complaint and, therefore, denies same.

6. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 6 of Plaintiff's Complaint and, therefore, denies same; Defendant further notes that, with the exception of the allegation that A.M. lives more than 1.5 miles from Sr. Thea Bowman Catholic Elementary School, the remaining allegations of paragraph 6 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

7. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 7 of Plaintiff's Complaint and, therefore, denies same.

8. Defendant admits that Sr. Thea Bowman Catholic Elementary School is a private elementary school located in East St. Louis, Illinois, but Defendant lacks sufficient knowledge to

form a belief as to the remaining allegations contained in paragraph 8 of Plaintiff's Complaint and, therefore, denies same, and further notes that Sr. Thea Bowman Catholic Elementary School was voluntarily dismissed as a Plaintiff by this Court's Order of January 9, 2023.

9. Defendant admits that Arthur R. Culver is the Superintendent of East St. Louis School District No. 189 charged with the administration of its schools under the direction of its Board of Education in accordance with Section 10-21.4 of the Illinois School Code (10 ILCS 5/10-21.4), but denies the remaining allegations of paragraph 9 of Plaintiff's Complaint, and further notes that Arthur R. Culver was dismissed as a Defendant by this Court's Order of January 9, 2023.

10. Defendant admits that East St. Louis School District No. 189 is a body corporate and politic organized and existing under the Illinois School Code that may sue or be sued in accordance with Section 10-2 of the Illinois School Code (10 ILCS 5/10-2), but denies the remaining allegations of paragraph 10 of Plaintiff's Complaint.

11. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 11 of Plaintiff's Complaint and, therefore, denies same; Defendant further notes that the allegations of paragraph 11 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

12. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 12 of Plaintiff's Complaint and, therefore, denies same; Defendant further notes that the allegations of paragraph 12 of Plaintiff's Complaint are subject to striking

under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

13. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 13 of Plaintiff's Complaint and, therefore, denies same; Defendant further notes that the allegations of paragraph 13 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

14. Defendant can neither admit nor deny the allegations contained in paragraph 14 of Plaintiff's Complaint because same consist of legal conclusions.

15. Defendant admits the allegations contained in paragraph 15 of Plaintiff's Complaint; Defendant further notes that the allegations of paragraph 15 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

16. Defendant admits the allegations contained in paragraph 16 of Plaintiff's Complaint; Defendant further notes that the allegations of paragraph 16 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation

that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

17. Defendant admits the allegations contained in paragraph 17 of Plaintiff's Complaint; Defendant further notes that, because such Temporary Restraining Order was superseded by a Preliminary Injunction on October 28, 2015 and such Preliminary Injunction was dissolved and St. Clair County Circuit Court Case No. 15-CH-592 was dismissed for want of prosecution by this Court's Order of November 22, 2022, the allegations of paragraph 17 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

18. Defendant admits the allegations contained in paragraph 18 of Plaintiff's Complaint; Defendant further notes that, because such Preliminary Injunction was dissolved and St. Clair County Circuit Court Case No. 15-CII-592 was dismissed for want of prosecution by this Court's Order of November 22, 2022, the allegations of paragraph 18 of Plaintiff's Complaint are subject to striking under section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) as immaterial to this Court's determination of the nature/extent of bus transportation that Defendant is required to provide under section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and Defendant reserves its objection to same.

19. Defendant denies the allegation contained in paragraph 19 of Plaintiff's Complaint, and Defendant further notes that, in St. Clair County Circuit Court Case No. 15-CH-592, the Preliminary Injunction was dissolved and the case was dismissed for want of prosecution by this Court's Order of November 22, 2022.

20. Defendant admits the allegations contained in paragraph 20 of Plaintiff's Complaint.

21. Defendant admits the allegations contained in paragraph 21 of Plaintiff's Complaint.

22. Defendant denies the allegations contained in paragraph 22 of Plaintiff's Complaint.

23. Defendant denies the allegation contained in paragraph 23 of Plaintiff's Complaint, and Defendant further notes that, in St. Clair County Circuit Court Case No. 15-CH-592, the Preliminary Injunction was dissolved and the case was dismissed for want of prosecution by this Court's Order of November 22, 2022.

24. Defendant lacks sufficient knowledge to form a belief as to the allegations contained in paragraph 24 of Plaintiff's Complaint and, therefore, denies same.

25. Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint.

26. Defendant denies the allegations contained in paragraph 26 of Plaintiff's Complaint.

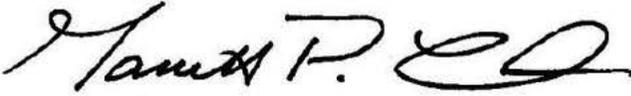
27. Defendant denies the allegations contained in paragraph 27 of Plaintiff's Complaint.

28. Defendant denies the allegations contained in paragraph 28 of Plaintiff's Complaint.

29. Defendant denies the allegations contained in paragraph 29 of Plaintiff's Complaint.

WHEREFORE, Defendant, **Board of Education of East St. Louis School District No. 189**, respectfully request that this Court enter judgment on Plaintiff's Complaint in its favor and against Plaintiffs, and order such other relief as this Court deems just and proper.

BECKER, HOERNER & YSURSA, P.C.

By: 
Garrett P. Hoerner
No. 6243119

ATTORNEYS FOR DEFENDANTS
5111 West Main Street
Belleville, IL 62226
Phone: (618) 235-0020
Fax: (618) 235-8558
E-Mail: gph@bhylaw.com

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Answer, 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: _____

Lawrence Tourijigian
Director of the Student Information
System, the 21st Century Grant,
and Student Transportation

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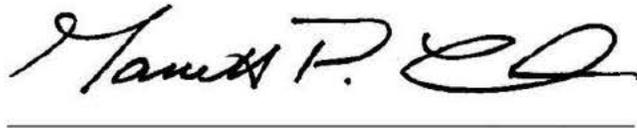
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CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rule 12(b), the undersigned certifies that a copy of this instrument was served upon the following persons via electronic mail and U.S. Mail, postage prepaid, by depositing same in the U.S. Mailbox located at 5111 West Main Street, Belleville, Illinois at 4:00 p.m. on this 28th day of March, 2023, to:

Susan M. Simone
Land of Lincoln Legal Aid
8787 State Street, Suite 201
East St. Louis, Illinois 62203
ssimone@lincolnlegal.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.



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Restraining Order and Preliminary Injunction seeking the same relief on an interim basis pending resolution of this case.

2. On November 2, 2022, following hearing conducted on October 31, 2022, this Court entered an Order pertinently providing that “Plaintiff’s *Motion for Temporary Restraining Order* is partially GRANTED to the extent that, within seven (7) days of the date of this Order, Plaintiffs and Defendants are ordered to confer and 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), but partially DENIED in all other respects.”

3. On November 7, 2022, Plaintiffs and Defendants so conferred concerning the District’s regular bus routes in existence at that time.

4. On January 9, 2023, Plaintiff, Sr. Thea Bowman Catholic School, voluntarily dismissed its claims in this matter by Court Order, leaving only the claims of Defendants, Plaintiffs, E.W., by and his mother and next friend, Chandres Johnson, A.M., by her father and next friend, Antonio Brown, as pending.

5. Section 2-1005(c) of the Illinois Code of Civil Procedure provides that summary judgment “shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c). Summary judgments are encouraged to summarily dispose of litigation where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Shelter Mut. Ins. v. Bailey*, 160 Ill.App.3d 146 (5th Dist. 1987). “[I]nterpreting or construing a statute is a matter of law for the court and is appropriate for summary judgment.” *In re A.M.F.*, 311 Ill.App.3d 1049, 1051 (5th Dist. 2001).

6. Section 29-4 of the Illinois School Code contemplates a public school district affording transportation to pupils attending a charter school or nonpublic school as follows:

“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 ½ 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 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.

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.” 105 ILCS 5/29-4.

7. The plain language of Section 29-4 of the Illinois School Code only requires public school districts to provide free bus transportation to non-public school students on its

existing routes. 105 ILCS 5/29-4. Indeed, that Section expressly limits such requirement to the public school district's "regular routes" of transportation to be provided "on the same basis as it provides transportation to its own pupils." 105 ILCS 5/29-4. More specifically, it simply requires that a public school district allow nonpublic school students residing at least 1 1/2 miles from the school attended to utilize the public school district's existing bus transportation by expressly providing the scope 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". 105 ILCS 5/29-4. Furthermore, it permits, but does not require, a public school district to operate separate bus routes only if such routes are "more economical and more efficient." 105 ILCS 5/29-4. This limitation is confirmed by how Section 29-4 similarly treats non-public school students who live within 1 1/2 miles from the school attended: "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." 105 ILCS 5/29-4. Indeed, our Illinois Appellate Court has explained 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 1/2 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).

8. To the extent that it prays for a separate bus route, Plaintiff's Complaint seeks more than transportation for Plaintiffs on the District's existing bus system, meaning its “regular routes” that provide transportation to its own pupils. However, the law remains Section 29-4 permits but does not require separate routes. Simply put, as already stated in this Court's November 2, 2022 Order, this Court cannot enjoin Defendants to do more than Section 29-4 of the Illinois School Code requires.

9. To the extent that it prays for transportation by regular existing route nearest to the Plaintiffs' homes and to Sister Thea Bowman, Plaintiffs' Complaint remains insufficient. It is clear that Section 29-4 of the Illinois School Code requires Defendant to provide nonpublic

school students “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). However, since the parties conferred concerning the District’s regular existing routes on November 7, 2022, Plaintiffs have not identified any such routes that they desire to utilize.

10. While Plaintiffs’ Complaint attempts to present a sympathetic argument as to their reasons for choosing to attend private school and their financial need for free transportation, our Illinois Appellate Court explained that such circumstances are irrelevant to the construction of the statutory requirements of Section 29-4 of the Illinois School Code:

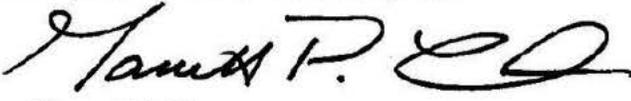
“We are not unsympathetic to the plight of these young plaintiffs who certainly deserve access to quality education. Nor are we unmindful of the failing state of the defendant school district, a fact which was in evidence before the circuit court and no doubt gives rise to the plaintiffs’ desires to attend a parochial school. Nevertheless, like the circuit court, our hands are tied and we cannot grant the plaintiffs the relief for which they pray.” *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, 970 N.E.2d at 1290.

11. 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.

12. Accordingly, Defendant is entitled to summary judgment on Plaintiff's Complaint as a matter of law pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)).

WHEREFORE, Defendants, **East St. Louis School District No. 189**, respectfully request that this Court enter summary judgment on Plaintiff's Complaint in its favor and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), and order such other relief as this Court deems just and proper.

BECKER, HOERNER & YSURSA, P.C.

By: 
Garrett P. Hoerner
No. 6243119

ATTORNEYS FOR DEFENDANTS
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Case No. 22-CH-75
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C 137

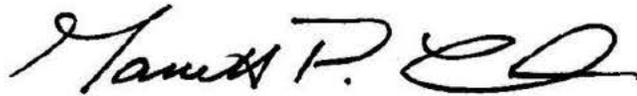
A122

CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rule 12(b), the undersigned certifies that a copy of this instrument was served upon the following persons via electronic mail and U.S. Mail, postage prepaid, by depositing same in the U.S. Mailbox located at 5111 West Main Street, Belleville, Illinois at 4:00 p.m. on this 28th day of June, 2023, to:

Susan M. Simone
Land of Lincoln Legal Aid
8787 State Street, Suite 201
East St. Louis, Illinois 62203
ssimone@lincolnlegal.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.



Case No. 22-CH-75
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C 138

A123

**IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS**

E.W., by his mother and next friend,)
Chandres Johnson, and A.M by her father,)
and next friend, Antonio Brown,)
)
Plaintiffs,)
)
v.)
)
BOARD OF EDUCATION OF EAST)
ST. LOUIS SCHOOL DISTRICT #189,)
)
Defendant.)

No. 2022-CH-0075

**RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT**

NOW COME Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown; by and through their attorneys Susan M. Simone and Noah J. Halpern, Land of Lincoln Legal Aid, pursuant to 735 ILCS 5/2-1005 and for their Response in Opposition to Defendant's Motion for Summary Judgment and Plaintiffs Cross-Motion for Summary Judgment, state as follows:

1. At issue is the interpretation of 105 ILCS 5/29-4 entitled "Pupils attending a charter school or nonpublic school", a statute that requires public school districts to provide bus transportation to nonpublic school students on the same basis as the school district provides transportation for its students.

2. 105 ILCS 5/29-4 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. 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.

3. The statute directs school districts to provide transportation for nonpublic school students either (i) from the student's home located on or near a regular route to their schools; or (ii) from the student's school located on a regular route to their homes.

4. The statute does not require that nonpublic school students must live on or near Defendant's regular routes AND that the school be located on the same regular route.

5. Plaintiffs have filed a Memorandum of Law in Support of Response in Opposition to Defendant's Motion for Summary Judgment and Plaintiffs Cross-Motion for Summary Judgment. Plaintiffs incorporate their Memorandum of Law herein.

6. Dr. Tourijgian, the Director of Student Transportation for Defendant, testified in his deposition that in summer of 2022, Superintendent Culver told him not to route Sr. Thea Bowman students for school year 2022-23. Dr. Tourijgian testified no options were offered to Sr. Thea Bowman, and he just did what his superior told him to do. Deposition of Dr. Tourijgian, pp. 100-101, lines 20-2; pg. 61, line 14-24, attached to the Memorandum of Law as Exhibit D.

7. Defendant's Motion for Summary Judgment seems to imply that at the meeting that occurred in November 2022, Plaintiffs were offered bus routes and have failed to identify which ones they want to utilize. However, no routes were offered to transport Plaintiffs to their school. Dr. Tourijgian attended the November meeting but Superintendent Culver did not.

8. Dr. Tourijgian testified at deposition that there are about six different buses picking up children at Gompers Homes, where Plaintiff A.M. lives, and a similar number of bus routes exist for students who live in Orr Weathers Homes, where Plaintiff E.W. lives, 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 Sr. Thea Bowman. Ex. D of Memorandum of Law, Deposition, pp. 57-58, lines 15-7; pp. 101-102, lines 11-1.

9. Defendant has numerous routes that could be used by one or both Plaintiffs to be transported to their school. Plaintiffs have attached hereto the following exhibits:

- a. Exhibit 1 consists of fourteen (14) bus routes that run near Plaintiff A.M.'s home in Gompers;

- b. Exhibit 2 consists of seven (7) bus routes that run near Plaintiff E.W.'s home in Orr Weathers;
- c. Exhibit 3 consists of thirteen (13) bus routes that run near Sr. Thea Bowman school; and
- d. Exhibit 4 consists of nine (9) bus routes that run near Sr. Thea Bowman and either Orr Weathers or Gompers.

10. Defendant did not use or offer to use any of these routes to transport Plaintiffs to their school in 2022-23.

WHEREFORE, Plaintiffs, by and through their attorneys, pray that this Court:

- A. Deny Defendant's Motion for Summary Judgment;
- B. Enter summary judgment in favor of Plaintiffs;
- C. Declare that Plaintiffs are entitled to bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school;
- D. Declare the Defendant's decision not to route Plaintiffs for the past school year was unlawful;
- E. Enjoin Plaintiffs from failing to provide Plaintiffs with bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school; and
- F. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

/s/ Susan M. Simone

Susan M. Simone, ARN: 6204458

Noah Halpern, ARN: 6342199

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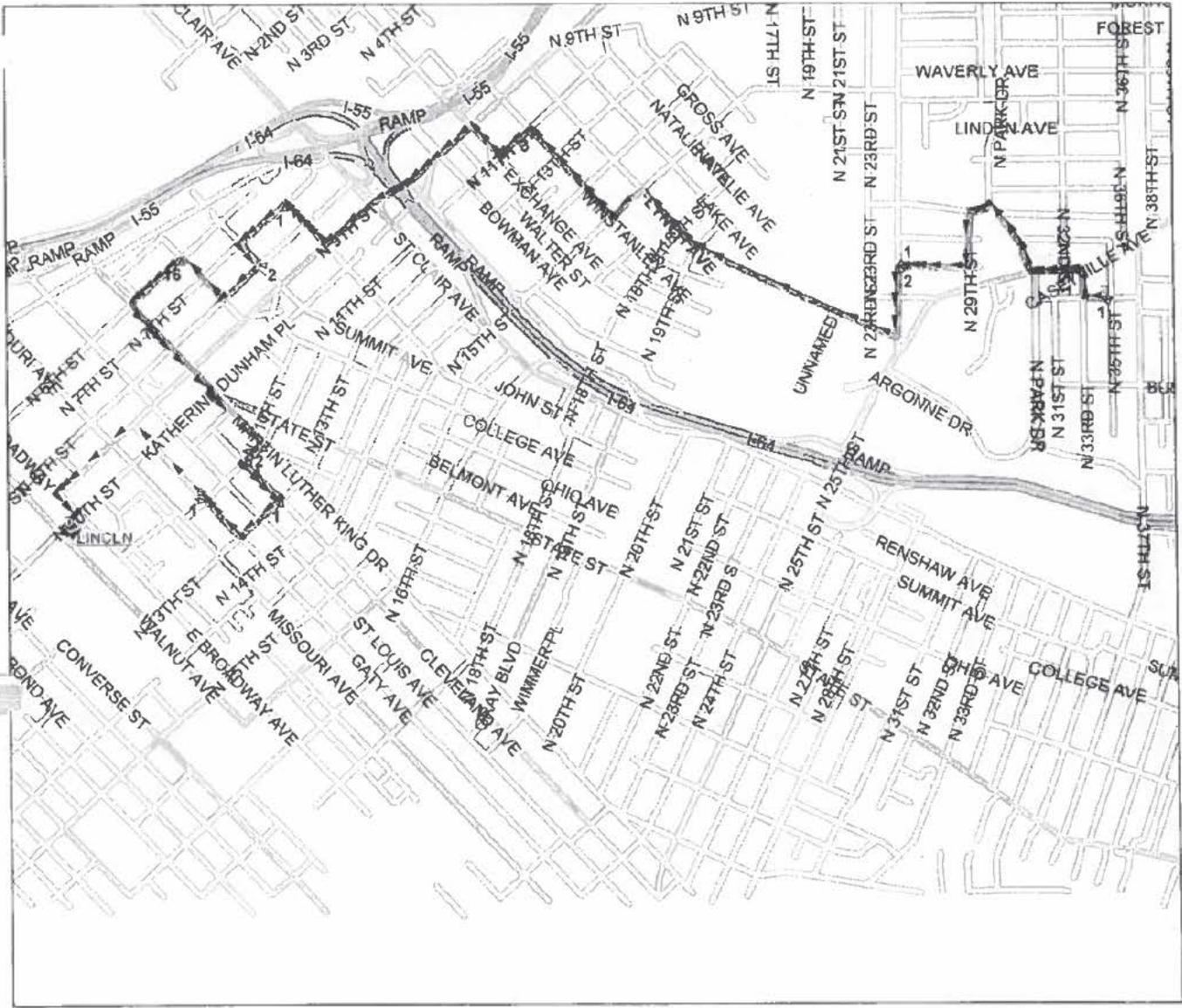
Land of Lincoln Legal Aid
Dorothy O. Cook Community Law Center
8787 State Street, Suite 201
East St. Louis, IL 62203
618-398-0574 ext. 1221
ssimone@lincolnlegal.org
nhalpern@lincolnlegal.org
Efile: efileCRO@lincolnlegal.org

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that a copy of the foregoing was served upon Garrett Hoerner, attorney for Defendant Board of Education of East St. Louis School District #189, by electronic mail at email address gph@bhylaw.com on July 23, 2023, at 7:00 pm.

/s/ Susan M. Simone
Susan M. Simone

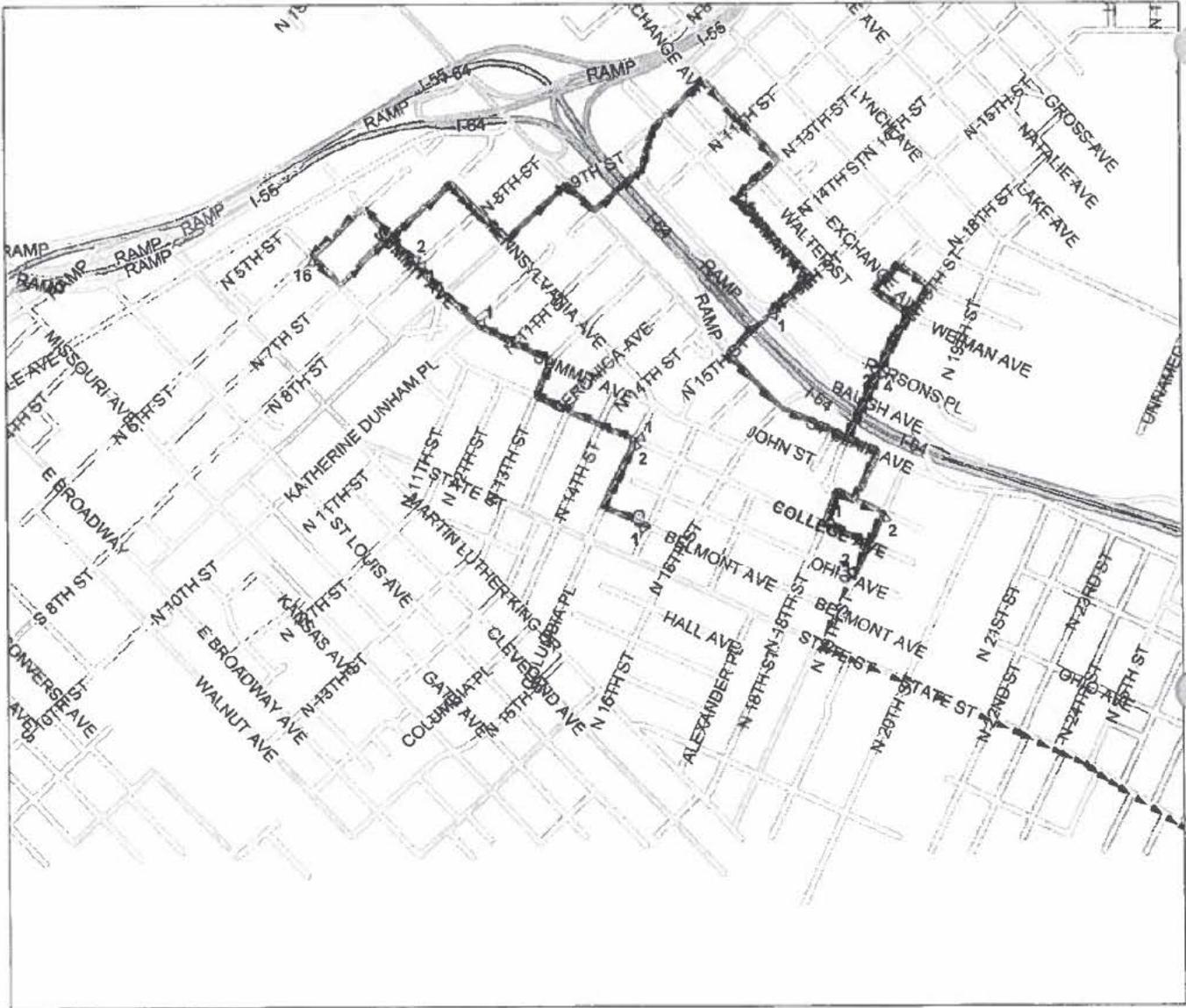
East St. Louis School District 189 Route Map



Route: 2308 AM
 Vehicle: 5089
 Anchor: LINCLN
 Start Time: 7:10 AM
 Pickups: 34
 Distance: 4.89 mi.

Desc: LMS INBOUND
 Driver:
 Max Load: 34
 Arrival Time: 7:30 AM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

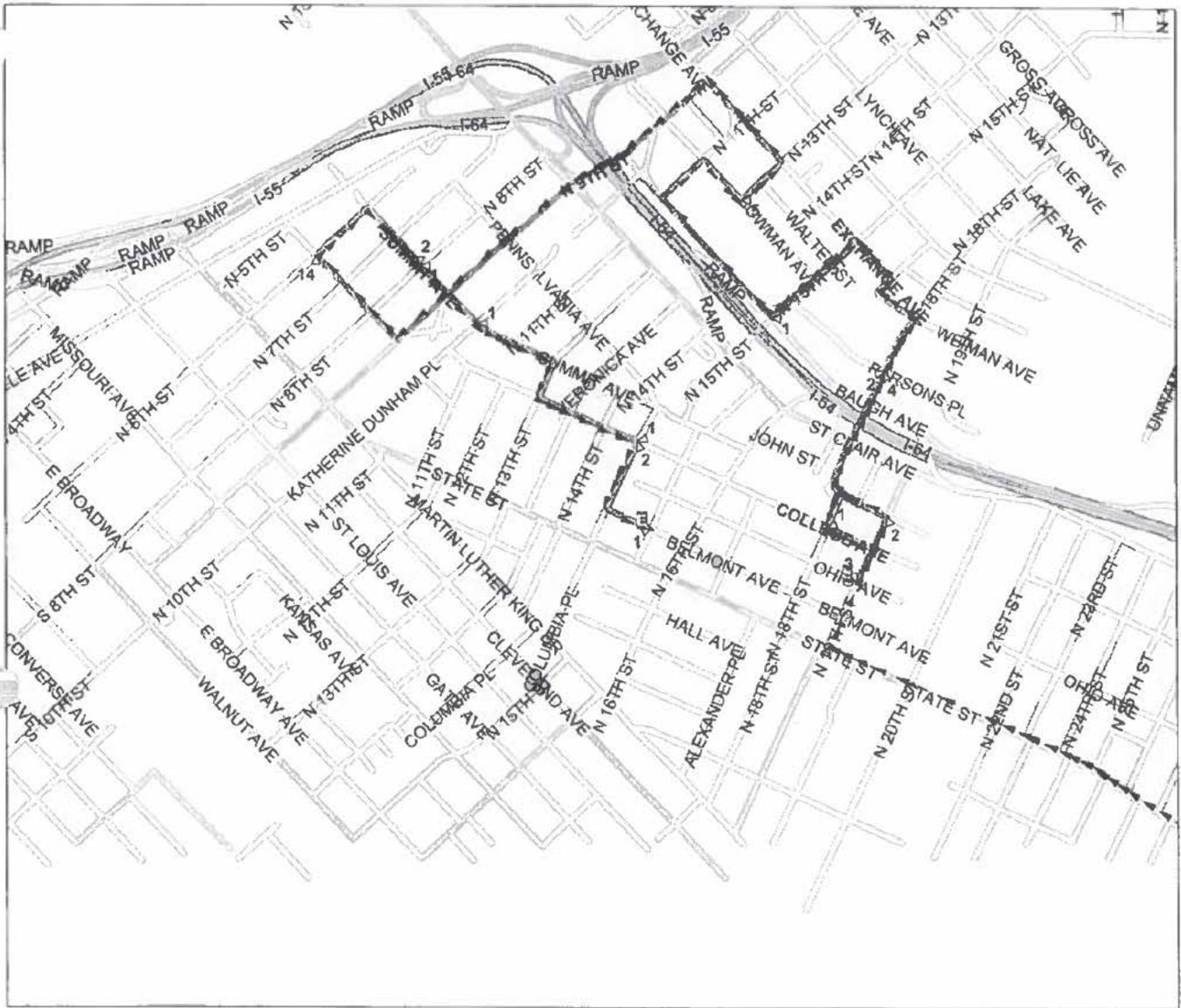
East St. Louis School District 189 Route Map



Route: **2308 AH**
 Vehicle: **5089**
 Anchor: **ESLH**
 Start Time: **6:36 AM**
 Pickups: **41**
 Distance: **6.51 mi.**

Desc: **ESLSHS INBOUND**
 Driver:
 Max Load: **41**
 Arrival Time: **7:00 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

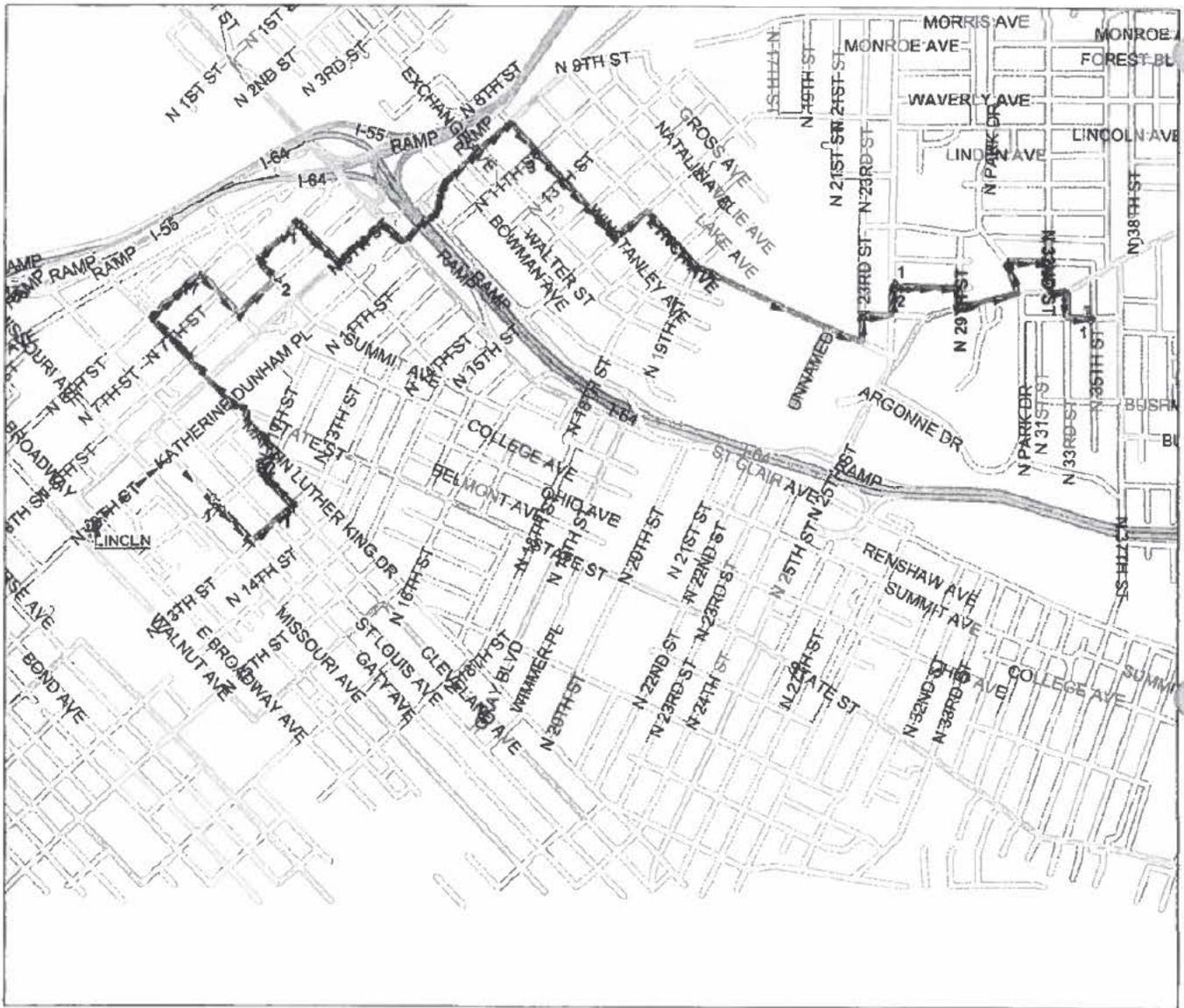
East St. Louis School District 189 Route Map



Route: **2308 PH**
 Vehicle: **5089**
 Anchor: **ESLH**
 Depart Time: **2:30 PM**
 Dropoffs: **39**
 Distance: **6.01 mi.**

Desc: **ESLSHS OUTBOUND**
 Driver:
 Max Load: **39**
 End Time: **2:52 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

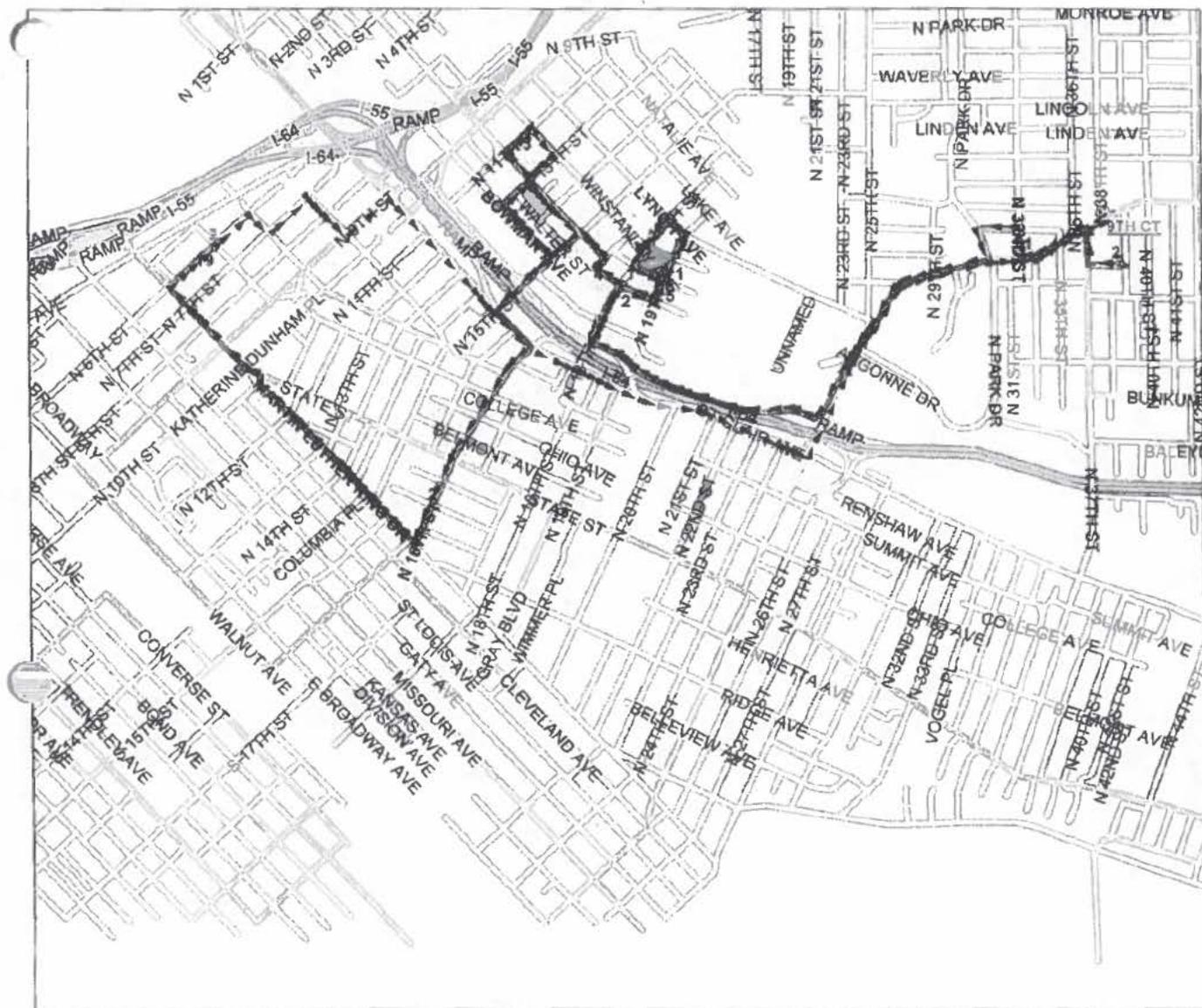
East St. Louis School District 189 Route Map



Route: **2308 PM**
 Vehicle: **5089**
 Anchor: **LINCLN**
 Depart Time: **3:00 PM**
 Dropoffs: **34**
 Distance: **4.78 mi.**

Desc: **LMS OUTBOUND**
 Driver:
 Max Load: **34**
 End Time: **3:19 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

East St. Louis School District 189 Route Map



Route: 2329 AM
 Vehicle: 5746
 Anchor: 9TH CT
 Start Time: 7:01 AM
 Pickups: 49
 Distance: 8.95 mi.

Desc: WYSOE INBOUND
 Driver:
 Max Load: 49
 Arrival Time: 7:30 AM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

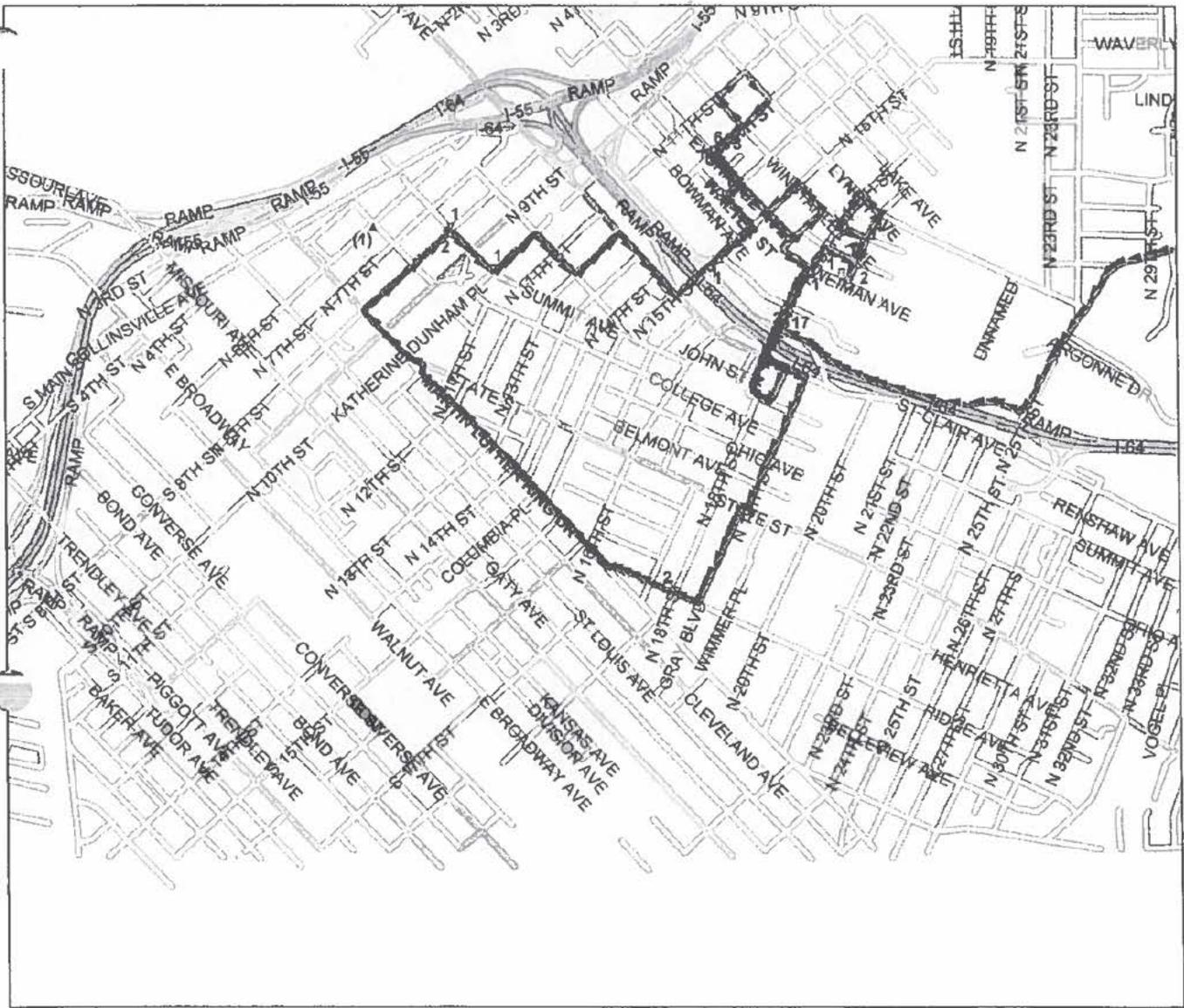
East St. Louis School District 189 Route Map



Route: 2330 AM
 Vehicle:
 Anchor: 9TH CT
 Start Time: 7:04 AM
 Pickups: 44
 Distance: 6.39 mi.

Desc: WYSOE INBOUND
 Driver:
 Max Load: 44
 Arrival Time: 7:30 AM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

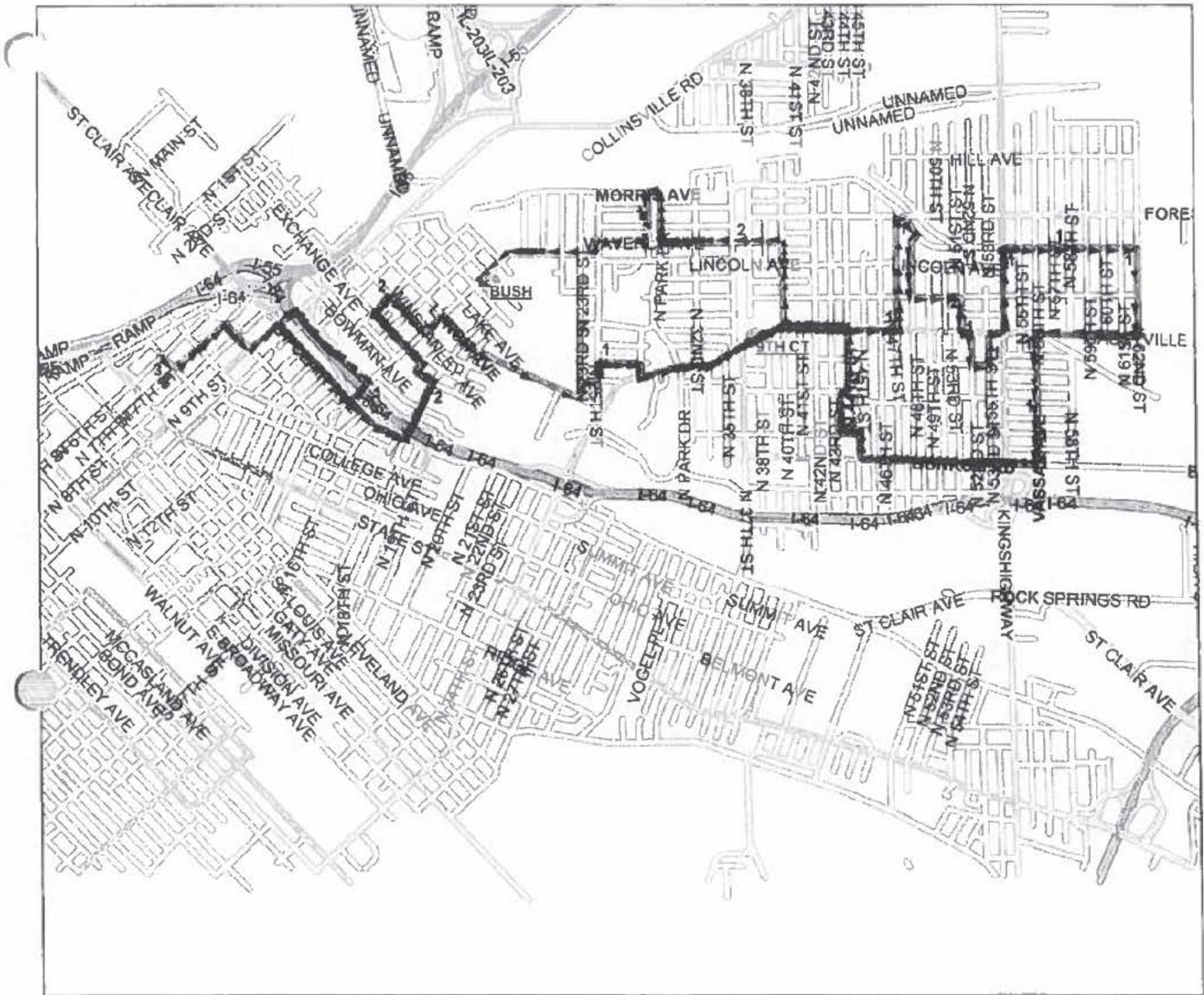
East St. Louis School District 189 Route Map



Route: 2330 PM
 Vehicle:
 Anchor: 9TH CT
 Depart Time: 3:00 PM
 Dropoffs: 49
 Distance: 7.63 mi.

Desc: WYSOE OUTBOUND
 Driver:
 Max Load: 49
 End Time: 3:29 PM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

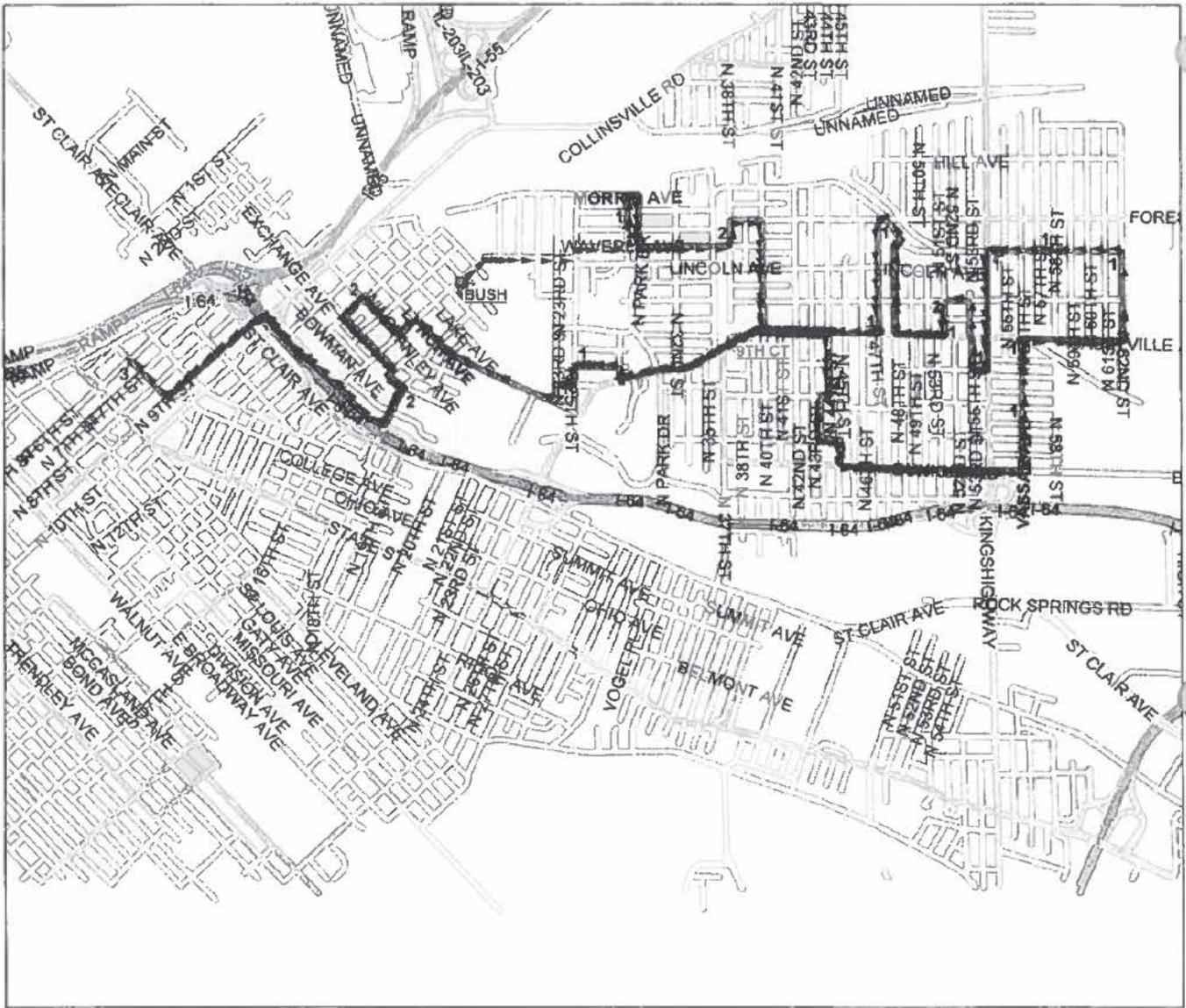
East St. Louis School District 189 Route Map



Route: **2333AAH**
 Vehicle: **5091**
 Anchor: **BUSH**
 Start Time: **6:50 AM**
 Pickups: **32**
 Distance: **12.30 mi.**

Desc: **GBAS INBOUND**
 Driver:
 Max Load: **32**
 Arrival Time: **7:30 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

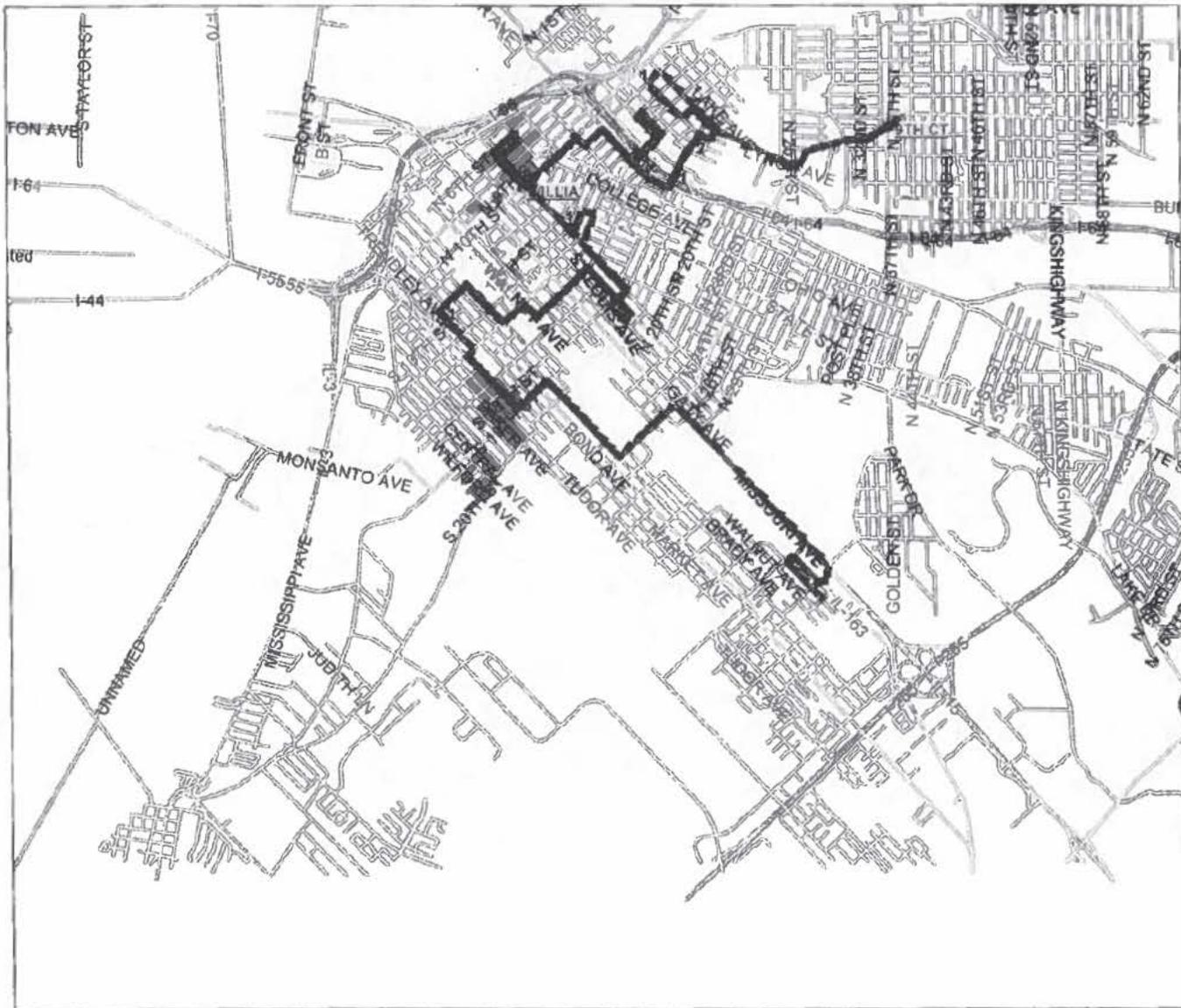
East St. Louis School District 189 Route Map



Route: **2333APH**
 Vehicle: **5091**
 Anchor: **BUSH**
 Depart Time: **3:00 PM**
 Dropoffs: **31**
 Distance: **11.79 mi.**

Desc: **GBAS OUTBOUND**
 Driver:
 Max Load: **31**
 End Time: **3:39 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

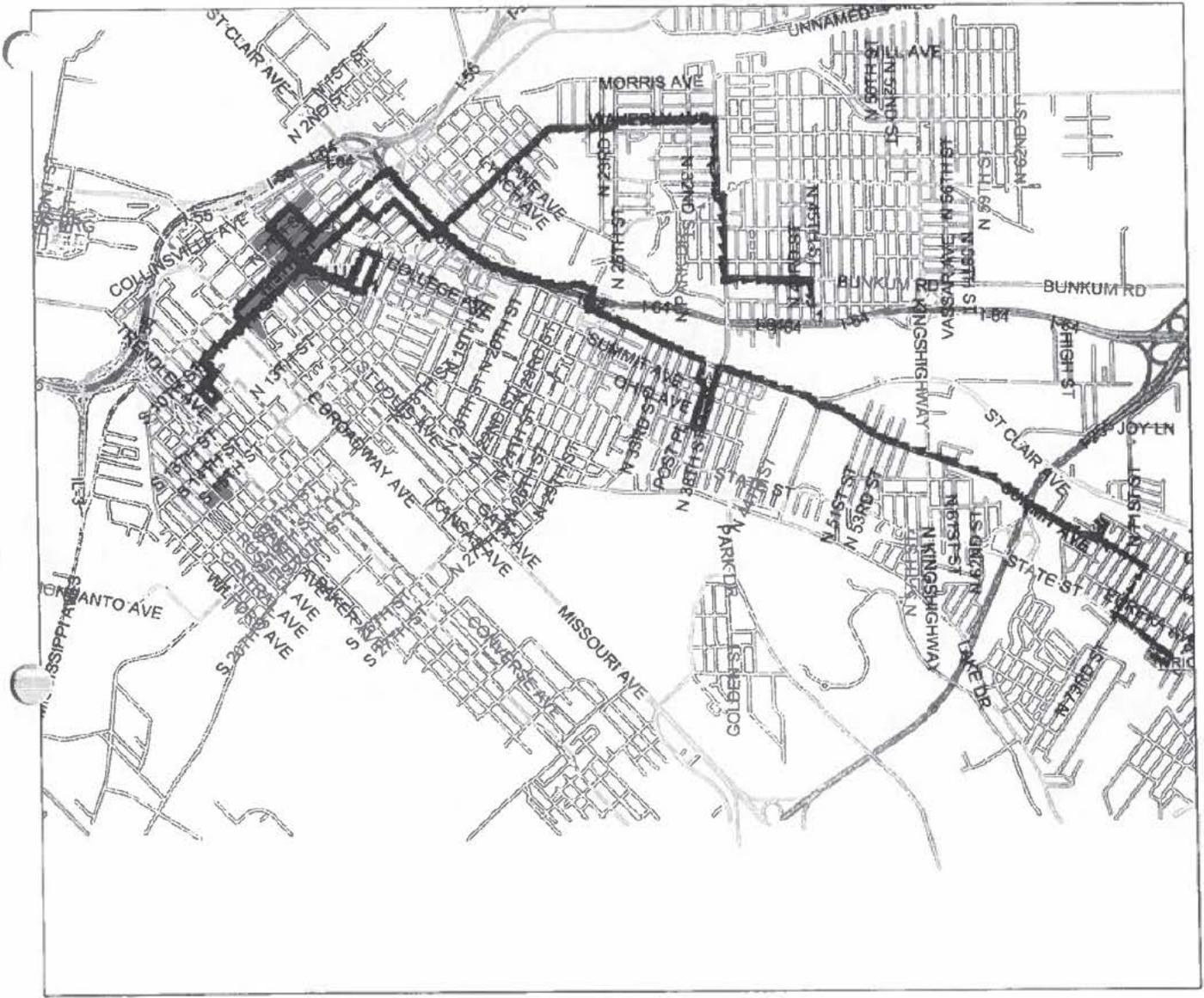
East St. Louis School District 189 Route Map



Route: 2361ZAM
 Vehicle: 5090
 Anchor: 9TH CT
 Start Time: 6:56 AM
 Pickups: 11
 Distance: 12.97 mi.

Desc: WYSOE INBOUND Z
 Driver:
 Max Load: 11
 Arrival Time: 7:30 AM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

East St. Louis School District 189 Route Map



Route: 2361ZPE
 Vehicle: 5090
 Anchor: WRIGHT
 Depart Time: 3:30 PM
 Dropoffs: 6
 Distance: 14.76 mi.

Desc: KHW Z OUTBOUND
 Driver:
 Max Load: 6
 End Time: 4:09 PM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

12/1/2022 5 20 17 PM

East St. Louis School District 189 Route Map



Route: 2319 PH
 Vehicle: 2884
 Anchor: ESLH
 Depart Time: 2:30 PM
 Dropoffs: 43
 Distance: 4.65 mi.

Desc: ESLSHS OUTBOUND
 Driver:
 Max Load: 43
 End Time: 2:49 PM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

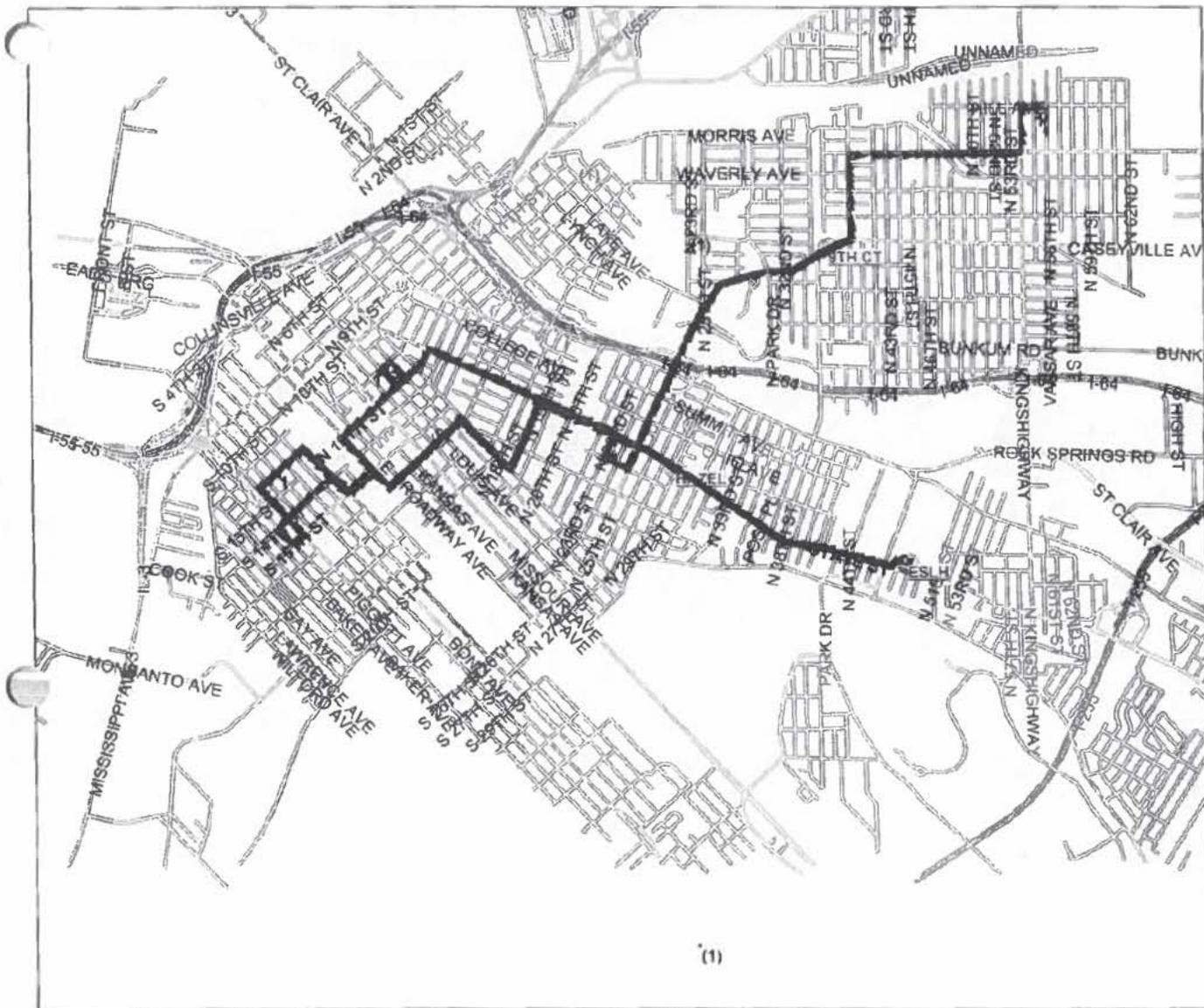
East St. Louis School District 189 Route Map



Route: **2330PE**
 Vehicle:
 Anchor: **ECC**
 Depart Time: **3:30 PM**
 Dropoffs: **13**
 Distance: **3.63 mi.**

Desc: **VAEC OUTBOUND**
 Driver:
 Max Load: **13**
 End Time: **3:43 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

East St. Louis School District 189 Route Map



Route: **2357PHZ**
 Vehicle:
 Anchor: **ESLH**
 Depart Time: **2:30 PM**
 Dropoffs: **5**
 Distance: **11.00 mi.**

Desc: **Z ESLSHS OUTBOUND**
 Driver:
 Max Load: **4**
 End Time: **3:03 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

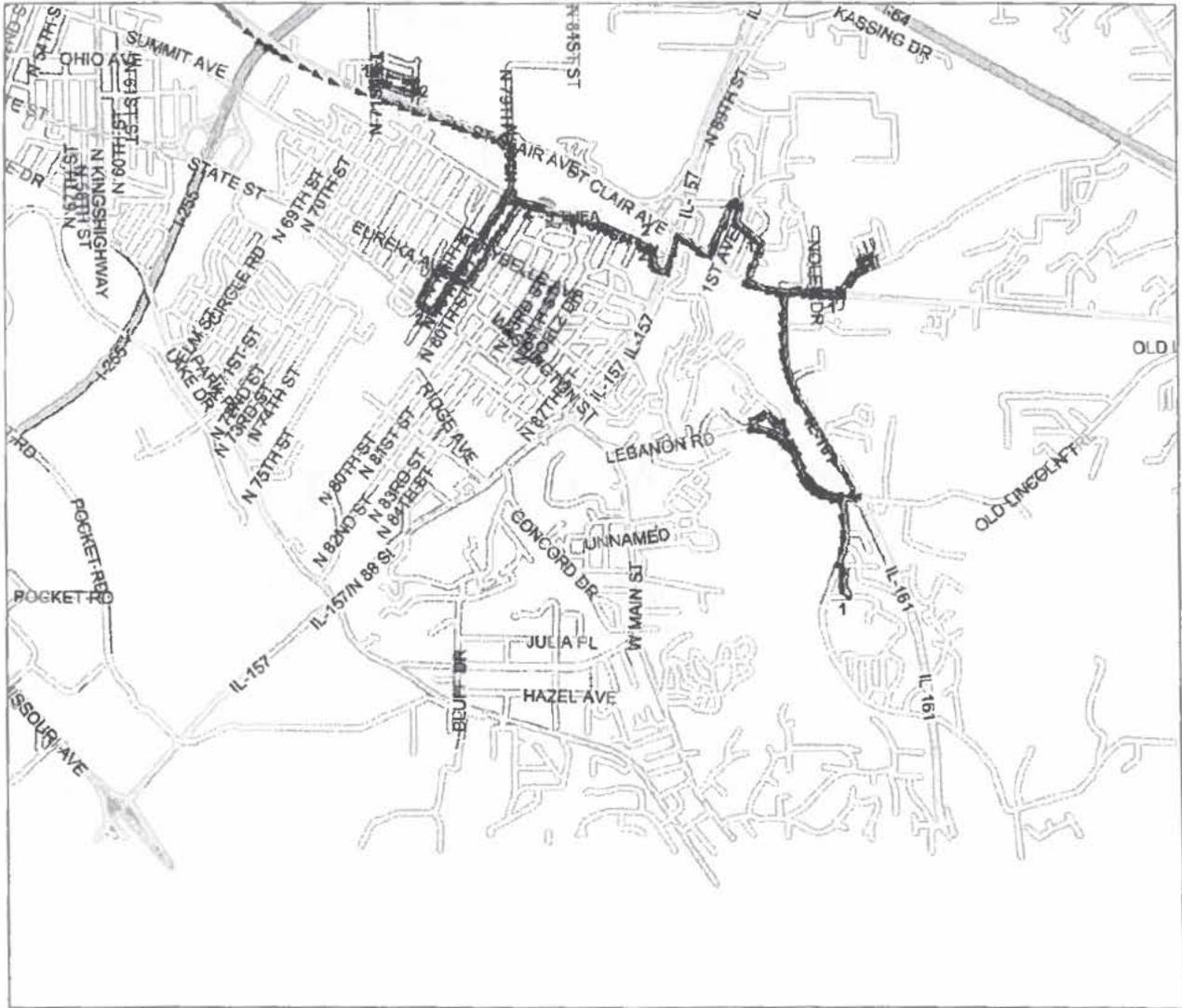
East St. Louis School District 189 Route Map



Route: 2358ZAM
 Vehicle:
 Anchor: CLARK
 Start Time: 7:08 AM
 Pickups: 6
 Distance: 6.77 mi.

Desc: MCMS Z INBOUND
 Driver:
 Max Load: 6
 Arrival Time: 7:30 AM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

East St. Louis School District 189 Route Map

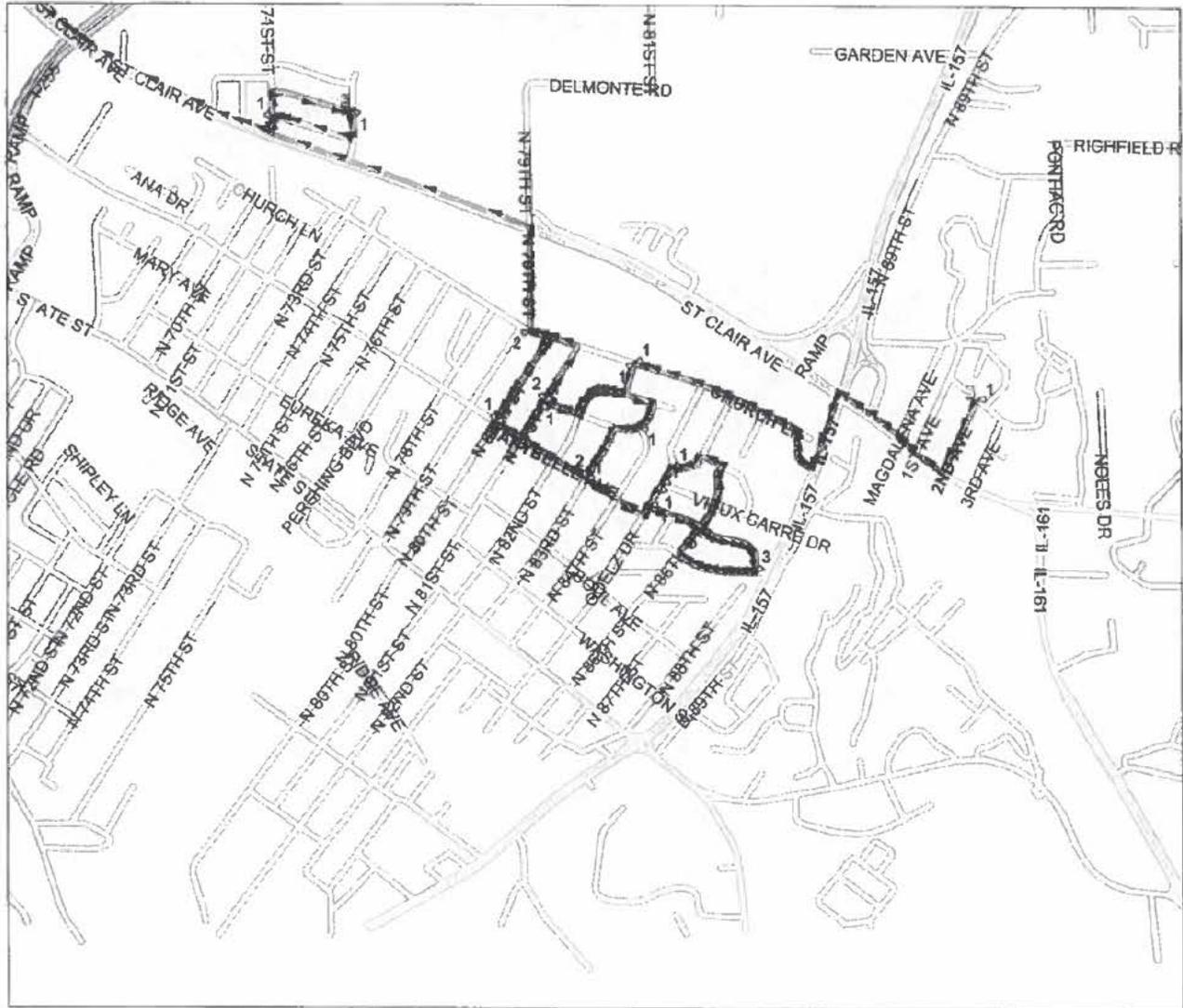


Route: 2316 PH
 Vehicle: 63
 Anchor: ESLH
 Depart Time: 2:30 PM
 Dropoffs: 21
 Distance: 9.85 mi.

Desc: ESLSHS OUTBOUND
 Driver:
 Max Load: 21
 End Time: 2:57 PM
 Transfers On: 0
 Transfers Off: 0
 Days: MTWHF

12/1/2022 5:20:26 PM

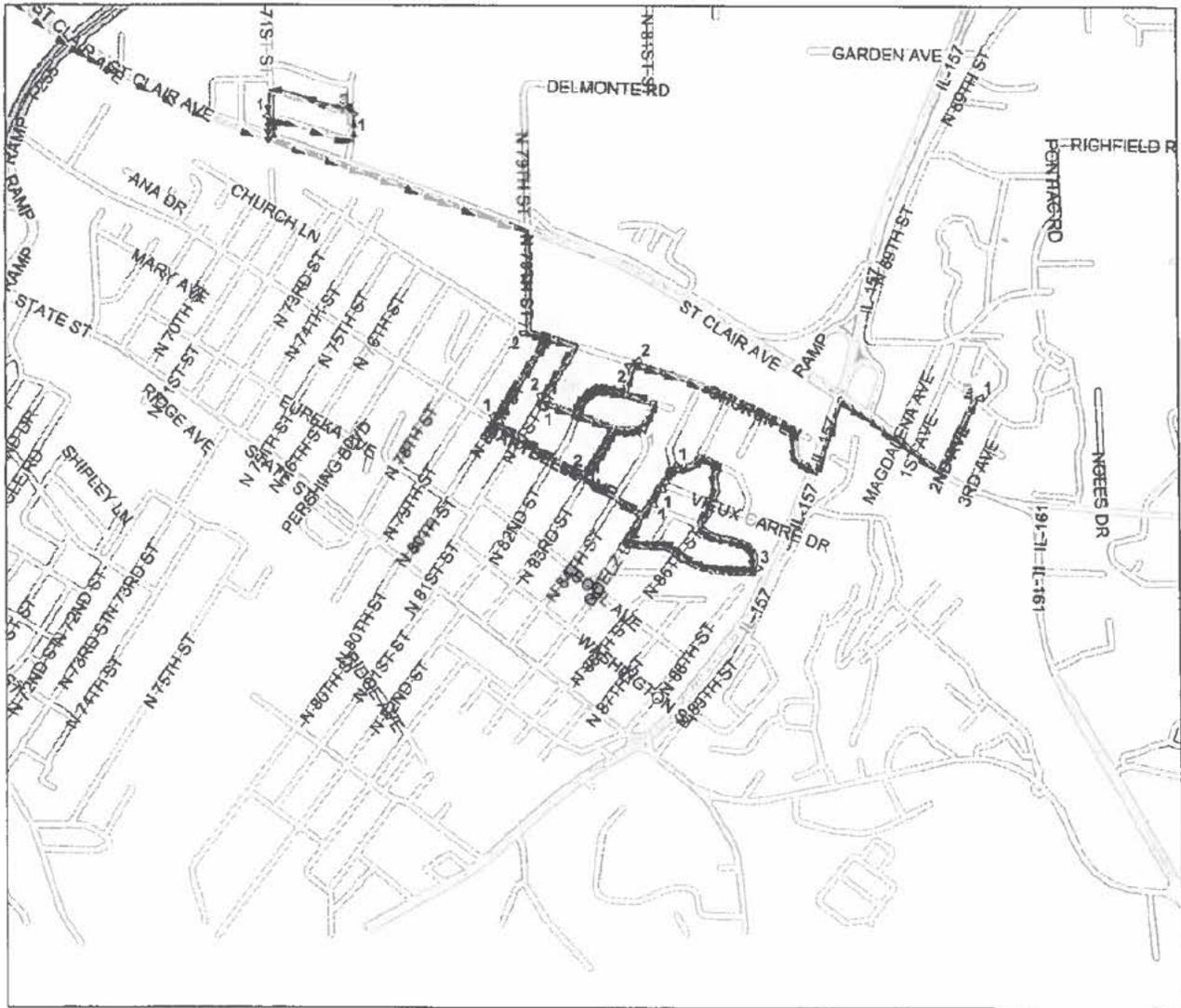
East St. Louis School District 189 Route Map



Route: **2320 AM**
 Vehicle:
 Anchor: **CLARK**
 Start Time: **7:06 AM**
 Pickups: **24**
 Distance: **7.48 mi.**

Desc: **MCMS INBOUND**
 Driver:
 Max Load: **24**
 Arrival Time: **7:30 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

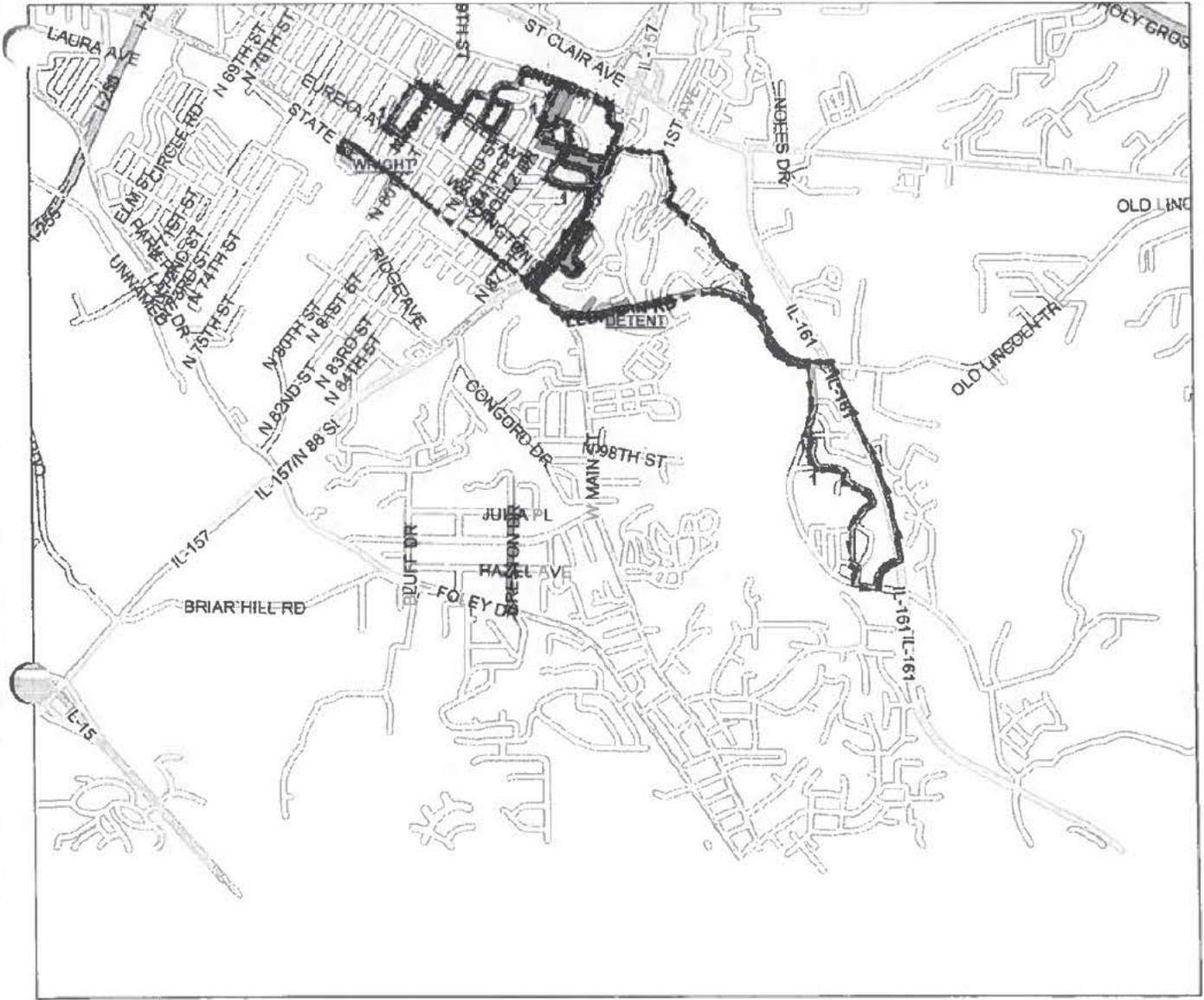
East St. Louis School District 189 Route Map



Route: **2320 PM**
 Vehicle:
 Anchor: **CLARK**
 Depart Time: **3:00 PM**
 Dropoffs: **24**
 Distance: **7.57 mi.**

Desc: **MCM OUTBOUND**
 Driver:
 Max Load: **24**
 End Time: **3:24 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

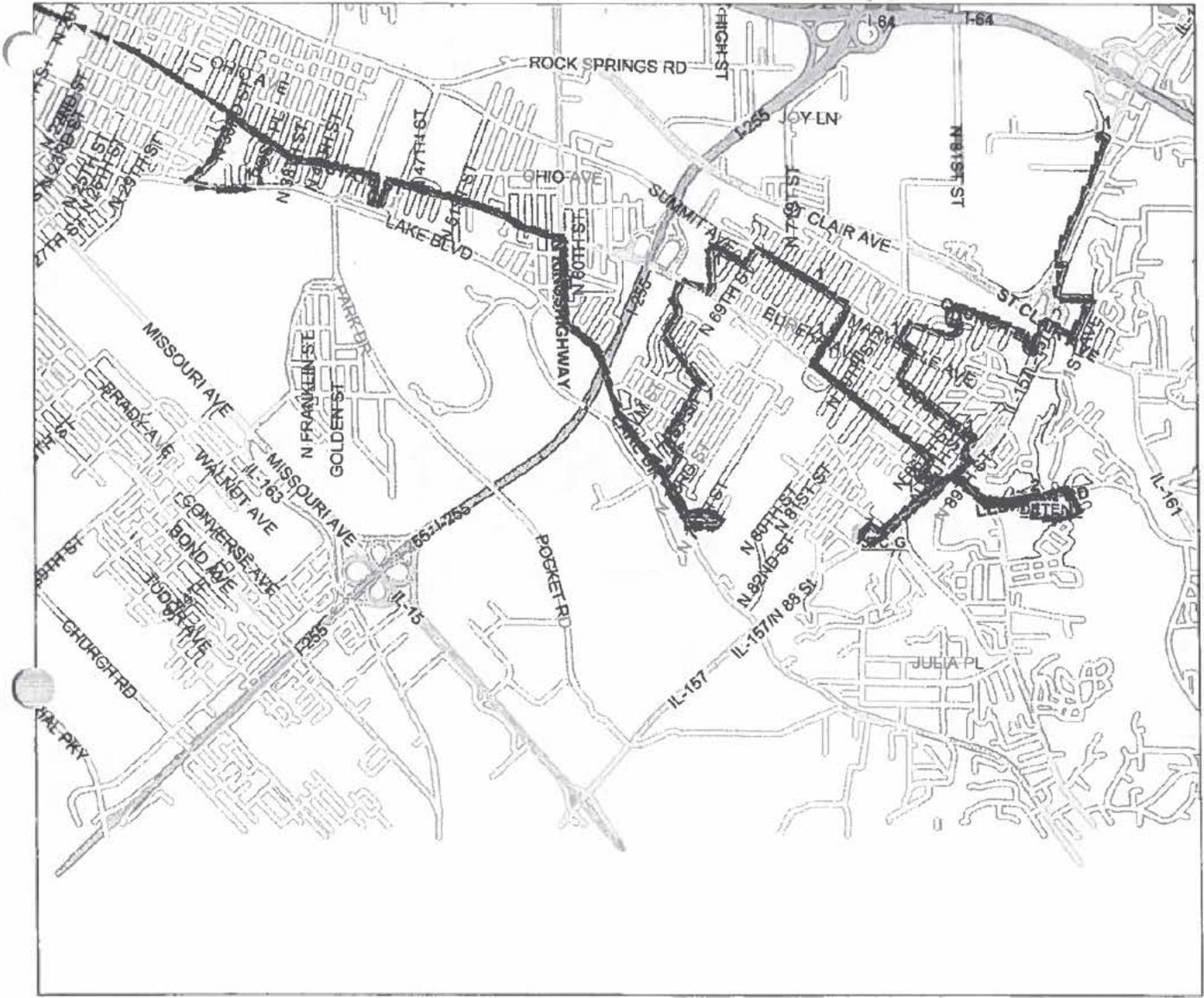
East St. Louis School District 189 Route Map



Route: **2328PAE**
 Vehicle: **5092**
 Anchor: **WRIGHT**
 Start Time: **7:58 AM**
 Pickups: **8**
 Distance: **10.72 mi.**

Desc: **KHW PRE-K INBOUND**
 Driver:
 Max Load: **8**
 Arrival Time: **8:30 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

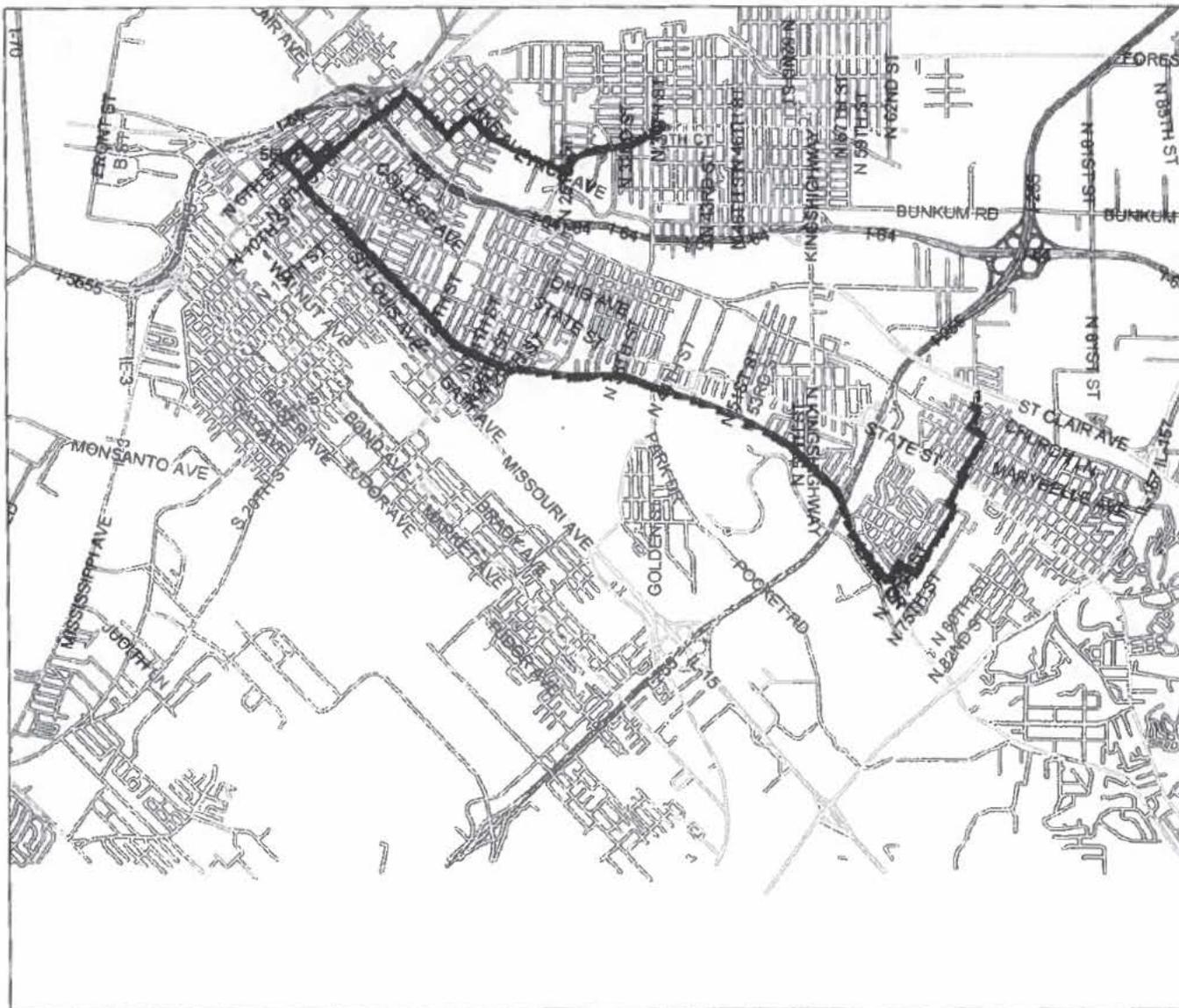
East St. Louis School District 189 Route Map



Route: **2331AAH**
 Vehicle: **5605**
 Anchor: **BUSH**
 Start Time: **6:44 AM**
 Pickups: **26**
 Distance: **16.09 mi.**

Desc: **GBAS INBOUND**
 Driver:
 Max Load: **26**
 Arrival Time: **7:30 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

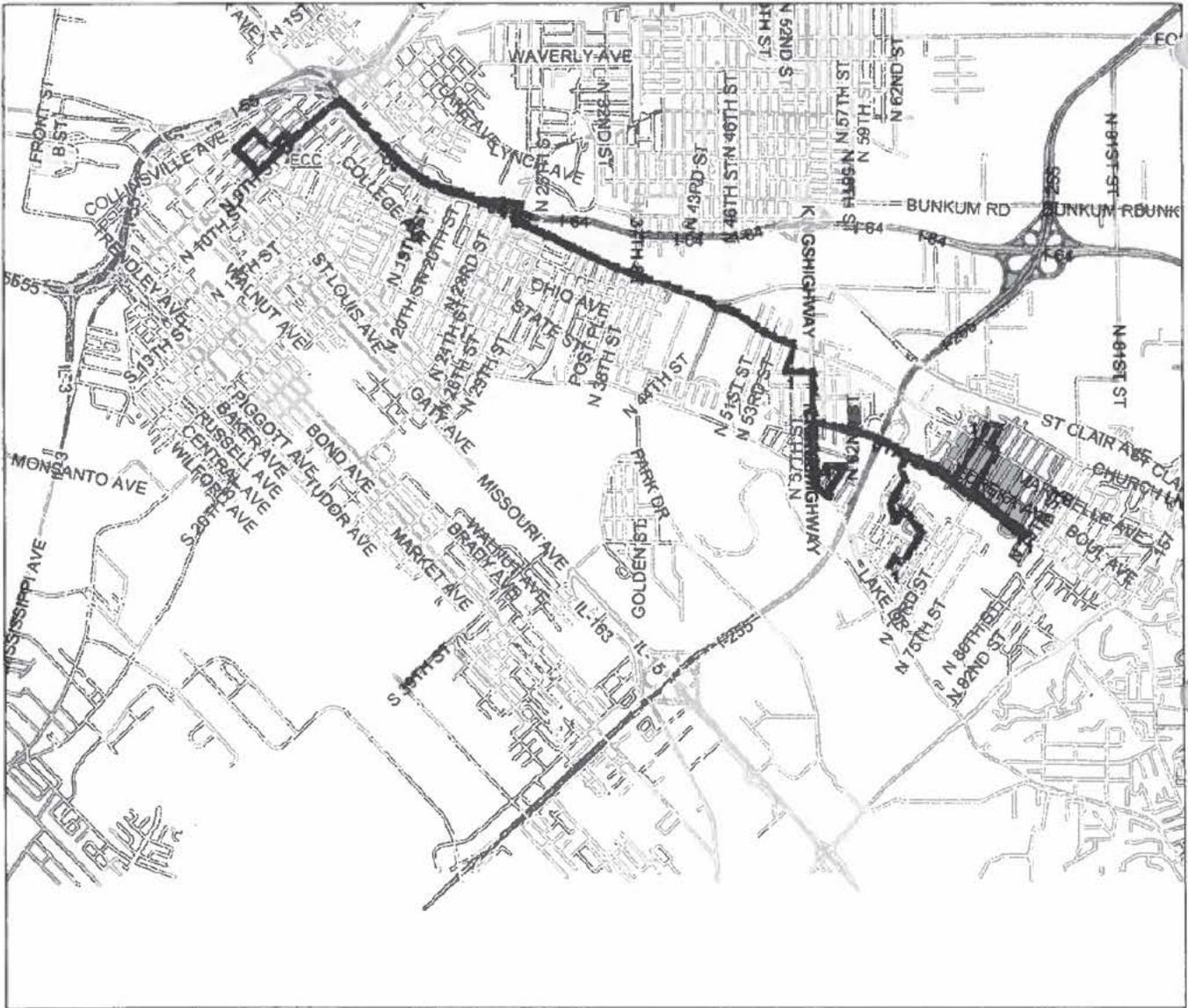
East St. Louis School District 189 Route Map



Route: **2328 PM**
 Vehicle: **5092**
 Anchor: **9TH CT**
 Depart Time: **3:00 PM**
 Dropoffs: **53**
 Distance: **10.21 mi.**

Desc: **WYSOE OUTBOUND**
 Driver:
 Max Load: **53**
 End Time: **3:28 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

East St. Louis School District 189 Route Map



Route: **2335 AE**
 Vehicle: **8**
 Anchor: **ECC**
 Start Time: **8:01 AM**
 Pickups: **15**
 Distance: **10.47 mi.**

Desc: **VAEC INBOUND**
 Driver:
 Max Load: **15**
 Arrival Time: **8:30 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

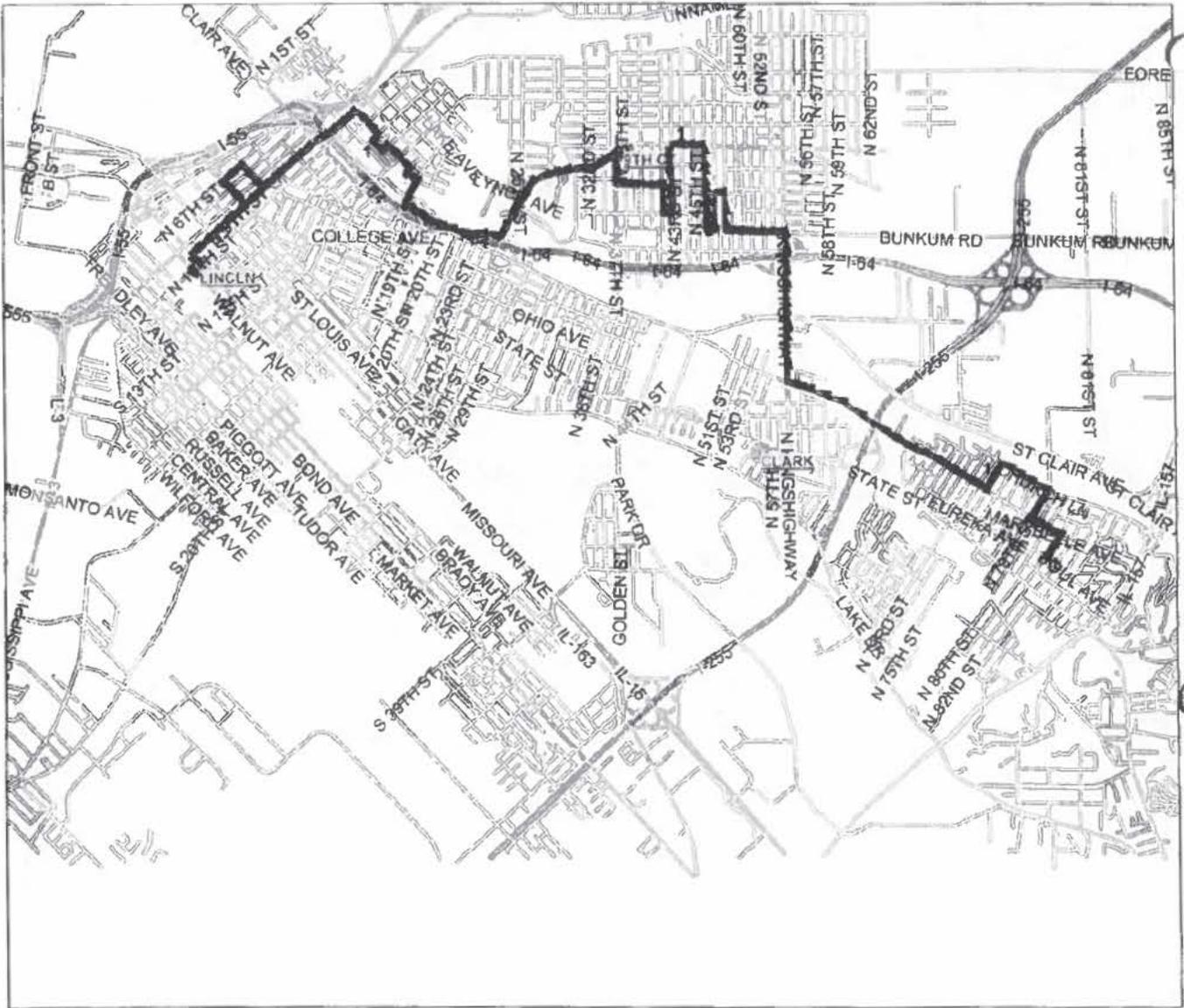
East St. Louis School District 189 Route Map



Route: **2335AAM**
 Vehicle: **8**
 Anchor: **BUSH**
 Start Time: **7:27 AM**
 Pickups: **9**
 Distance: **12.88 mi.**

Desc: **GBAS MIDDLE INBOUND**
 Driver:
 Max Load: **9**
 Arrival Time: **8:00 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

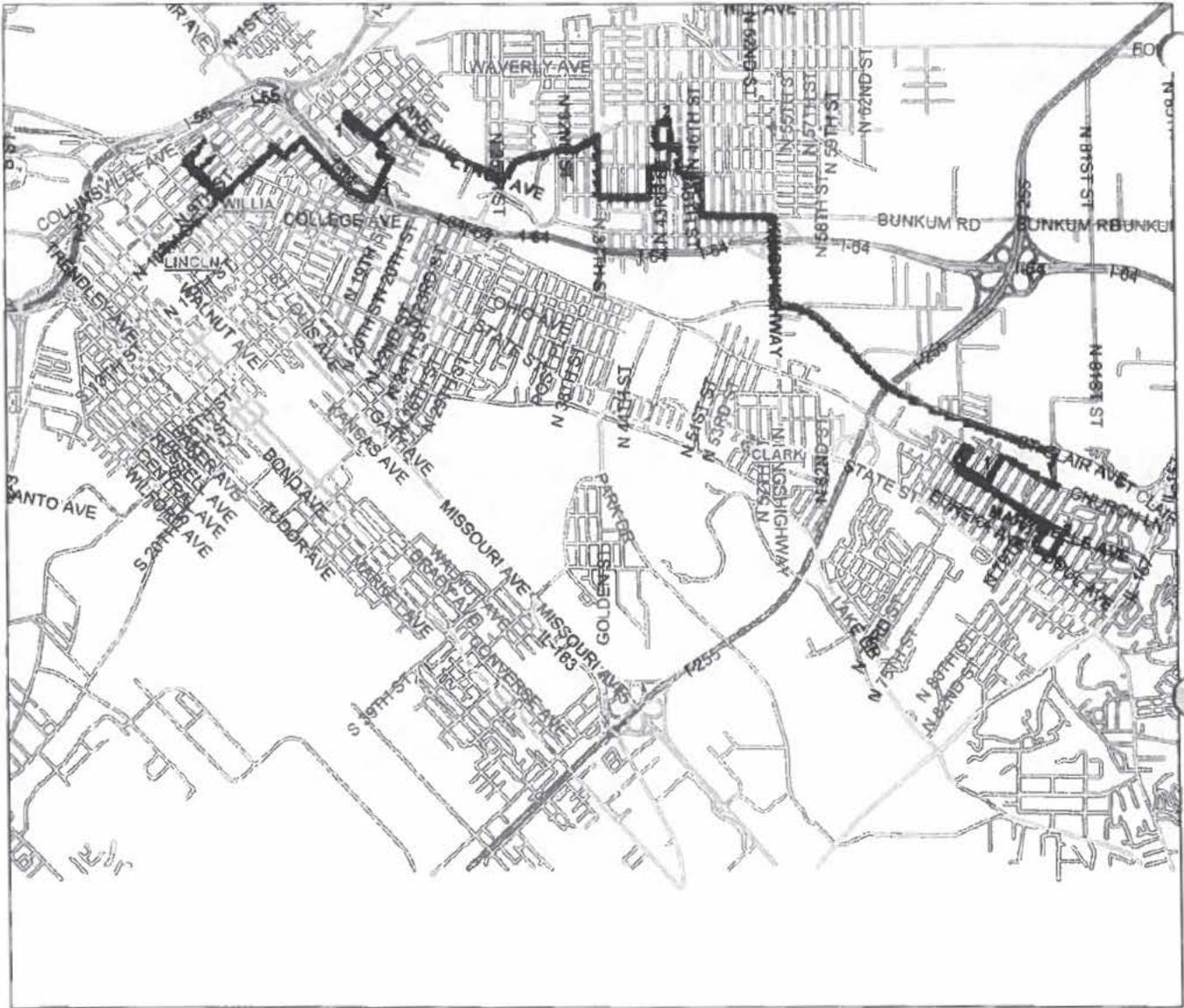
East St. Louis School District 189 Route Map



Route: **2351ZAM**
 Vehicle: **5619**
 Anchor: **LINCLN**
 Start Time: **7:06 AM**
 Pickups: **8**
 Distance: **10.52 mi.**

Desc: **LMS INBOUND Z**
 Driver:
 Max Load: **8**
 Arrival Time: **7:43 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

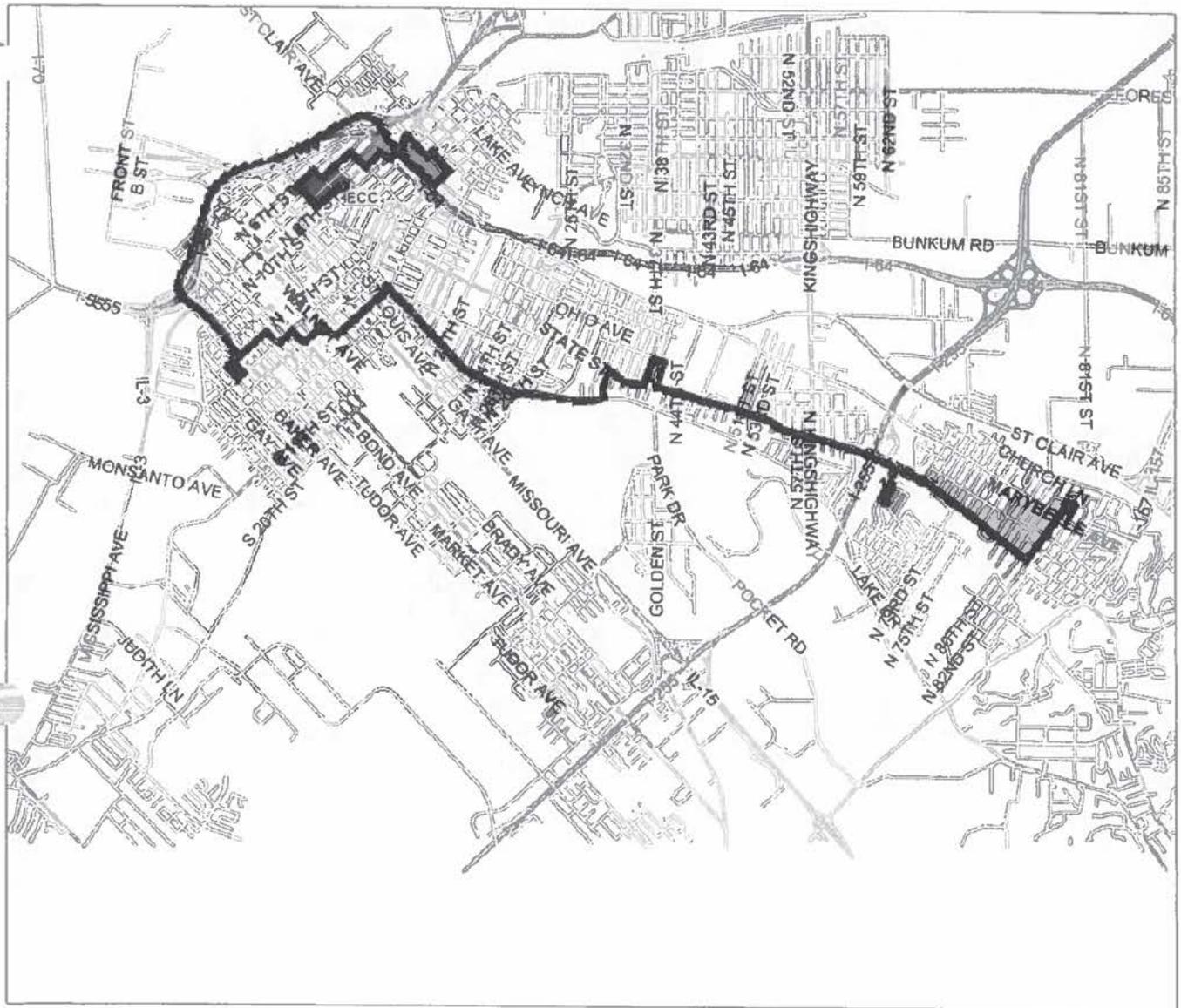
East St. Louis School District 189 Route Map



Route: **2351ZPM**
 Vehicle: **5619**
 Anchor: **LINCLN**
 Depart Time: **3:00 PM**
 Dropoffs: **9**
 Distance: **11.83 mi.**

Desc: **LMS Z OUTBOUND**
 Driver:
 Max Load: **9**
 End Time: **3:38 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

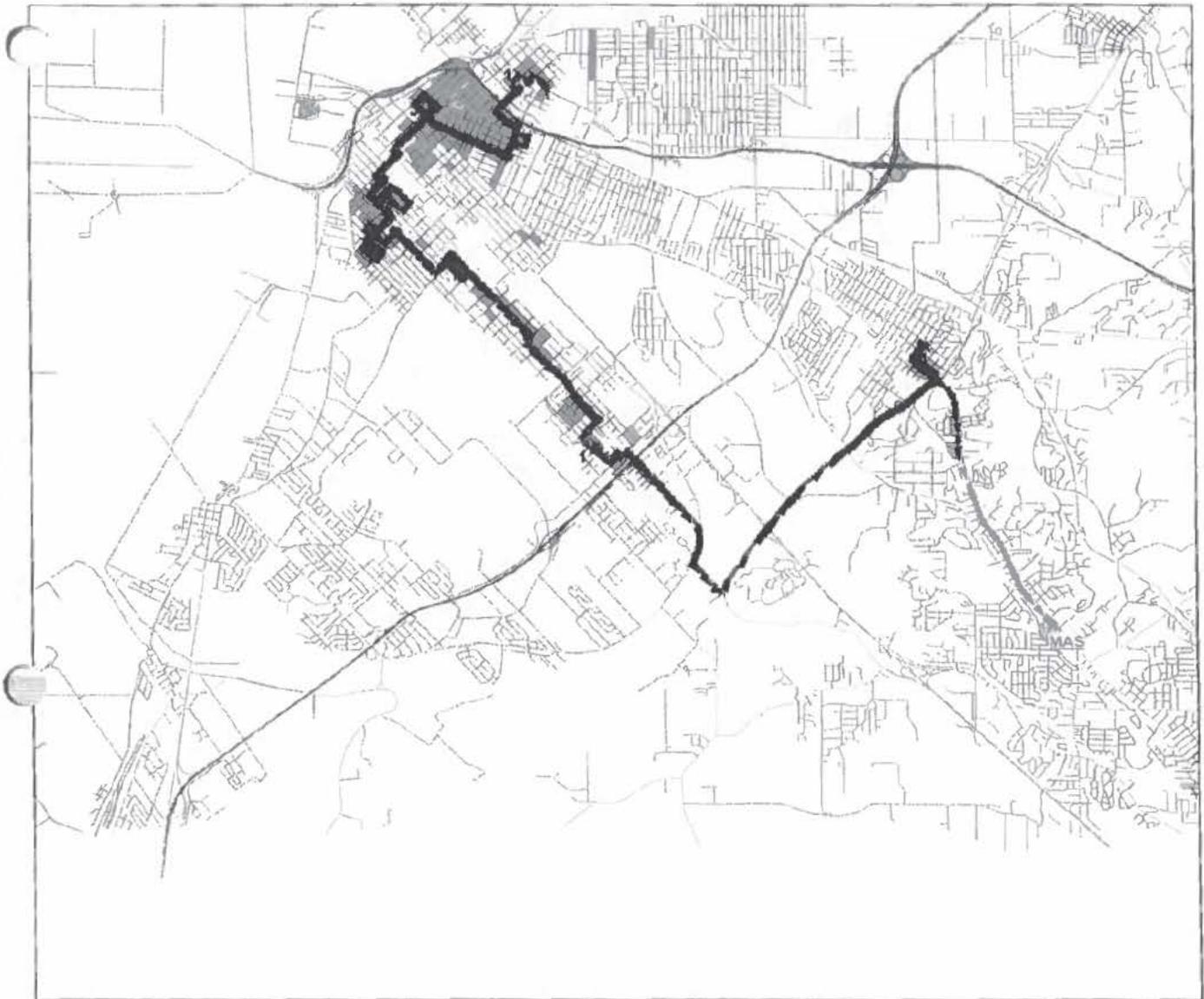
East St. Louis School District 189 Route Map



Route: **2352ZPE**
 Vehicle: **9**
 Anchor: **ECC**
 Depart Time: **3:30 PM**
 Dropoffs: **6**
 Distance: **13.24 mi.**

Desc: **VAEC OUTBOUND**
 Driver:
 Max Load: **6**
 End Time: **4:07 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

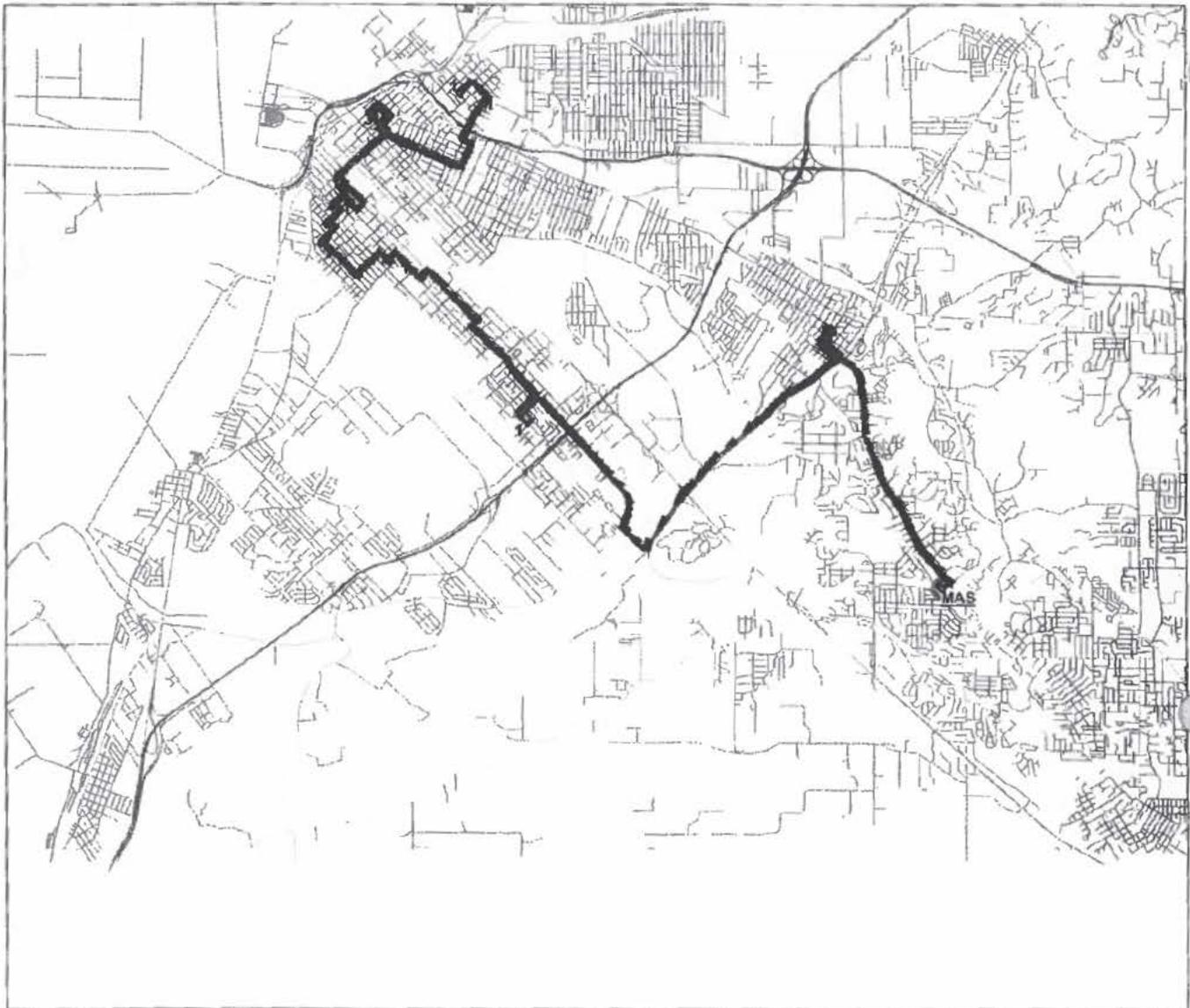
East St. Louis School District 189 Route Map



Route: **2359ZAH**
 Vehicle: **4326**
 Anchor: **MAS**
 Start Time: **7:35 AM**
 Pickups: **11**
 Distance: **20.23 mi.**

Desc: **MA Z INBOUND**
 Driver:
 Max Load: **11**
 Arrival Time: **8:30 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

East St. Louis School District 189 Route Map



Route: **2359ZPH**
 Vehicle: **4325**
 Anchor: **MAS**
 Depart Time: **2:00 PM**
 Dropoffs: **11**
 Distance: **19.09 mi.**

Desc: **MA Z OUTBOUND**
 Driver:
 Max Load: **11**
 End Time: **2:54 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

**IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS**

E.W., by his mother and next friend,
Chandres Johnson, and A.M.,
by her father and next friend,
Antonio Brown

Plaintiffs,

v.

BOARD OF EDUCATION OF EAST
ST. LOUIS SCHOOL DISTRICT #189,

Defendants.

No. 22-CH-0075

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF RESPONSE IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

NOW COME Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown; by and through their attorneys Susan M. Simone and Noah J. Halpern, Land of Lincoln Legal Aid, and for their Memorandum of Law in Support of Response in Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment, pursuant to 735 ILCS 5/2-1005, state as follows:

A. STATEMENT OF FACTS

Sister Thea Bowman Catholic Elementary School (hereinafter "Sr. Thea Bowman") is a kindergarten through eighth grade private Catholic school located within the boundaries of East St. Louis School District 189 (hereinafter "District 189"). The address of Sr. Thea Bowman is 8213 Church Lane, East St. Louis, Illinois.

Plaintiff E.W. is a nearly 10-year-old boy who has attended Sister Thea Bowman since kindergarten. E.W. lives at the Orr Weathers Homes with his mother, Chandres Johnson. See

Affidavit of Chandres Johnson attached hereto and marked Exhibit A. Orr Weathers homes are located at 1400 Missouri Avenue, East St. Louis, Illinois¹, more than 1 ½ miles from Sister Thea Bowman. E.W. needs assistance with transportation to and from his school. E.W.'s mom is employed but has limited income and cannot afford the gas to bring E.W. to and from school each day. Exhibit A.

Plaintiff A.M. is an 8-year-old girl who was in second grade at Sister Thea Bowman this past school year. A.M. lives in the Samuel Gompers Homes. See Affidavit of Antonio Brown attached hereto and marked Exhibit B. Gompers Homes are located at 450 North 6th Street, East St. Louis, Illinois², more than 1 ½ miles from Sr. Thea Bowman. A.M. needs assistance with transportation to and from school. Her father has limited income and cannot afford the gas to take her to and from school each day. A.M. has missed school because of the lack of bus transportation. Exhibit B.

1. PRIOR LITIGATION

There has been prior litigation involving the scope of Defendant's responsibility to provide transportation to other students of Sr. Thea Bowman. In 2012, the Fifth Appellate District of Illinois held that Defendant does not have any legal obligation to transport Sr. Thea Bowman students **on days when Defendant's schools are not in session**. *C.E. v. Bd. of Educ.*, 2012 IL App (5th) 110390 (emphasis added).

In 2015, litigation was filed against Defendant when it did not provide bus service for Sr. Thea Bowman students in a manner that brought students to school in a safe and timely manner.

¹ Plaintiffs ask the Court to take judicial notice that Orr Weathers Homes are generally located between Missouri Avenue and Broadway on the east and west, and between 14th Street and 15th Street on the north and south.

² Plaintiffs ask the Court to take judicial notice that Gompers Homes are generally located between Summit Avenue and one block east of Martin Luther King Drive on the east and west, and between North 5th Street and North 7th Street on the north and south.

That case is known as *R.T., et al., v. Board of Education of East St. Louis School District #189, et al.*, St. Clair County, Illinois case number 15-CH-592. A copy of the Preliminary Injunction Order entered by then-Judge Robert LeChien on October 28, 2015, is attached hereto marked Exhibit C. Plaintiffs ask that this Court take judicial notice of Judge LeChien's Order.

Judge LeChien found that Defendant 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." Exhibit C, page 3. Compelled by Judge LeChien's Order, Defendant provided regular bus transportation to the students of Sr. Thea Bowman until the 2022-23 school year.

2. SCHOOL YEAR 2022-23

Until the 2022-23 school year, Defendant chose to fulfill its statutory obligation to provide transportation to Sr. Thea Bowman students by operating two separate bus routes that carried only Sr. Thea Bowman students. Those routes operated whenever the Defendant's school bus routes operated in accordance with the *C.E.* decision.

Dr. Lawrence Tourijigian is the Director of Transportation for Defendant and has held that position for two years. Deposition of Dr. Tourijigian (hereinafter "Deposition"), pg. 7, lines 22-23; pg. 21, lines 3-7. A copy of the Deposition pages referenced are attached hereto and marked Exhibit D.³ Dr. Tourijigian appeared for deposition on June 27, 2023 and was sworn prior to examination. Ex. D, Deposition pg. 4.

Sometime prior to April 5, 2022, a parent of a child attending Unity Lutheran, a private school located within Defendant's boundaries, inquired about bus service to their school. Ex. D, Deposition pg. 88, lines 17-23; Email attached hereto and marked Exhibit E, pg. 3 (Deposition

³ All deposition pages referenced throughout are marked Exhibit D and attached in numerical order.

Exhibit Ex. 9). On April 5, 2022, Dr. Tourijigian emailed his contact at the Illinois State Board of Education, Christine Kolaz, seeking guidance on how soon the request for transportation must be fulfilled and Ms. Kolaz directed Dr. Tourijigian to 105 ILCS 5/29-4. Exhibit E, pg. 3 (Deposition Ex. 9). Dr. Tourijigian testified that transportation was not provided to the Unity Lutheran student because Defendant did not want to take on another expense. Ex. D, Deposition pg. 88-89, lines 24-14; pg. 90, lines 7-11.

In early Summer 2022, Arthur Culver, the Superintendent of East St. Louis School District 189, made the decision not to create any routes for Sr. Thea Bowman students for school year 2022-23. Ex. D, Deposition pg. 60, lines 1-12. Dr. Tourijigian was not part of the decision and just did what he was told. Ex. D, Deposition pg. 61, lines 9-24. No reason was given. Dr. Tourijigian thought the decision was related to bus drivers but he does not know why Superintendent Culver made the decision to stop bus service for Sr. Thea Bowman. Ex. D, Deposition pg. 62, lines 7-15.

On July 29, 2022, Dr. Tourijigian informed Ms. Jefferies, the Director of the SIU Charter school that the District would not be transporting her students. Ex. D, Deposition pg. 94, lines 5-15.

On August 4, 2022, Dr. Tourijigian emailed Francine Gordon at Sr. Thea Bowman that "School District 189 will not be routing STB [Sr. Thea Bowman] students and providing transportation as we have in prior years. We will strictly follow state Illinois State School Code with respect to transporting children." Exhibit E, pg. 7 (Deposition Ex. 9). At deposition, Dr. Tourijigian stated this meant that Defendant would not veer from what the Illinois School Code said was allowable. Ex. D, Deposition pg. 95, lines 12-19. No other explanation was offered.

On August 11, 2022, Dr. Tourijigian exchanged emails with Jonathan Birdsong, Superintendent of Schools, Diocese of Belleville. Exhibit E, pp. 9-11 (Deposition Ex. 9). At his deposition, Dr. Tourijigian said he told Mr. Birdsong what the District could and could not do based on the school code. When pressed, Dr. Tourijigian stated he told Mr. Birdsong that the District would not "be providing services in the upcoming school year in the manner in which they had been accustomed to." Ex. D, Deposition pg. 99-100, lines 19-17. Dr. Tourijigian concluded by stating "I was told not to route Sister Thea Bowman students, and I didn't." Ex. D, Deposition pg. 100, lines 20-21. Dr. Tourijigian received his order from Superintendent Arthur Culver. Ex. D, Deposition pg. 100, lines 22-23. No transportation options were offered to Sr. Thea Bowman students. Ex. D, Deposition pp. 100-101, lines 24-2. No routes were created that included Sr. Thea Bowman students for school year 2022-23. Ex. D, Deposition pp. 59, lines 10-19). Defendant knew Sr. Thea Bowman students wanted transportation but did not route them on any of their existing routes.

3. EXISTING ROUTES

Dr. Tourijigian acknowledged that there are about six different buses picking up children at Gompers Homes, where Plaintiff A.M. lives, and a similar number of bus routes exist for students who live in Orr Weathers Homes, where Plaintiff E.W. lives. Ex. D, Deposition pp. 57-58, lines 15-7. 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 Sr. Thea Bowman. Ex. D, Deposition pp. 101-102, lines 11-1. Dr. Tourijigian also acknowledged that it appeared Route 2200 went near Gompers, Orr Weathers, and Sr. Thea Bowman,. Ex. D, Deposition pp. 102-103, lines, 10-6, pp. 104-105, lines 22-6; Exhibit F (Deposition Ex. 10, pg. 1, 3).

Bus routes are created by catchment area. A catchment area is tied to a specific school. There are circumstances when a child who lives in one catchment area is taken to another school's catchment area. These students are usually but not always homeless students. Such students are assigned to the "open enrollment program." Open enrollment students who are homeless may live within the boundaries of East St. Louis in one catchment area but have their home school in a different catchment area. These students are transported to their home school by the regular route bus that runs closest to where the child lives. That regular route bus brings the child to school in the different catchment area and brings them home. See, Ex. D, Deposition pg. 32, line 23 through pg. 36, line 22. This is exactly what is required by the Illinois School Code for nonpublic school students.

Defendant utilizes the VersaTrans computer system for bus routing. VersaTrans uses student information from the previous year as well as new and updated student data, to create the routes for the next year. The routes are automatically made using the One Touch Routing feature within VersaTrans software. Ex. D, Deposition pg. 41 line 21 through pg. 43 line 21. Manual adjustments are often made to correct errors or add students. Ex. D, Deposition pg. 55, lines 7-9. Each school is listed as an anchor point for the routes within the system. Sr. Thea Bowman remains as an anchor point for routes within the VersaTrans system. Ex. D, Deposition pg. 59, lines. Sister Thea Bowman students that were in the VersaTrans system from previous years remain in the system though those students were not assigned to any routes. Ex. D, Deposition pg. 59, lines 2-19.

Plaintiffs have identified routes that were produced by Defendant from the 2022-23 school year that ran near either Orr Weathers, Gompers, or Sr. Thea Bowman. Those routes are attached to Plaintiffs Response in Opposition to Defendant's Motion for Summary Judgment and

Plaintiffs' Cross-Motion for Summary Judgment, marked Exhibits 1 – 4, and are incorporated herein by reference. These are routes that could provide bus transportation to Plaintiffs to attend their school.

B. STATUTE AT ISSUE

This case presents an issue of statutory interpretation, specifically the interpretation of 105 ILCS 5/29-4 entitled "Pupils attending a charter school or nonpublic school" which 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. 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.

105 ILCS 5/29-4.

C. ARGUMENT

1. THE PUBLIC POLICY OF ILLINOIS IS TO ENSURE ALL SCHOOL CHILDREN RECEIVE SAFE AND APPROPRIATE BUS TRANSPORTATION TO AND FROM THEIR SCHOOLS.

In 1973, the Illinois Supreme Court upheld the constitutionality of Sec. 29-4 of the Illinois School Code. The Court found that Act was enacted for the “secular legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools.” *Board of Education v. Bakalis*, 54 Ill. 2d 448, 461, 299 N.E.2d 737 (1973). The Court observed that “the bussing of nonpublic students at public expense was a well-recognized and long-established practice.” *Board of Education v. Bakalis*, 54 Ill. 2d at 448.

The Illinois Administrative Code makes clear that pupil 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 Sec. 120.30(a)(3). Again, the public policy of reimbursing schools for transporting all students reflects a public policy of safeguarding all students regardless of what school they attend in the district.

In 2018, the Illinois General Assembly amended the School Code to allow free transportation for all students residing within 1 ½ miles of the school they attended where conditions of walking constituted a serious safety hazard to the student either due to a course or pattern of criminal activity or due to vehicular traffic or rail crossings. 105 ILCS 5/29-3. Dr. Tourijigian advised that the criminal gang activity safety hazard involved first, having the local police department state that an area was dangerous, then Defendant submitting the information to the State, which then allows Defendant to be reimbursed for transporting students who live closer than 1 ½ miles to their educational center. Ex. D, Deposition pg. 81-82, lines 23-8.

Defendant was reimbursed in the 2020-21 school year for 44 students attending Sr. Thea Bowman, two of whom resided in a designated criminal gang activity safety hazard. And in school year 2021-22, Defendant was reimbursed for 52 students, six of whom resided in a designated criminal gang activity safety hazard area. See East St. Louis SD 189 Claim Reviews attached hereto and marked Exhibit G (Deposition Ex. 7).

Dr. Tourijjian did not provide any bus transportation for Sr. Thea Bowman students because his superior told him not to. Ex. D, Deposition pg 60, line 1 through pg. 61, line 24; pg. pg. 100, lines 20-21. Defendant's decision to terminate all school bus transportation for Plaintiffs was done without regard to the health and safety of Sr. Thea Bowman students residing in East St. Louis.

2. DEFENDANT'S ACTIONS VIOLATE THE PLAIN LANGUAGE OF 105 ILCS 5/29-4.

"The cardinal rule in construing a statute, to which all others are subordinate, is to ascertain and give effect to the intent of the legislature. To determine legislative intent, we turn to the language of the statute, which is the best indicator of its intent. We must give the statutory language its 'plain, ordinary, and popularly understood meaning,' and '[w]here the language is clear and unambiguous, the statute must be given effect as written without resort to further aids of statutory construction.' '[A]ll words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation.' 'Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous.'"

Olive Portfolio Alpha, LLC v. 116 W. Hubbard St., LLC, 2017 IL App (1st) 160357, P37.

(internal citations omitted).

The statutory provisions at issue can be broken into more readily digestible components as follows.

a. **“The school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools...”**

Defendant District 189 provides school buses to transport children to and from their public schools.

b. **“[S]hall afford transportation, without cost, for children who attend a charter school or any school other than a public school.”**

Defendant stopped providing transportation to Sr. Thea Bowman students who reside within the boundaries of District 189 in school year 2022-23. Ex. D, Deposition pg. 60, lines 1-12; pg. 100, lines 20-23. Defendant ignored requests from other charter and nonpublic schools for transportation because they did not want the expense despite the fact that the state reimburses them. Ex. D, Deposition pp. 88-89, lines 24-14; pg. 94, lines 5-12. Defendant has not indicated any intention to provide bus transportation for Plaintiffs in school year 2023-24.

c. **“[W]ho reside at least 1 1/2 miles from the school attended.”**

Both Plaintiffs reside more than 1 ½ miles from Sr. Thea Bowman. Plaintiff E.W. resides in the Orr Weathers Homes, approximately 6.3 miles from Sr. Thea Bowman. Exhibit A. Plaintiff A.M. resides in the Gompers Homes, approximately 6.7 miles from St. Thea Bowman. Exhibit B.

d. **[A]nd who reside on or along the highway constituting the regular route of such public school bus or conveyance.**

Both Plaintiffs reside on or along District 189 routes. As set forth above, Dr. Tourijigian acknowledged about six different buses pick up children at Gompers Homes and a similar number of bus routes exist for students who live in Orr Weathers Homes. Ex. D, Deposition pp. 57-58, lines 15-7; see also pp. 101-102, lines 11-1 (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 Sr. Thea Bowman.) Dr. Tourijigian also acknowledged that it appeared Route 2200 went near Sr.

Thea Bowman, Gompers, and Orr Weathers. Ex. D, Deposition pp. 102-103, lines, 10-6; pp. 104-105, lines 22-6; Exhibit F (Deposition Ex. 10, pp. 1, 3). Further, Plaintiffs have identified numerous bus routes from school year 2022-23 that ran near Gompers Homes or Orr Weathers Homes and attached copies of those routes to Plaintiffs Response and Cross-Motion as Exhibits 1 and 2.

- e. **“[S]uch 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.” (emphasis added)**

These provisions are the crux of the dispute. 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. This first part focuses on transportation of nonpublic school students from near their homes to their schools, just as the district 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.

Alternatively, the District may look to the regular routes near the school the student attends and provide transportation to and from the home 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 an 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 – from near their homes to near their school and back.

The clauses set forth above offer Defendant two choices – use a regular route near the student’s residence and transport them to and from their school or use a regular route near the student’s school and transport the children to and from their home. 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.

3. *C.E. v. Bd. of Educ.* DID NOT INVOLVE A DECISION TO TERMINATE BUS TRANSPORTATION FOR THE ENTIRE SCHOOL YEAR.

Defendant’s heavy reliance on *C.E. v. Bd. of Educ.* is misplaced because that case involved the question of whether bus transportation had to be provided on days when the public school was not in session. “There is no question that the plaintiffs meet the requirements of the statute in terms of their distance from their school and their location on or along the regular route of the public school bus. The only question is whether the district must provide bus service on days when the district schools are not in session but the Catholic school is in session.” *C.E. v. Bd. of Educ.*, 2012 IL App (5th) 110390, *P8. Finding that “the legislative intent is that transportation be provided to nonpublic school students only on the same basis on which it is provided to public school students,” the Court found that to require the District to transport Sr. Thea Bowman students on days when District 189 was not in session was not consistent with the legislative intent. *C.E. v. Bd. of Educ.*, at *P9, *P10.

Here, Defendant did not provide bus transportation service to students of Sr. Thea Bowman for the entire school year, and seemingly indefinitely, while maintaining bus transportation service for District 189 students. This is prohibited by the statute. Defendant must

provide bus service to students who reside on its regular routes to their schools on the same basis that Defendant provides bus transportation to its own students.

**4. COST CAN ONLY BE CONSIDERED IF THE DEFENDANT CHOOSES
TO PROVIDE A SEPARATE ROUTE.**

The General Assembly provided school districts such as Defendant with the option to operate a separate regular bus route for nonpublic school students. When contemplating this option, school districts are to consider whether separate routes are “safer, more economical and more efficient”. 105 ILCS 5/29-4. The statute does not require any cost benefit analysis when directing school districts to provide transportation for nonpublic school students from their homes near regular routes to their schools or from their schools on regular routes to their homes.

Defendant is reimbursed for transportation services provided to Sr. Thea Bowman students at the same rate and on the same basis as public school students. 23 Ill. Admin. Code Sec. 120.30(a)(3). See also Ex. D, Deposition pg. 84 Lines 14-18. 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 for the District students riding the same bus. Otherwise, school districts would be able to readily frustrate the legislative intent to allow all students safe transportation to their schools.

D. CONCLUSION

The General Assembly’s directive to public schools is to provide transportation to all students within the parameters set by the statute – on a route near the student’s home to their school, on a route near the student’s school to their home, or by a separate route. Refusing to provide any transportation is not an option.

Wherefore, Plaintiffs pray this court grant summary judgment in their favor and against Defendants; deny Defendant's Motion for Summary Judgment; declare that Plaintiffs are entitled to bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school; declare the Defendant's decision not to route Plaintiffs for the past school year was unlawful; enjoin Plaintiffs from failing to provide Plaintiffs with bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school; and for such other and further relief as justice and equity may require.

Respectfully submitted,

/s/ Susan M. Simone

Susan M. Simone, ARN: 6204458

Noah Halpern, ARN: 6342199

Attorneys for Plaintiffs E.W. and A.M.

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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that a copy of the foregoing was served upon Garrett Hoerner, attorney for Defendant Board of Education of East St. Louis School District #189, by electronic mail at email address gph@bhylaw.com on July 23, 2023, at approximately 7:00 pm.

/s/ Susan M. Simone

Susan M. Simone

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,
Chandres Johnson, and A.M,
by her father and next friend,
Antonio Brown, and SR. THEA BOWMAN)
CATHOLIC ELEMENTARY SCHOOL,)

Plaintiffs,)

v.)

BOARD OF EDUCATION OF EAST)
ST. LOUIS SCHOOL DISTRICT #189,)
and ARTHUR R. CULVER,)
Superintendent, East St. Louis School)
District #189, in his official capacity,)

Defendants.)

No. 2022-CH- 0075

AFFIDAVIT OF CHANDRES JOHNSON

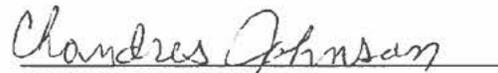
COUNTY OF ST. CLAIR)
STATE OF ILLINOIS) ss

Affiant, Chandres Johnson, on oath state as follows:

1. I, CHANDRES JOHNSON, am over the age of eighteen (18) and am of sound mind.
2. I am the mother of my 9-year-old son, E.W., who is currently a fourth grader at Sr. Thea Bowman Catholic Elementary School located in District 189. My son E.W. has attended Sr. Thea Bowman Catholic School since he started kindergarten.
3. My son and I reside in the Orr Weathers Homes in East St. Louis, Illinois, approximately 6.3 miles from St. Thea Bowman Catholic School.



4. My car does not work at this time. Since District 189 stopped providing bus transportation I have to rely on friends to help me get my son to school and I pay those friends for gas.
5. I also work as a home health aide and it has been very difficult trying to juggle transportation for myself to and from work and my son to and from school.
6. Because I do not have reliable and stable transportation to get my son to and from school, he has missed approximately 5 days of school so far this year.
7. My income is about \$1,500 per month. The added expenses of paying others to take my son to and from Sr. Thea Bowman twice a day has caused my family a great hardship and it is an unsustainable additional expense.
8. If public transportation is no longer provided for my son, I feel certain that he will not be able to regularly attend Sr. Thea Bowman Catholic School and I feel his prospects for a brighter future will be limited.
9. It is my hope that my son will have a better education than I received, and that Sr. Thea Bowman is the right place to start him on that path.
10. Sr. Thea Bowman Catholic School teaches children the importance of reliability, punctuality, and time management. When their attendance at school becomes erratic and uncertain, they cannot appreciate these valuable life lessons being taught in the classroom.
11. The information contained in this Affidavit is based upon facts and information personally known to me.
12. Further Affiant sayeth not.


CHANDRES JOHNSON

VERIFICATION BY CERTIFICATION

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

Chandres Johnson
Chandres Johnson

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,)
Chandres Johnson, and A.M,)
by her father and next friend,)
Antonio Brown, and SR. THEA BOWMAN)
CATHOLIC ELEMENTARY SCHOOL,)

Plaintiffs,)

v.)

BOARD OF EDUCATION OF EAST)
ST. LOUIS SCHOOL DISTRICT #189,)
and ARTHUR R. CULVER,)
Superintendent, East St. Louis School)
District #189, in his official capacity,)

Defendants.)

No. 2022-CH-0075

AFFIDAVIT OF ANTONIO BROWN

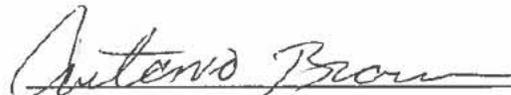
COUNTY OF ST. CLAIR)
STATE OF ILLINOIS) ss

Affiant, Antonio Brown, on oath state as follows:

1. I ANTONIO BROWN, am over the age of eighteen (18) and am of sound mind.
2. I am the father of my 6-year-old daughter, A.M., who is currently a first grader at Sr. Thea Bowman Catholic Elementary School located in District 189.
3. My daughter and I reside in the Gompers Homes in East St. Louis, Illinois, approximately 6.7 miles from St. Thea Bowman Catholic School.
4. I am not currently working because of disability. My income is limited to \$413 a month from TANF public assistance.

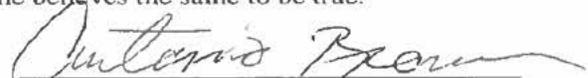


5. I have a car but the added expenses of gas for my car to go to and from Sr. Thea Bowman twice a day have caused and will continue to cause my family a great hardship and will be an unsustainable additional expense.
6. If public transportation is no longer provided for my daughter, I feel certain that she will not be able to regularly attend Sr. Thea Bowman Catholic School and I feel her prospects for a brighter future will be limited.
7. It is my hope that my daughter will have a better education than I received, and that Sr. Thea Bowman is the right place to start her on the path.
8. Sr. Thea Bowman Catholic School teaches children the importance of reliability, punctuality, and time management. When their attendance at school becomes erratic and uncertain, they cannot appreciate these valuable life lessons being taught in the classroom.
9. The information contained in this Affidavit is based upon facts and information personally known to me.
10. Further Affiant sayeth not.


Antonio Brown

VERIFICATION BY CERTIFICATION

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


Antonio Brown

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

R.T., by her Guardian and next friend,)
Willie Britton, K.W., by his mother)
and next friend, Sharnese Willis,)
and J.B., J.B., and J.B.,)
by their mother and next)
friend, Norkisha Epps,)

Plaintiffs,)

v.)

BOARD OF EDUCATION OF EAST)
ST. LOUIS SCHOOL DISTRICT #189,)
and ARTHUR CULVER,)
Superintendent, East St. Louis School)
District #189, in his official capacity,)

Defendants.)

No. 15 CH 592

FILED
ST. CLAIR COUNTY
OCT 28 2015
Harold A. Cook
CIRCUIT CLERK
13

ORDER

This matter comes before the court on Defendant's Motion for Preliminary Injunction, with arguments heard on September 23, 2015; the Court, being fully advised in the premises, finds as follows:

Plaintiffs (Bowman students) seek a preliminary injunction requiring that Defendant, East St. Louis School District No. 189 (District) to provide bus transportation to students at Sr. Thea Bowman Catholic School (Bowman) "The party seeking a preliminary injunction is required to establish four factors before an injunction will be granted: (1) a clearly ascertained right in need of protection, (2) an irreparable injury in the absence of an injunction, (3) an inadequate remedy at law, and (4) a likelihood of success on the merits."

PLAINTIFF'S
EXHIBIT
C

Kalbfleisch v. Columbia Community Unit School District No. 4, 396 Ill. App. 3d 1105, 1113, 920 N.E.2d 651, 658 (5th Dist. 2009).

The Bowman children will suffer irreparable injury if they do not have transportation to school. Specifically, failure to provide bus service will disrupt their education. In the absence of education there is ignorance. When the children miss school in whole or in part it is obviously harmful.

The issue here is do the Bowman students have a right to transportation that is in need of protection and can they establish there is a likelihood of success on the merits. The District denies that the Bowman children have a clear right in need of protection. The Bowman students disagree and claim they have a right to transportation in the same manner as the public school students. The court is mindful of the need of the Bowman children to get to school in a safe and timely manner. The court is also cognizant of the financial distress that confronts the District and the burden placed on the taxpayers' of the District to provide bus service to the Bowman students.

Transportation for non-public students is controlled by the Illinois School Code (Code.) (105 ILCS 5/29-4.) Section 29-4 provides in pertinent part as follows:

"Pupils attending a charter school or non-public 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 1½ 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. * * * If any such children reside within 1½ miles from the school attended, the school board shall afford such transportation to such children on the same basis as it provides transportation to 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". 105 ILCS 5/29-4.

The plain meaning of the words of the statute express the legislative intent. Extrinsic evidence is unnecessary to resolve the dispute before the court. However, it is necessary to break the text into pieces in order to rebuild its whole substance.

Preliminarily, the Illinois Supreme Court has held that "section 29-4 was enacted for the secular legislative purpose of protecting the health and safety of the children traveling to and from non-public schools... ." *Board of Education, School District No. 142, Cook County v. Bakalis*, 54 Ill. 2d 448, 299 N.E.2d 737 (1973.) The use of the word "shall" in the passage "... shall afford transportation, without cost ... 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" creates a mandatory duty. The Bowman students have established that they have a clearly ascertained right in need of protection. Therefore, based on the public policy expressed by the Supreme Court in *Bakalis* and the Court's determination of legislative intent of section 29-4, the court finds that the District 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.

Further, the District argues that the Bowman students are not likely to have success on the merits of their complaint. The District contends that its obligation is limited to pick up and drop off along its "regular routes." As stated by the District's counsel: "The plain language of Section 29-4 of the Illinois School Code only requires public-school district's to

provide free bus transportation to non-public school students on its existing routes, which are inherently based upon the public-school district's daily time schedule." Consequently, as the Bowman school is not located on the public school bus route, the District has adopted a daily bus schedule that delivers the students to a public school and causes the elementary school children to risk the walk to their school without policing.

This approach steers around that the District "shall afford transportation, without cost, for children that attend ... any school other than a public school ... "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." (Emphasis added.) Again, the use of the word "shall" imposes a mandatory duty to comply with the legislative directives of the statute. The public school locus is not the nearest or most easily accessible place to the Bowman school.

The act of using only those bus stops that are provided for public school students is not safe for the Bowman students and is in contradiction of the public policy of the State of Illinois as set forth by the Supreme Court in *Bakalis*. The District may not abrogate its duty under section 29-4. Therefore, the District does not have authority to limit its non-public school bus service in the manner it contends.

Additionally, nothing in the statute allows the District to ignore the Bowman school schedule and impose its daily time schedule for public schools. If imposed, the public school schedule makes the students over an hour late for school and requires them leave school before classes are completed. The duty created by section 29-4 necessarily implies that the District's adapt transport to a commonsensical school schedule of the Bowman school. This

is because timely bus service promotes the public purpose of section 29-4. Moreover, the job of getting the children to the parochial school on time is no more than what is provided to the public school students to convey its students to and from school in a safe and timely manner.

The District contends that under *C.E. and C.L.* its' transportation expenditures need not be increased to discharge its obligation under section 29-4. The District concludes that its bus service for the Bowman students can be limited to the same time and place as adopted for daily schedule of the public school so that its costs are minimized. The District is wrong. There is no mention of money in the statute except when the District contemplates establishing a separate regular bus service route for the Bowman children. When a separate route is considered the school district must determine if the operation of a separate route is "safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes." Section 29-4 means that only when a school district exercises its' discretion to adopt a separate route for the non-public school students may it take into account its transportation expenditures. Also, the cost of providing a separate regular bus service to non-public students must be compared to expenditures required for transportation non-public students without separate regular bus service.

In this case, the District chose to provide separate regular service to the Bowman school children. The District then decided that it is more economical to terminate all mandated bus service "to and from" the Bowman school by limiting bus service to only the route and schedule in place for its students. Section 29-4 does not support the decision to limit the Bowman students' right to bus transportation because compliant service costs

more. Compliance with section 29-4 regarding nonpublic school students does not exceed the bus service provided for the District's own pupils. Cost does not abrogate compliance.

In *C.E. and C.L.*, the appellate court was confronted with the demand of non-public school students' for transportation on days when the public schools did not hold classes. The appellate court held that the legislative intent of section 29-4 was that the District did not have to transport the Bowman students "...on days when the public schools are not in session..." The District seeks to extend this holding to apply to Bowman school bus service on days when public school *are* in session. The District takes the holding in *C.E. and C.L.* to permit it to severely restrict the service to the Bowman school from what it was in the 2014 -2015 school year. The District points out that the appellate court construed section 29-4 to mean that "... the legislature took care to ensure that non-public school students received no more in the way of transportation than do public school students." Continuing, the court went elsewhere to append this *dicta*: "and that the transportation of non-public school students not increase the school district's cost or interfere with its convenience or efficiency."

The appellate court's resolution of the problem before it does not translate to the problem here. That court was not asked to consider the everyday operation of the buses to the public school and to the non-public school. The notion that the school buses are not required to "go out of their way" to transport non-public school students to elementary school is indifferent to the safety and educational needs of the children of East St. Louis who attend Sr. Thea Bowman School. Consequently, the appellate court's statement of public policy can not be meant to apply here. The plain language of the statute provides for right of non-public school students to transportation to and from school at no cost. The

plain English does not require elementary school students to fend for themselves on the streets in order to connect with school and home. While the District counsel's presents judicious defense maintaining that the holding in *C.E. and C.L.* should be extended, the factual and legal findings necessary here are clearly distinguishable.

Many of the statements made in *C.E. and C.L.* that are asked to be applied here are *obiter dictum*, and not *judicial dictum*. As explained in *Cates v. Cates*, 156 Ill 2d 76, 619 N.E. 2d 715 (1993):

"The term "*dictum*" is generally used as an abbreviation of *obiter dictum*, which means a remark or opinion uttered by the way. Such an expression or opinion as a general rule is not binding as authority or precedent within the *stare decisis* rule. (Citations omitted.) On the other hand, an expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause, if *dictum*, is a *judicial dictum*. (Citations omitted)... 'such *dictum* should be considered a *judicial dictum* as distinguished from a mere *obiter dictum*...' And further, a *judicial dictum* is entitled to much weight, and should be followed unless found to be erroneous. (Citations omitted) 'where expression of opinion considered to be *judicial dictum* held to have force of judicial determination.'" *Cates*, 619 N.E. 2d at 717.

The *C.E. and C.L.* opinion does not reveal that the mixed questions of fact and law presented here were addressed by the attorneys in that appeal. Additionally, the court did not deliberately articulate the legislative intent of the segment of section 29-4 that states a school district shall afford transportation of the non-public school children "... 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." (Emphasis added.) The legislative intent of this passage was not within the appellate court's judicial pronouncements.

In *Cates v. Cates*, Justice Miller wrote a dissent that thoroughly summarized the courts role in determining legislative intent. The Justice wrote:

"Expressions of public policy are found primarily in the constitution and statutes of the state, and only secondarily in its judicial decisions. (Citations omitted.) The preferred role of the legislature as an expositor of public policy simply reflects the basic principle that a court, constrained by the particularity of the specific controversy before it, is singularly ill-suited to making broad pronouncements of policy. The legislature, with its vastly different functions and resources, is better able to undertake a thorough examination of the different concerns that underlie a matter such as this. The judicial branch is not equipped to perform that mission." *Cates v. Cates*, 719 N.E.2d at 731.

Based on the foregoing, this court can rightly conclude that the remarks of the appellate court made in connection with the issues in the case were *obiter dictum* and are not precedent on the issues here.

There are conflicting themes running through the cases cited in this order. One theme implies that the non-public school students are freeloaders on the back of the taxpayer. This school of thought is summarized in the statement (I)t seems to us that the legislature took care to ensure ... that the transportation of non-public school students not increase the school district's cost or interfere with its convenience or efficiency." *C.E and C.L.*, 970 N.E. 2d at 1290.

The other theme is stated by the controlling authority of Illinois courts, the Illinois Supreme Court. In *In re Marriage of Lappe*, 176 Ill.2d 414, 680 N.E.2d 380, 389 (1997), the Court cited *Bakalis*, and observed "that a public purpose was served by a provision of the School Code which required school boards to provide free transportation to school to non-

public school students." The Court concluded "that the transportation of school children, public or non-public, is a public purpose."

This court finds that *Bakalis* and *Lappe* are settled law that declares the legislative intent of section 29-4. As a consequence of the Supreme Court's analysis, this court finds that *C.E* and *C.L* are not *stare decisis* as applied to Plaintiffs' case. Since the law is bus transportation of non-public school students serves the public interest, it follows that the Bowman students do not take a back seat to the District's students. They both get a ride to school.

The court finds that the hardship to Bowman children outweighs the harm to District to provide bus service in such a manner that the Bowman children actually reach their school in a safe and timely fashion and are allowed to remain there to the end of their school day.

Notwithstanding the above, there is an avenue to an adequate remedy at law. The St. Clair County local rules provide for court-annexed mediation of civil disputes. These rules give the court to refer the case to mediation on its own motion. However, given the status of the case after trial of Plaintiffs' complaint on September 23, 2015, and the noteworthy professional presentation and cooperation of counsel, the court strongly advises the attorneys confer with their clients, and each other, regarding referral to mediation.

The goal is to have the parties sit down and take up a conference on a unified system of transportation which protects the health and safety of all students traveling to and from their schools in a timely fashion. After such, the parties will report to the court the result of their deliberation with respect to amelioration of the dispute by November 23, 2015. If in

the judgment of the court, the parties have engaged in discussions in good faith, and it is unlikely that mediation will not be successful, the court will rule that there is no adequate remedy at law for the Plaintiffs.

The injunctive relief already in place shall continue until further order of court. Final order will follow.

(As a convenience to the parties, attached hereto is Part VIII of the local rules that pertain to court- annexed mediation.)

October 28, 2015



Robert P. LeChien, Circuit Judge

c.c and e.c. to all lawyers

Dr. Lawrence Tourijigian 6/27/2023

1 IT IS STIPULATED AND AGREED by and between counsel
 2 for Plaintiffs and counsel for Defendant, that the
 3 deposition of DR. LAWRENCE TOURIJIGIAN may be taken
 4 for discovery purposes pursuant to and in accordance
 5 with the provisions of the Illinois Code of Civil
 6 Procedure and Supreme Court Rules pertaining to such
 7 depositions, by and on behalf of the Plaintiffs on
 8 June 27, 2023, at Becker, Hoerner & Yursa, P.C.,
 9 before Holly A. McCullough, an Illinois CSR, a
 10 Missouri CCR and a RPR, that the issuance of notice is
 11 waived and that this deposition may be taken with the
 12 same force and effect as if all statutory requirements
 13 had been complied with.

14 IT IS FURTHER STIPULATED AND AGREED that the
 15 signature of the deponent is waived.

16 DR. LAWRENCE TOURIJIGIAN produced, sworn and
 17 examined on behalf of the Plaintiffs, testified and
 18 deposed as follows:

19
 20
 21
 22
 23
 24

(Deposition commences at 1:28 p.m.)



Dr. Lawrence Tourijigian 6/27/2023

1 **A. No.**

2 Q. Have you consumed any alcohol or other
3 substances today?

4 **A. No.**

5 Q. Did you do anything to prepare for today's
6 deposition?

7 **A. I looked over the documents that I sent
8 you -- or shared out with Attorney Hoerner, which I
9 assume you got.**

10 Q. Okay. Did you do anything else?

11 **A. No.**

12 Q. And what is your date of birth?

13 **A. 9-19-56.**

14 Q. How old are you today?

15 **A. 66.**

16 Q. Okay. Where do you live; what's your
17 address?

18 **A. 8903 West Boul Avenue, East St. Louis,
19 Illinois 62203.**

20 Q. And where do you work?

21 **A. East St. Louis School District 189.**

22 Q. What is your position at District 189?

23 **A. Director of Transportation, Student
24 Information Systems and the 21st Century Grant.**

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1 responsibilities for the transportation department.

2 **A. Okay.**

3 Q. You took over this position two years ago
4 you said?

5 **A. I believe so. I think it was right before**
6 **we came back in person with the kids, which I believe**
7 **was school year '21.**

8 Q. All right. And what are your
9 responsibilities as the Transportation Director?

10 **A. Well, we prep the routes that the kids use**
11 **to get back and forth to school. You make hard**
12 **decisions about the way we operate. You field**
13 **complaints, you speak with building representatives,**
14 **and you just try and make things work getting the kids**
15 **back and forth to home and school.**

16 Q. Who -- You said "we" at the beginning of
17 your answer. Who is the "we"?

18 **A. Well, there's me and Ms. Epps and, of**
19 **course, you know, the people at the next tier above**
20 **you that have some say so in the way business is**
21 **conducted.**

22 Q. Okay. Do the principals of the schools or
23 other school personnel in the individual buildings --

24 **A. Uh-huh.**

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1 **them caught up with their credits.**

2 Q. Okay. Do you still have that program?

3 **A. No. It's over with for the regular school**
4 **year.**

5 Q. If we were still in school, would you still
6 have that program?

7 **A. If school started tomorrow, I would say I**
8 **don't know because I don't know if the funding is**
9 **there.**

10 Q. When school ended -- Did school end May of
11 year?

12 **A. May 25th, yes, was the last day of regular**
13 **education.**

14 Q. Did you have the dual enrollment program on
15 May 25th, the last day of regular education?

16 **A. It stopped sometime in May. I can't exactly**
17 **remember. It was mid to late May when that program**
18 **ended.**

19

20 (A brief discussion off the record.)

21

22 BY MS. SIMONE:

23 Q. What is a "catchment area"?

24 **A. That's the area of the school district that**

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1 is tied to either an elementary or a middle school,
2 and, of course, the high school has the entire
3 district as its catchment area.

4 Q. Does it mean that a child who lives
5 outside -- What does it mean for a child who lives out
6 the catchment area; how is that child assigned?

7 A. It depends. There are circumstances when
8 you might take a child that's out of the catchment
9 area into another school's area, and generally
10 speaking that child has to be homeless. There's a
11 McKinney-Vento Act that says that if a child becomes
12 homeless at one school and they're forced to stay with
13 another relative or friend or whoever in another
14 catchment area, we are bound to take that child back
15 to the area that they were going to school and that
16 school for their education.

17 Q. Are those students assigned as open
18 enrollment program -- to the open enrollment program?

19 A. Yes, ma'am. Uh-huh.

20 Q. Are any other students, besides homeless
21 students, assigned to the open enrollment program?

22 A. No. We try not to. It really wears on the
23 system when you do that.

24 Q. How so?

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1 **A.** Well, it extends the length of the route.
2 You've got kids that are on routes that are in things
3 that are already running, and if I have to reach out
4 to another catchment area to bring a child in, then
5 that child is gonna really increase the length of that
6 route.

7 **Q.** Tell me the mechanics of how you implement
8 an open enrollment student.

9 **A.** An open enrollment student?

10 **Q.** How do you implement the open enrollment
11 program for a student who is homeless?

12 **A.** Well, we tell people that if you live
13 outside of a catchment area and you want to take your
14 child to that school, that's fine, but we're not gonna
15 transport, but if the child is homeless because of
16 that displacement, then we will transport, but not if
17 they are outside of School District 189. Then another
18 program kicks in and transports the child.

19 **Q.** If you're talking about a homeless student
20 who is outside of District 189 boundaries.

21 **A.** Yeah. This happens not too frequently, but
22 it does happen. Let's say the kid winds up living in
23 Cahokia, and it's real easy to because at 50th and
24 Bond, that's where we stop, but there's a set of

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1 housing developments there, and if that child stays
2 with a relative in that area, we can't transport
3 because we're not allowed to move Illinois Central
4 buses out of our school district. So, another program
5 has to come in and pick those kids up and take them to
6 school.

7 Q. Would that be Cahokia?

8 A. The cost is split between the two school
9 districts evenly.

10 Q. But the actual transporting is done by
11 Cahokia?

12 A. Oh, no. Cahokia normally would give you a
13 gas card if you had a car, or you might have to go
14 with somebody like EMT, Express Medical Transport.
15 There's a couple other vendors out there that will
16 move a child if they are homeless for us or for
17 Cahokia. Usually the home school district is
18 responsible for finding the vendor for transportation
19 for the child.

20 Q. But for students who live in the boundaries
21 of East St. Louis --

22 A. Uh-huh.

23 Q. -- but their home school is in a different
24 catchment area --

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1 **A. Okay.**

2 **Q. -- what bus will take them to their home**
3 **school?**

4 **A. We just take a regular route bus, whichever**
5 **one is running closest to that area where the child**
6 **lives, and we'll attach them to that route, and the**
7 **bus has to go outside of that route to pick up that**
8 **child and then bring them back into that catchment**
9 **area.**

10 **Q. Is that student transported like at the end**
11 **of the route to their home school and picked up first**
12 **or last?**

13 **A. Generally speaking, I like to do it that way**
14 **because that way it doesn't -- I find it in my opinion**
15 **it doesn't disrupt the route that badly if you do it**
16 **that way.**

17 **Q. About how many students have you had in the**
18 **open enrollment program during school year 2022 and**
19 **2023?**

20 **A. I've never counted, ma'am, but there's**
21 **always at least 1 or 2 kids per building we have to do**
22 **that with.**

23 **Q. Per building and you have 10 buildings. So,**
24 **at least 20 kids?**

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1 **45 minutes to an hour to gather those kids up across**
2 **the city and then another 30 to 45 minutes to get that**
3 **bus down to William BeDell. That's a route.**

4 Q. And those are all the special education
5 routes?

6 **A. Yes. Those two examples are, yes, ma'am.**

7 Q. And just for clarification, in the documents
8 that we were provided, the "Z" in a bus route number
9 signifies special education; is that right?

10 **A. That "Z" designator, that's exactly what**
11 **that means.**

12 Q. Exhibit 1 indicates that bus routes cannot
13 take more than 20 to 25 minutes.

14 **A. Uh-huh.**

15 Q. "Yes"?

16 **A. Yes, ma'am. We try not to let them take**
17 **more than that, yes, ma'am.**

18 Q. And there are bus routes that do take more
19 than 25 minutes; correct?

20 **A. Oh, yes. Yes.**

21 Q. What is "one-touch routing"?

22 **A. Oh. That's the computer operated routing**
23 **system.**

24 Q. Versatrans?

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1 **A. Yes.**

2 **Q. Is that another name for Versatrans, or is**

3 **--**

4 **A. No.**

5 **Q. -- that a particular operation of**

6 **Versatrans?**

7 **A. That's a module that's contained within**

8 **Versatrans.**

9 **Q. Okay. What is the Versatrans modular for**
10 **one-touch routing do?**

11 **A. Computerized routing.**

12 **Q. What information does it need in order to be**
13 **able to use the one-touch routing?**

14 **A. Oh, shoot. Everything about the child's**
15 **address, the child's program, the child's pick-up and**
16 **drop-off times. It needs the length of time that you**
17 **want the routes to run. It needs the length of time**
18 **you want that bus to stop and stay at the anchor**
19 **points. It needs to know how long that bus is gonna**
20 **stay at that stop for pick up, you know, everything**
21 **that you want to use to factor in how that route is**
22 **going to run that day.**

23 **Q. And after you input all that information,**
24 **then the one-touch routing takes over?**

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1 **A. Oh, yeah.**

2 Q. You just said that one of the factors of
3 input that you put in for routing information is how
4 long you want a bus to stay at an anchor; did I
5 understand that right?

6 **A. Yes.**

7 Q. What does that mean?

8 **A. Well, you've got a bus that comes in and
9 pulls up at a school. Now, you don't want that bus
10 taking off 30 seconds later because you can't get kids
11 off a bus that fast. So, you program it at a time you
12 want it to stop and stay, and it's indicative of how
13 long you think it's gonna take for that bus to unload.
14 Normally it's around five minutes.**

15 Q. Okay. Do you put in factors for letting a
16 bus idle at a school between tiers?

17 **A. That's that five minutes, ma'am.**

18 Q. I thought the five minutes was to give
19 students time to get off the bus?

20 **A. Right, and that's how long we want it to
21 stay at that school.**

22 Q. Do you build in any idle time for school
23 buses between routes, between tier routes?

24 **A. I try not to. I don't know. Maybe others**

1 three. But what was crucial, ma'am, was, after
2 Ms. Cooper left, the support I got from Versatrans
3 trumped Transfinder, and they spelled their own doom.

4 Q. So, you never transitioned to Transfinder it
5 sounds like?

6 A. No. No. Never.

7 Q. Are routes ever adjusted manually after the
8 system has published them?

9 A. Oh yeah. You've got to.

10 Q. And who is responsible for manually
11 adjusting the routes?

12 A. Myself and Ms. Epps.

13 Q. Give me some examples of how you manually
14 adjust a bus route.

15 A. Okay. Attorney Hoerner comes into the area.
16 He's now a new student at Paul Laurence Dunbar, and
17 his mom wants transportation. All right? I've got to
18 put Garrett Hoerner on the route.

19 Q. And that's a manual adjustment?

20 A. Yeah.

21 Q. Is adding and subtracting students to the
22 route the only manual adjustments you make?

23 A. Pretty much, yes. Are routes ever redone?
24 Of course, they are. They have to be. Our early

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1 may be one general ed bus from Lincoln picking up
2 Gompers' kids, and then you might have a SpEd bus from
3 Lincoln picking up Gompers' kid, and then you would
4 say the same for Wyvetter Younge kids. Well, we've
5 had two buses from Wyvetter Younge picking up Gompers'
6 children.

7 Q. And then how many high school buses pick up
8 Gompers' children?

9 A. It's only one I think off the top of my
10 head. We were looking at the map today. I believe
11 there's -- Right now we don't have any new kids yet
12 because we don't know if any other kids are gonna move
13 into the Gompers. I think we've got about 30 kids
14 from the Gompers going to the high school.

15 Q. Okay. So, it sounds like you have about 6
16 different buses picking up children at Gompers?

17 A. Oh, yeah, because they're part of that many
18 school's catchment area. You've Vivian Adams,
19 Lincoln, Wyvetter Younge, and they you've got special
20 needs' buses that may carrying program children from
21 the Gompers to schools with certain programs. I think
22 some of the lower functioning kids may go to Wyvetter
23 Younge. Your BEd kids may go out to Katie Harper
24 Wright. You may have some cross cats that go to

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1 **Wyvetter Younge.**

2 Q. Where is Vivian Adams?

3 A. They call it Katherine Dunham Place, but
4 it's the old 10th Street.

5 Q. Okay. To your knowledge, how many buses
6 pick up and drop off at the Orr-Weathers' homes?

7 A. The same situation. You may have one bus
8 going there for East Side. That's another Lincoln
9 Middle School catchment area. And then you've got the
10 Dunbar kids, but now Dunbar probably has two buses
11 that go to the Orr-Weathers normally speaking. We try
12 not to do it, but it happens.

13 Q. Why do you try not to do it?

14 A. Well, let's say you're on the first
15 Orr-Weathers' bus and you're on the second
16 Orr-Weathers' bus. Well, nobody gets up for the first
17 Orr-Weathers' bus. They put them all on the second
18 Orr-Weathers' bus, and now all of a sudden you've got
19 a bus that's running over its maximum.

20 Q. Okay. Were any Sister Thea Bowman students
21 put into the Versatrans system for the 2021 to 2022
22 school year?

23 A. Whenever we routed Sister Thea Bowman kids,
24 they were in Versatrans, yes. There was no automatic

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1 **upload. They were manually done.**

2 Q. Were any Sister Thea Bowman students
3 inputted into the Versatrans for the school year 2022
4 to 2023?

5 **A. 2022 to 2023? They were already in there if**
6 **they were former riders. They become part of a**
7 **student file, and that file isn't deleted at the end**
8 **of the year. It's used to help propagate the data for**
9 **the upcoming school year.**

10 Q. Were routes created for the 2022 to 2023
11 school year --

12 **A. No.**

13 Q. -- for Sister Thea Bowman?

14 **A. No. I'm sorry.**

15 Q. So, no routes were even created for 2022 to
16 2023 --

17 **A. No, ma'am.**

18 Q. -- for Sister Thea Bowman?

19 **A. No, ma'am.**

20 Q. Is Sister Thea Bowman the anchor point in
21 Versatrans for the 2021 to 2022 school year?

22 **A. You can't take a school out of Versatrans**
23 **once it's in there. So, it is an anchor point in the**
24 **system still. Yes, it is.**

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Keefe Reporting Company

C 188

A215

Dr. Lawrence Tourijigian 6/27/2023

1 Q. Who made the decision not to create any
2 routes for Sister Thea Bowman students for the school
3 year 2022 to 2023?

4 A. Mr. Culver.

5 Q. And who is Mr. Culver?

6 A. He's our Superintendent of the schools.

7 Q. And that is Arthur Culver?

8 A. Arthur Ray Culver, yes, ma'am.

9 Q. When did he make the decision not to
10 create routes for Sister Thea Bowman students for
11 school year 2022 to 2023?

12 A. Early in the Summer of 2022.

13 Q. Do you know why he made that decision?

14 A. Ma'am, we were short on drivers, and we were
15 doing anything to try to make those buses run on time.
16 The bus company at the time I think for the grand
17 majority of school year '22-'23, they were doing good,
18 turnover considered, to have enough buses and bus
19 drivers -- well, buses were never a consideration, but
20 enough bus drivers just to get all of our regular
21 routes covered.

22 Q. You said that Mr. Culver -- Is it Mr. or Dr.
23 Culver?

24 A. Mr. Arthur Ray Culver.

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Keefe Reporting Company

C 189

A216

Dr. Lawrence Tourijigian 6/27/2023

1 Q. You said Mr. Culver made the decision in
2 early Summer 2022 not to route --

3 **A. Yes.**

4 Q. -- the Sister Thea Bowman students?

5 **A. Yes, ma'am. Uh-huh.**

6 Q. Do you remember, was it before or after
7 July 1st, 2022?

8 **A. I believe it was before.**

9 Q. Were you part of the recommendation for
10 whether or not to route Sister Thea Bowman students --

11 **A. No, ma'am.**

12 Q. -- for the school year 2022?

13 **A. No, ma'am, I wasn't.**

14 Q. Were you just told that you weren't to route
15 Sister Thea Bowman students by Culver?

16 **A. Yes, ma'am.**

17 Q. Do you know how he -- I understand I'm
18 asking you what someone else did. To your knowledge
19 or to the best of your knowledge, how did he make the
20 decision not to route Sister Thea Bowman students?

21 **A. Ma'am, I wasn't part of that decision. I
22 didn't question that decision. When superior tells
23 you what to do, you just do it with a smile on your
24 face.**

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Keefe Reporting Company

C 190

A217

Dr. Lawrence Tourijigian 6/27/2023

1 Q. Do you know who else was involved in that
2 decision?

3 A. No, ma'am. No idea.

4 Q. You said that decision was made prior to
5 July 1st, 2022 to the best of your knowledge?

6 A. Yes, ma'am. Uh-huh.

7 Q. If I understand your testimony, that
8 decision to stop bus service for Sister Thea Bowman
9 had to do with a shortage of bus drivers?

10 A. Now, ma'am, you're asking me to think for
11 Mr. Culver. I don't know how that decision was made.
12 I don't know what it was based on. I can tell you
13 what I thought would be the reason why those routes
14 were cut out, but they would be strictly mine. I
15 cannot speak for the school district or Mr. Culver.

16 Q. You were the main point of contact for
17 Illinois Central and still are the main point of
18 contact for Illinois Central?

19 A. Yes, ma'am.

20 Q. At any time in June or -- In June, 2022, did
21 you have a conversation with Illinois Central about a
22 driver shortage?

23 A. Oh, ma'am, that's been an ongoing
24 conversation ever since I took over that position back

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Keefe Reporting Company

C 191

A218

Dr. Lawrence Tourijigian 6/27/2023

1 Q. Do you submit for reimbursement for
2 transportation for the prior school year?

3 A. We'll submit, for example, this pupil
4 transportation reimbursement plan for '22-'23, but we
5 will be paid for it in school year '23-'24.

6 Q. So, the state is about a year behind in
7 paying for student transportation?

8 A. They're only gonna pay you for what you
9 submit, yes, ma'am.

10 Q. Looking at Plaintiff's Exhibit 7, on page 1,
11 it indicates that there were 42 students transported
12 on non-public regular education students in '20 to
13 '21; is that correct?

14 A. That's correct.

15 Q. Are that all Sister Thea Bowman students?

16 A. Yes. Yes.

17 Q. And looking at 2d of page 1 of Exhibit 7, it
18 indicates that 2 of those students were within
19 improved criminal gang activity safety hazard area?

20 A. Okay.

21 Q. Is that correct?

22 A. That's what it says.

23 Q. Tell me about the criminal gang activity
24 safety hazard grant?

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Keefe Reporting Company

C 192

A219

1 **A. Okay. If a child lives within an area that**
2 **a local police department states is dangerous, we can**
3 **present them with paperwork, they present us with**
4 **evidence, and then they will sign off on it saying**
5 **that that area is hazardous, dangerous, and we can**
6 **submit it to the state, and that way we can transport**
7 **kids that live closer than one-and-a-half miles to**
8 **their educational center.**

9 Q. And District 189 will be reimbursed for
10 those students who live in a criminal gang activity
11 safety hazard area that's within one-and-a-half miles
12 of the school?

13 **A. Yes, ma'am. Uh-huh.**

14 Q. Is part of that grant also the vehicular
15 safety hazard grant?

16 **A. I don't know. What is "vehicular safety**
17 **hazard"?**

18 Q. If you look on Exhibit 7, the first page, 1c
19 --

20 **A. Uh-huh.**

21 Q. -- it indicates that you can claim students
22 who reside within one-and-a-half miles of the school
23 in an approved vehicular safety hazard area.

24 **A. Okay. There's something like railroad**

1 students?

2 **A. Yes, ma'am, that's what it looks like.**

3 Q. What is the rate of reimbursement for school
4 bus transportation?

5 **A. It varies by fund availability. Somewhere
6 between 80 and 88 percent, ma'am.**

7 Q. In the last few years, was Illinois
8 reimbursing District 189 and other schools at
9 100 percent of the transportation costs?

10 **A. As far as I know, that's never happened. As
11 far as I know. It may have happened some year, but I
12 don't think the state has ever been that generous,
13 ma'am.**

14 Q. Does District 189 get reimbursed for
15 transporting Sister Thea Bowman students at the same
16 rate it gets reimbursed for transporting students of
17 District 189?

18 **A. As far as I know, I believe that to be true.**

19 Q. And just for clarification, District 189 was
20 approved for a criminal gang activity safety hazard
21 grant?

22 **A. Yes.**

23 Q. And does District 189 continue to receive
24 that grant for bus transportation?

Dr. Lawrence Tourijigian 6/27/2023

1 can provide the appropriate level of transportation
2 services. Please respond as soon as possible." We
3 were just trying to find out if they were gonna be in
4 person or remote.

5 Q. And if Sister Thea Bowman was going to
6 continue to be in person, District 189 was going to
7 continue bus transportation?

8 A. I'm assuming so.

9 Q. Page 2 of Exhibit 9 is an email dated
10 April 5th, 2022 from Christine Kolaz. Do you see that
11 email?

12 A. This is 1. This is 2. I don't see
13 anything.

14 Q. I'm very sorry. I keep forgetting I
15 double-sided.

16 A. I see the one on page 3.

17 Q. Page 3 of Exhibit 9 is an email from
18 Christine Kolaz dated April 5th, 2022 to you regarding
19 transportation to another private school.

20 A. Okay.

21 Q. This indicates that you received a query
22 from a student attending Unity Lutheran.

23 A. A parent, yes, ma'am.

24 Q. Did District 189 provide school bus

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Keefe Reporting Company

C 195

A222

Dr. Lawrence Tourijigian 6/27/2023

1 transportation for the child attending Unity Lutheran
2 after April 5th, 2022?

3 **A. No.**

4 **Q. Why not?**

5 **A. Taking on another expense. Once you start a**
6 **practice, generally it's continued, and that would be**
7 **expensive.**

8 **Q. So, did you make the decision to decline**
9 **providing transportation for the student attending**
10 **Unity Lutheran?**

11 **A. I probably consulted with someone about**
12 **this, but we didn't want to open up another expensive**
13 **practice, I know that. Only one child and one parent**
14 **wanted this service.**

15 **Q. Where is Unity Lutheran located in East St.**
16 **Louis?**

17 **A. Right at the corner of 39th and Caseyville.**

18 **Q. And where was the student coming from?**

19 **A. I don't remember.**

20 **Q. Do you know -- That would be in the Wyvetter**
21 **Younge catchment area if it were an elementary**
22 **student?**

23 **A. Now, that school resides in the Wyvetter**
24 **Younge catchment area, yes.**

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Keefe Reporting Company

C 196

A223

1 Q. Was this student who was requesting
2 transportation also a resident of the Wyvetter Younge
3 catchment area?

4 A. I don't know.

5 Q. You don't know?

6 A. Don't know. Huh-huh.

7 Q. So, the student was turned down just based
8 on not wanting to incur another expense for
9 transporting a non-public school student?

10 A. I did not transport this child -- for
11 District 189, did not transport this child.

12 Q. Who is Christine Kolaz?

13 A. She was the Director of Transportation for
14 the State of Illinois at the time.

15 Q. Is she no longer with the state?

16 A. Now, that I don't know. I've heard rumors.

17 Q. Do you have a different contact at the State
18 of Illinois for transportation issues?

19 A. Well, one gentleman is still there, a fellow
20 named Mike Stier, but the person who is in charge of
21 transportation for the state, I believe it's a man,
22 and I think he's a recent hire.

23 Q. Do you know his name?

24 A. No. Huh-huh.

Dr. Lawrence Tourijigian 6/27/2023

1 email that's on page -- The email August 4th, 2022, at
2 the bottom of that page of Exhibit 9 begins an email
3 to Ms. Jeffries from you?

4 **A. Okay.**

5 Q. Who is Ms. Jeffries?

6 **A. She's the Director of the charter school.**

7 Q. Why were you providing her with the names of
8 the Terminal Manager at Illinois Central and
9 Ms. Gordon's name?

10 **A. She was inquiring about transportation**
11 **services for her kids, and I let her know that we**
12 **wouldn't be able to transport her children, but she**
13 **was also wondering what it would cost to run a bus**
14 **route for SIU charter. So, I told her to get in**
15 **contact with Ms. Welch.**

16 Q. On that same page of Exhibit 9, the email
17 dated August 4th, 2022 to Ms. Gordon, you state that
18 District 189 will not be routing Sister Thea Bowman
19 students as you have in prior years; is that correct?

20 **A. We told them we wouldn't be moving their**
21 **kids, yes.**

22 Q. It says you will strictly follow state --
23 Illinois State School Code with respect to
24 transporting children?

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Keefe Reporting Company

C 198

A225

1 **A. Yep. Yep. Yep.**

2 Q. What did that mean to you, to strictly
3 follow the Illinois State School Code regarding
4 transporting?

5 MR. HOERNER: Just for the record, that calls for
6 a legal conclusion. I think we know what the
7 respective parties' interpretation of the statute are.
8 Just look at the pleadings and denial and temporary
9 restraining order. Subject to that, you can answer.
10

11 BY MS. SIMONE:

12 Q. What did it mean to you when you told
13 Francine Gordon that District 189 was going to
14 strictly follow the Illinois State School Code with
15 respect to transporting children?

16 **A. That we wouldn't veer from what they said**
17 **was allowable.**

18 Q. Who is "they"?

19 **A. Illinois School Code, ma'am.**

20 Q. You were interpreting the school code?

21 MR. HOERNER: Well, I'm gonna object. You just
22 asked him to interpret the school code. He said if
23 you look at the emails, that we were gonna follow what
24 the school code provides as was provided, interpreted

1 **A. I was never asked to come out.**

2 Q. What would you have told the parents if you
3 had gone out there?

4 MR. HOERNER: Objection. That calls for
5 speculation. Its improper characterization of his
6 testimony and calls for a legal conclusion.

7

8 BY MS. SIMONE:

9 Q. Subject to that objection --

10 MR. HOERNER: Subject to that, you can answer, but
11 you don't have to guess or speculate.

12 **A. Ma'am, I just would have provided them with
13 a copy of the school code. Just like you two are
14 saying, you know, I'm not a lawyer, but I would let
15 them see exactly what could and couldn't be done and
16 how far it does and doesn't go.**

17

18 BY MS. SIMONE:

19 Q. Okay. The effect of the decision by
20 District 189 based on your interpretation of the
21 school code was effectively to deny transportation for
22 Sister Thea Bowman students; correct?

23 **A. I don't know if I'd say that, ma'am. We
24 stated what we could and what we couldn't do, and no**

1 **one wanted to participate.**

2 Q. What did you state you could do?

3 **A. Exactly what's in the school code.**

4 Q. Tell me what you told Mr. Birdsong you could
5 do.

6 **A. What's in the school code.**

7 Q. Do you know what's in the school code?

8 **A. I've read it, yes, ma'am.**

9 Q. Okay. What did you -- I'm asking you about
10 a conversation you had apparently with Mr. Birdsong.

11 **A. Okay.**

12 Q. Did you have a conversation with
13 Mr. Birdsong?

14 **A. Yes, ma'am. I went out there and told him
15 we wouldn't be providing services in the upcoming
16 school year in the manner in which they had been
17 accustomed to.**

18 Q. And the reason you relied on was the school
19 code?

20 **A. Ma'am, I was told not to route Sister Thea
21 Bowman students, and I didn't.**

22 Q. Okay. And who told you that?

23 **A. Arthur Ray Culver.**

24 Q. So, there was no option offered to Sister

1 Thea Bowman; is that correct?

2 **A. No.**

3 MR. HOERNER: Objection. That's not what his
4 testimony is, and, again, you're asking him to provide
5 a legal opinion.

6 MS. SIMONE: He's answered it.

7 MR. HOERNER: I know he answered it. I don't know
8 why it's continued to be asked.

9

10 BY MS. SIMONE:

11 Q. Do you agree that there are regular routes
12 that pick up and drop off at Gompers Homes?

13 **A. Oh, yeah.**

14 Q. And regular routes that pick up and drop off
15 at Orr-Weathers homes?

16 **A. Yes.**

17 Q. And there are regular routes that go past
18 Sister Thea Bowman; isn't that correct?

19 **A. I believe there's one.**

20 Q. What route would that be?

21 **A. I think it's -- In the past school year,**
22 **there may have been one that serviced Katie Harper**
23 **Wright and had a bus going down Church Lane that**
24 **passed the old St. Philip's school, Sister Thea**

1 **Bowman.**

2 Q. And Katie Harper Wright would be the
3 elementary school?

4 **A. Yes. Uh-huh.**

5

6 (Plaintiff's Exhibits No. 10 and No. 11 are marked
7 for identification.)

8

9 BY MS. SIMONE:

10 Q. Doctor, I'm showing you what's been marked
11 Plaintiff's Exhibit 10 --

12 **A. Uh-huh.**

13 Q. -- which is the school bus route for which
14 school?

15 **A. It looks like Gordon Bush Alternative
16 inbound route.**

17 Q. Does the "MS" indicate Gordon Bush Middle
18 School?

19 **A. Yes. Uh-huh.**

20 Q. This is route number 2200; correct?

21 **A. Yes, ma'am.**

22 Q. This route goes right past Sister Thea
23 Bowman; doesn't it?

24 **A. Somebody has marked on this, ma'am, and I**

1 can't tell if that marking -- It looks like it's one
2 street off of St. Clair Avenue. That could possibly
3 be Church Lane.

4 Q. And Church Lane is where Sister Thea Bowman
5 is located?

6 A. I believe so, yes.

7 Q. So, that is a regular route of District 189
8 that goes right past Sister Thea Bowman?

9 A. Those kids wouldn't be allowed on that
10 route.

11 Q. Why?

12 A. Those are alternative children.

13 Q. And why wouldn't Sister Thea Bowman be
14 allowed on a route with alternative children?

15 A. I don't know if the Sister Thea Bowman
16 children would want to ride that route, ma'am. Those
17 children have challenges with respect to bureaucracy.
18 I'm gonna put it that way. Standard institutional
19 schools. They're at an alternative site for a reason,
20 ma'am. And Sister Thea Bowman kids are also outside
21 the grade range of the children that are transported
22 on that route. There's no child on that bus that's in
23 a grade lower than 5th or 6th. I don't know if you
24 would want to put kids on that route that were

1 **Kindergarten, 1st Grade, 2nd Grade with those other**
2 **children.**

3 Q. But it is true that this is a regular route
4 of District 189?

5 A. I wouldn't call it regular, ma'am.

6 Q. You have three routes regular, open
7 enrollment and special education; correct?

8 A. Uh-huh.

9 Q. "Yes"?

10 A. Yes.

11 Q. Is this a special education route?

12 A. No, it's not.

13 Q. Is it an open enrollment route?

14 A. Yes.

15 Q. So, these are homeless children?

16 A. No, they're not homeless children. When
17 they're put in the program in Versatrans, they're
18 considered open enrollment.

19 Q. And is that just so that they can be
20 transported outside one specific catchment area?

21 A. Right. Uh-huh.

22 Q. Do you agree that this route in
23 Exhibit 10 -- on page 1 of Exhibit 10 goes right by
24 Gompers?

Dr. Lawrence Tourijigian 6/27/2023

1 **A. Gompers, it looks like it's down in that**
2 **area, yes, ma'am.**

3 Q. And does this regular route -- Or does this
4 route also go near Orr-Weathers?

5 **A. I can't readily tell, but it does look like**
6 **it operates in that area.**

7

8 (A brief discussion off the record.)

9

10 BY MS. SIMONE:

11 Q. I'm showing you what's been marked
12 Plaintiff's Exhibit 11 because I have a question about
13 a discrepancy between the routes that were produced to
14 us and this document, Exhibit 11.

15 **A. Okay.**

16 Q. In the routes that were produced to us, I
17 think it's your Exhibit A in the document production,
18 for school year '21 to '22, there is no route number
19 2248 or 2250.

20 **A. And which route is that, ma'am?**

21 Q. The documents that were produced to us by
22 District 189 --

23 **A. Okay.**

24 Q. -- in Exhibit A, it ends at about 2235, the

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Keefe Reporting Company

C 206

A233

lawrence tourijigian

From: lawrence.tourijigian@estl189.com
Sent: Friday, December 31, 2021 4:06 PM
To: 'Francine Gordon'
Cc: 'Keisha Welch'; 'Laquita Epps'
Subject: RE: Student List and Transportation Letter

Ms. Gordon:

School District 189 is going remote from the 4th until the 14th of January. We return to in person instruction on the 18th after MLK Day. Can you please tell me what method of instruction your school will be using so we can provide the appropriate level of transportation services. Please respond as soon as possible.

Καληπτα τὰ καλα

Lawrence Tourijigian, Ed.D.
Director Student Information and the 21st Century CLC Grant
East Saint Louis SD 189
1005 State St.
East Louis Louis, IL 62201
(618) 646-3192

From: Francine Gordon <fgordon@srthea.org>
Sent: Monday, August 23, 2021 11:15 AM
To: Laquita Epps <laquita.epps@estl189.com>
Cc: Angela Allen <aallen@srthea.org>; Tim Keefe <tkeefe@srthea.org>; lawrence tourijigian <lawrence.tourijigian@estl189.com>
Subject: Re: Student List and Transportation Letter

Hello Laquita,
I'm sending this list to you again. We have a new student on the list. His name is Keith Hopgood and he's a first grader.

Thanks
Francine

On Mon, Aug 23, 2021 at 10:58 AM Laquita Epps <laquita.epps@estl189.com> wrote:

Good Morning,

Students can receive letters. Any new updates will not take effect until next week. I will resend letters once changes are made.

Just to confirm, the student that is highlighted in the attachment is requesting to be added to transportation.

Thank You

Laquita Epps



Transportation Liaison

On Mon, Aug 23, 2021 at 10:10 AM Angela Allen <aallen@srthea.org> wrote:

Received, thank you.

On Fri, Aug 20, 2021 at 2:58 PM Laquita Epps <laquita.epps@est189.com> wrote:

Good Afternoon,

Please see attached file. Student List and Transportation Letter for Sister Thea Bowman School.

Thank You

Laquita Epps
Transportation Liaison

--

*Angela M D Allen
Executive Administrative Assistant
Sister Thea Bowman Catholic School
8213 Church Lane
East St. Louis, IL 62203
Phone: 618-397-0316
Fax: 618-397-0337*

"Blessings and Peace To You"

2

lawrence tourijigian

From: KOLAZ CHRISTINE <ckolaz@isbe.net> on behalf of KOLAZ CHRISTINE
Sent: Tuesday, April 5, 2022 1:42 PM
To: lawrence.tourijigian
Subject: RE: Transportation to Another Private School

Please refer to Illinois School Code 105 ILCS 5/29-4 PUPILS ATTENDING OTHER THAN A PUBLIC SCHOOL

<https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=010500050K29-4>

Christine

From: lawrence tourijigian <lawrence.tourijigian@estl189.com>
Sent: Tuesday, April 5, 2022 1:34 PM
To: KOLAZ CHRISTINE <ckolaz@isbe.net>
Subject: Transportation to Another Private School

Ms. Kolaz:

I received a query from a parent whose child attends Unity Lutheran, a private school that lies within the school district's boundaries. She is trying to establish transportation to the school. How soon must a request be fulfilled?

Privileged transmission, delete if you are not the intended recipient, and misuse could lead to prosecution.

Καληπα τὰ καλά

Lawrence Tourijigian, Ed.D.
Director Student Information, Transportation, and the 21st Century CLC Grant
East Saint Louis SD 189
1005 State St.
East St. Louis, IL 62201
(618) 646-3192

3

lawrence tourijigian

From: KOLAZ CHRISTINE <ckolaz@isbe.net> on behalf of KOLAZ CHRISTINE
Sent: Wednesday, June 8, 2022 6:57 AM
To: lawrence.tourijigian
Subject: Re: Private Schools

Yes as long as they are 1.5 miles or more away. I can't confirm the rate of reimburse as it is driven by proration.
Thank you.

{0}
Title
Company

From: lawrence tourijigian <lawrence.tourijigian@estl189.com>
Sent: Wednesday, June 8, 2022 2:37 AM
To: KOLAZ CHRISTINE <ckolaz@isbe.net>
Subject: Private Schools

Ms Kolaz:

Do we get reimbursed for transporting in district private school students during the regular school year at the same rate we get reimbursed for comparable in district general education routes?

Is the rate of reimbursement 87 to 88 cents?

Privileged transmission, delete if you are not the intended recipient, & misuse could lead to prosecution.

Kalepa Ta Kala

Lawrence Tourijigian, Ed.D.
Dir. 21st CCLC & SIS
ESL SD 189
1005 State St.
ESL, IL 62203
(618) 646-3192

4

lawrence tourijigian

From: KOLAZ CHRISTINE <ckolaz@isbe.net> on behalf of KOLAZ CHRISTINE
Sent: Tuesday, June 14, 2022 8:23 AM
To: lawrence.tourijigian
Subject: RE: Summer Session

Yes, if they are on your established route.
 105 ILCS 29-3.2
 105 ILCS 29-4

Christine

-----Original Message-----

From: lawrence tourijigian <lawrence.tourijigian@est1189.com>
Sent: Thursday, June 9, 2022 11:07 AM
To: KOLAZ CHRISTINE <ckolaz@isbe.net>
Subject: Re: Summer Session

But are we obligated to transport during summer school?

Privileged transmission, delete if you are not the intended recipient, & misuse could lead to prosecution.

Kalepa Ta Kala

Lawrence Tourijigian, Ed.D.
 Dir. 21st CCLC & SIS
 ESL SD 189
 1005 State St.
 ESL, IL 62203
 (618) 646-3192

> On Jun 9, 2022, at 10:30 AM, KOLAZ CHRISTINE <ckolaz@isbe.net> wrote:

>

> Summer school is nonreimbuesable.

>

> -----Original Message-----

> **From:** lawrence tourijigian <lawrence.tourijigian@est1189.com>

> **Sent:** Thursday, June 9, 2022 10:23 AM

> **To:** KOLAZ CHRISTINE <ckolaz@isbe.net>

> **Subject:** Summer Session

>

> Ms Kolaz:

>

> During summer school the school district is not obligated to pay for summer school transportation for private school students from home to their private school, correct?

>

> Privileged transmission, delete if you are not the intended recipient, & misuse could lead to prosecution.

>

> Kalepa Ta Kala

5

- >
- > Lawrence Tourijigian, Ed.D.
- > Dir. 21st CCLC & SIS
- > ESL SD 189
- > 1005 State St.
- > ESL, IL 62203
- > (618) 646-3192

6

lawrence tourijigian

From: lawrence tourijigian <lawrence.tourijigian@estl189.com> on behalf of lawrence tourijigian
Sent: Thursday, August 4, 2022 10:44 AM
To: Francine Gordon
Subject: RE: Contact Information

Ms. Gordon:

As discussed with Mr. Birdsong, School District 189 will not be routing STB students and providing transportation as we have in prior years. We will strictly follow state Illinois State School Code with respect to transporting children.

Privileged transmission, delete if you are not the intended recipient, and misuse could lead to prosecution.

Καληπρα τὰ καλα

Lawrence Tourijigian, Ed.D.
 Director Student Information, Transportation, and the 21st Century CLC Grant
 East Saint Louis SD 189
 1005 State St.
 East St. Louis, IL 62201
 (618) 646-3192

From: Francine Gordon <fgordon@srthea.org>
Sent: Thursday, August 4, 2022 10:09 AM
To: lawrence tourijigian <lawrence.tourijigian@estl189.com>
Subject: Re: Contact Information

Goodmorning,

Please let me know when I should have the transportation list of the families for you. We are returning to school on August 16, 2022.

Thanks

On Fri, Jul 29, 2022 at 8:44 AM lawrence tourijigian <lawrence.tourijigian@estl189.com> wrote:

Ms. Jeffries:

Keisha Welch is the terminal manager for Illinois Central Bus site for this area. France Gordon is the school administrative assistant for Sister Bowman. Mr. Birdsong is the Superintendent of Schools for the Catholic Diocese in this area and is temporarily covering the principals position at STB.

Privileged transmission, delete if you are not the intended recipient, and misuse could lead to prosecution.

Καληποτά καλα

Lawrence Tourijigian, Ed.D.

Director Student Information, Transportation, and the 21st Century CLC Grant

East Saint Louis SD 189

1005 State St.

East St. Louis, IL 62201

(618) 646-3192

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lawrence tourijigian

From: lawrence tourijigian <lawrence.tourijigian@estl189.com> on behalf of lawrence tourijigian
Sent: Thursday, August 11, 2022 4:49 PM
To: Jonathan Birdsong
Cc: Delfaye Jason; keisa garrett; Arthur Culver; Sr. Kathleen Murray; mruppel@srthea.org
Subject: RE: Bus service

Mr. Birdsong:

I am not familiar with the lawsuit, but I want you to know that we are going to strictly follow Illinois School Code, see below;

105 ILCS 29-3.2
 105 ILCS 29-4

Or use the link <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=010500050K29-4>

We are not denying bus service, but Sister Thea Bowman students that want transportation must utilize our regular routes that we have in place for our School District 189 students to get to Sister Thea Bowman and back home again.

Privileged transmission, delete if you are not the intended recipient, and misuse could lead to prosecution.

Καληπτα τὰ καλά

Lawrence Tourijigian, Ed.D.
 Director Student Information, Transportation, and the 21st Century CLC Grant
 East Saint Louis SD 189
 1005 State St.
 East St. Louis, IL 62201
 (618) 646-3192

From: Jonathan Birdsong <JBirdsong@diobelle.org>
Sent: Thursday, August 11, 2022 12:45 PM
To: lawrence tourijigian <lawrence.tourijigian@estl189.com>
Cc: Delfaye Jason <delfaye.jason@estl189.com>; keisa garrett <keisa.garrett@estl189.com>; Arthur Culver <arthur.culver@estl189.com>; Sr. Kathleen Murray <srkmurray@srthea.org>; mruppel@srthea.org
Subject: Re: Bus service

Mr. Tourijigian,

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I appreciate your willingness to visit with parents, but the court decision involving District 189 and Sr. Thea Bowman that was handed down was clear which is why I was inquiring if you felt something had changed since that decision. I am hoping to avoid another legal issue, but I also have to be an advocate for the students and families we serve, and those families rely on having transportation provided for them.

Any additional information you can provide as to what you feel allows District 189 to deny bus service to the students would be greatly appreciated.

Thank you for your prompt attention to this matter as school starts next week and I will need to move things forward quickly.

Respectfully,
Jonathan Birdsong
Superintendent of Schools

From: lawrence tourijigian <lawrence.tourijigian@estl189.com>
Sent: Thursday, August 11, 2022 9:54 AM
To: Jonathan Birdsong <JBirdsong@diobelle.org>
Cc: Delfaye Jason <delfaye.jason@estl189.com>; keisa garrett <keisa.garrett@estl189.com>; Arthur Culver <arthur.culver@estl189.com>
Subject: RE: Bus service

Mr. Birdsong:

Let me know when have your next parents meeting is and I'll be there to explain what the Illinois School Code says about transporting private school students.

Privileged transmission, delete if you are not the intended recipient, and misuse could lead to prosecution.

Καληπρα τὰ καλα

Lawrence Tourijigian, Ed.D.
Director Student Information, Transportation, and the 21st Century CLC Grant
East Saint Louis SD 189
1005 State St.
East St. Louis, IL 62201
(618) 646-3192

From: Jonathan Birdsong <JBirdsong@diobelle.org>
Sent: Thursday, August 11, 2022 8:28 AM
To: lawrence.tourijigian@estl189.com
Subject: Bus service

Mr. Tourijigian,

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I hope this email finds you well. I appreciate you coming to Sr. Thea Bowman School to share that District 189 would not be providing bus service to the students at Sr. Thea Bowman students. I wanted to revisit this with you and ask if you could provide some information about what has changed in the law since the lawsuit and court decision that happened a number of years ago. Thank you for providing this information to me so that I can figure out the appropriate next steps for the school to take.

Respectfully,

Jonathan Birdsong
Superintendent of Schools
Diocese of Belleville

(11)

lawrence tourijigian

From: lawrence tourijigian <lawrence.tourijigian@estl189.com> on behalf of lawrence tourijigian
Sent: Friday, August 19, 2022 7:07 AM
To: Delfaye Jason
Subject: RE: Land of Lincoln

I believe this is for the STB students we are no longer transporting.

Privileged transmission, delete if you are not the intended recipient, and misuse could lead to prosecution.

Καληρα τὰ καλα

Lawrence Tourijigian, Ed.D.
Director Student Information, Transportation, and the 21st Century CLC Grant
East Saint Louis SD 189
1005 State St.
East St. Louis, IL 62201
(618) 646-3192

From: keisa garrett <keisa.garrett@estl189.com>
Sent: Friday, August 19, 2022 6:44 AM
To: lawrence tourijigian <lawrence.tourijigian@estl189.com>
Cc: delphaye.jason@estl189.com; Arthur Culver <arthur.culver@estl189.com>
Subject: Re: Land of Lincoln

Good Morning Dr. T,

Is it for a SPED student?

On Fri, Aug 19, 2022, 5:32 AM <lawrence.tourijigian@estl189.com> wrote:

All:

A Land of Lincoln lawyer contacted me by phone yesterday w/respect to transportation for the Sister Thea Bowman students. I referred him to Garrett Horner.

Καληρα τὰ καλα

Lawrence Tourijigian, Ed.D.

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Director Student Information and the 21st Century CLC Grant

East Saint Louis SD 189

1005 State St.

East Louis Louis, IL 62201

(618) 646-3192

(13)

lawrence tourijigian

From: KOLAZ CHRISTINE <ckolaz@isbe.net> on behalf of KOLAZ CHRISTINE
Sent: Monday, October 3, 2022 8:40 AM
To: lawrence.tourijigian
Subject: RE: Phone Call

I am busy till 2pm today. The answer is no to both, we do not reimburse parochial schools or east st louis district for these two scenarios.

If the parochial school requests their students be picked up by your district if they were on any of your routes, we would reimburse you at the prorated rate.

From: lawrence.tourijigian@estl189.com <lawrence.tourijigian@estl189.com>
Sent: Sunday, October 2, 2022 3:22 PM
To: KOLAZ CHRISTINE <ckolaz@isbe.net>
Subject: Phone Call

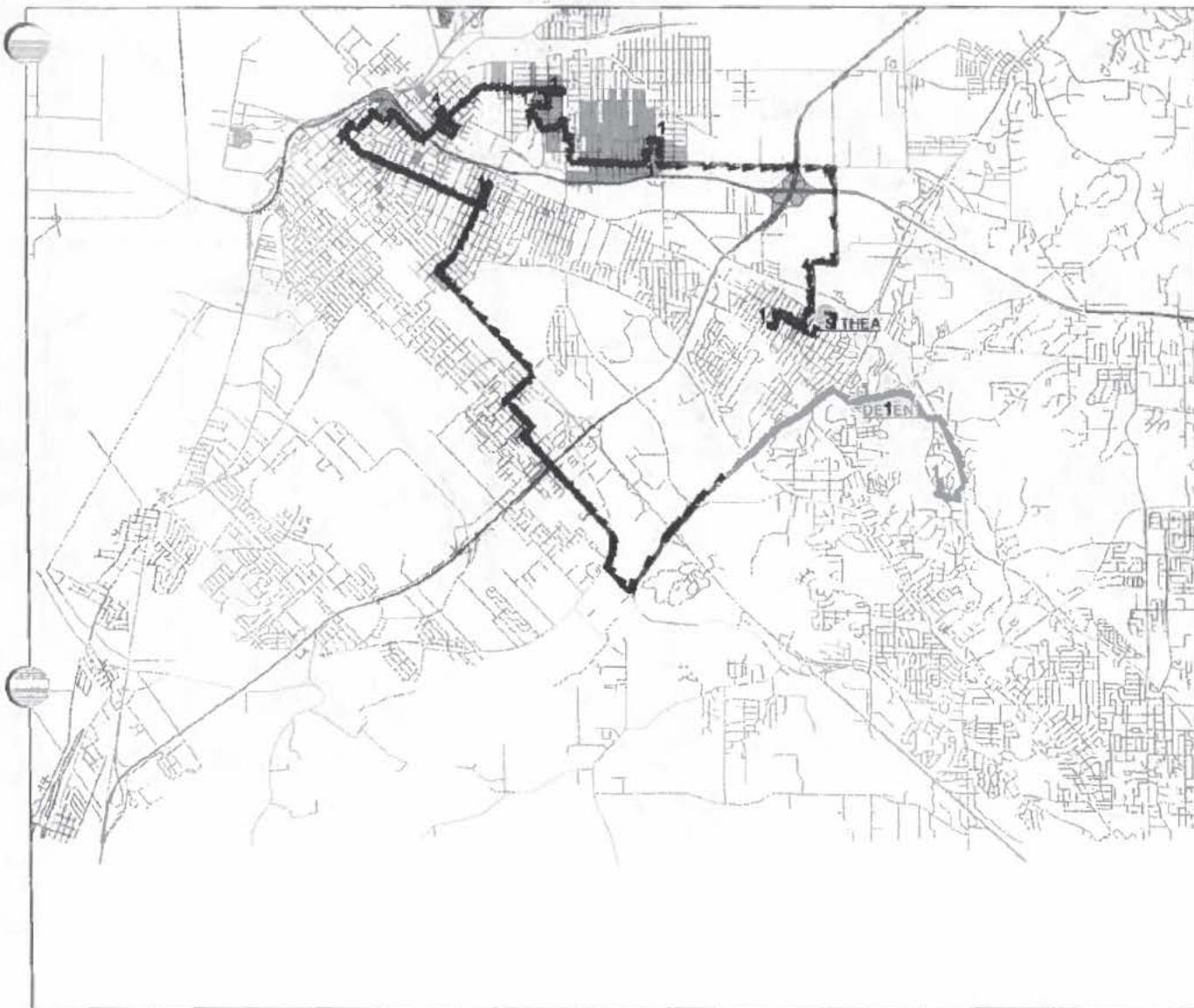
Ms. Kolaz:

Do you have time for a phone call tomorrow, Monday the 3rd of October between 8:30AM and 9:15AM? I have two questions; 1) one of the local parochial schools has found a bus and driver to hire and want to know if they could be reimbursed for this, 2) The local parochial school would also like to know if we could reimburse their parents for mileage to bring their children back and forth to the parochial school?

Καλησπέρα τὰ καλά

Lawrence Tourijigian, Ed.D.
 Director Student Information and the 21st Century CLC Grant
 East Saint Louis SD 189
 1005 State St.
 East Louis Louis, IL 62201
 (618) 646-3192

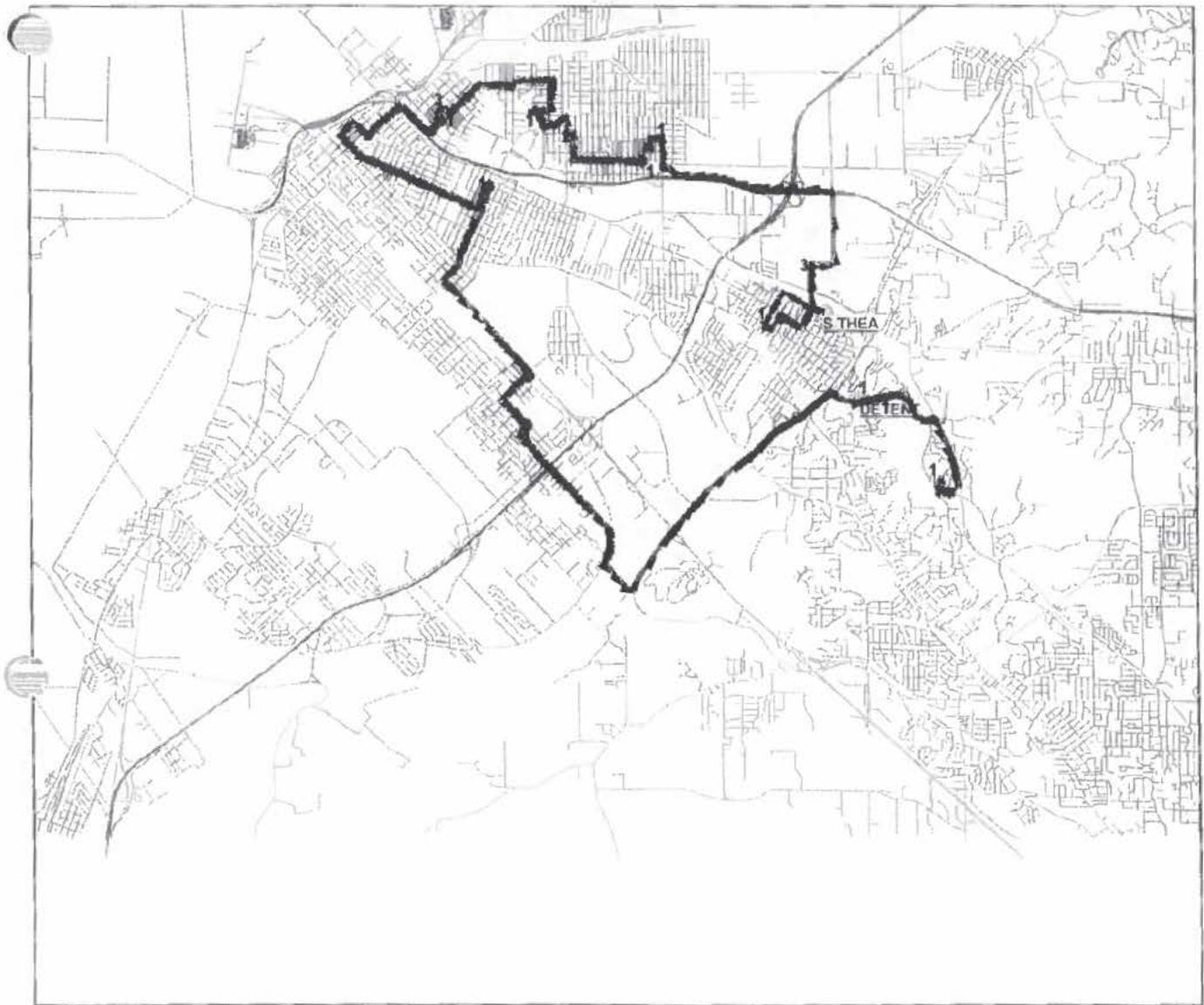
East St. Louis School District 189 Route Map



Route: **2201ISTB**
 Vehicle: **5091**
 Anchor: **S THEA**
 Start Time: **6:01 AM**
 Pickups: **25**
 Distance: **24.59 mi.**

Desc: **STB INBOUND**
 Driver:
 Max Load: **25**
 Arrival Time: **7:00 AM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**

East St. Louis School District 189 Route Map



Route: **2201PSTB**
 Vehicle: **5091**
 Anchor: **S THEA**
 Depart Time: **3:30 PM**
 Dropoffs: **23**
 Distance: **23.37 mi.**

Desc: **STB OUTBOUND**
 Driver:
 Max Load: **23**
 End Time: **4:26 PM**
 Transfers On: **0**
 Transfers Off: **0**
 Days: **MTWHF**



Illinois State Board of Education

Dr. Steven Boyd, Chairman | Dr. Carmen I. Ayala, State Superintendent of Education

Pupil Transportation Claim & Reimbursement System (PTCRS)

East St Louis SD 189
50-082-1890-22

Help Home

CLAIM REVIEW

FY 2022 : School Year 2020-2021

Claim Status: accepted and received by ISBE - [Revision#0 Submitted on: 11/1/2021]

Transportation Details

Regular Education Pupil Transportation (Regular School Term ONLY)

	Current Year	Last Year
K-12 public regular education students enrolled for transportation - Regular Route		
1a residing 1.5 miles or more from school	843	2,712
1b residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or a criminal gang activity safety hazard	11	107
1c residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	2	649
1d residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	444	0
1e total number of public school K-12 regular education pupils on a regular route	1,300	3,468
K-12 non-public regular education students enrolled for transportation - Regular Route		
2a residing 1.5 miles or more from school	42	66
2b residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or a criminal gang activity safety hazard	0	0
2c residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	0	0
2d residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	2	0
2e total number of non-public school k - 12 regular education pupils on a regular route	44	66
PreK regular education students enrolled for Transportation - Regular Route (NOT on an exclusive PreK Route)		
3a residing 1.5 miles or more from school on a Regular Route (<i>NOT on an exclusive pre-k route</i>)	0	0
3b residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or criminal gang activity safety hazard	0	0
3c residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	0	0
3d residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	0	0
3e total number of PreK students enrolled for transportation - Regular Route (line 3a + line 3b + line 3c + line 3d)	0	0
3f total number of PreK students enrolled for transportation - Exclusive PreK Route	0	0
3g total number of PreK students enrolled for transportation (line 3e + line 3f)	0	0
Students Transported for Curriculum-Related Field Trips (Not Enrolled on a Regular Route)		
4a Unduplicated headcount of students transported for Curriculum-Related Field Trips	0	0
4b Total days for students transported for Curriculum-Related Field Trips	0	0
	Current Year	Last Year
Total days for PreK - 12 regular education students enrolled for transportation - Regular Route		
5a days for PreK - 12 students residing 1.5 miles or more from school plus Curriculum-Related Field Trips	160,960	13,272
5b days for PreK - 12 students residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or a criminal gang safety hazard	2,079	17,120
5c days for PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	388	103,840
5d days for PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	82,046	0
5e total number of days for PreK - 12 regular education students enrolled for transportation (line 5a + line 5b + line 5c + line 5d)	245,473	134,232
6 Number of Student Attendance Days on the School Calendar	194	160
Average Number of PreK - 12 regular education students transported per year		
7a PreK - 12 students residing 1.5 miles or more from school plus Curriculum-Related Field Trip days	830	83
7b PreK - 12 students residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or criminal gang activity safety hazard	11	107
7c PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	2	649
7d PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	423	0
7e total average number of PreK - 12 regular education students enrolled for transportation	1,266	839

Transportation For Pupils Other Than In Regular Education

8 Number of Vocational students enrolled to be transported	0	10
9 Number of Special Education students enrolled to be transported	133	352

Mileage Details

Total Regular Education Transportation Miles to and from School	
10a Total regular route miles	



	Current Year	Last Year
	162,107	245,252

10b	Total regular curriculum-related field trip miles	0	0
Total Vocational Transportation Miles to and from School			
11a	Total vocational route miles	0	560
11b	Total vocational curriculum-related field trip miles	0	0
Total Special Education Transportation Miles to and from School			
12a	Total special education route miles	69,505	382,131
12b	Total special education curriculum-related field trip miles	0	0
Total Nonreimbursable Miles (Regular & Summer Terms)			
13a	Total non-curriculum-related field trip miles	11,269	153,890
13b	Total Pre-kindergarten miles	13,631	41,011

Expenditures and Deductions

	A Regular Transportation	B Vocational Transportation	C Special Ed. Transportation	D Non-Reimbursable Transportation	E Total	
Direct Costs - Paid from Fund 40 Transportation						
14a	Salaries (Full or Part-time)	48,619	0	20,846	7,468	76,933
14b	Employee Benefits	16,233	0	6,960	2,493	25,686
14c	Purchased Services - Do not include contractual reported on Lines d, e, or f	26,424	0	11,329	4,059	41,812
14d	Contractual Transportation - Do not include contractual with other districts	1,621,296	0	695,147	249,035	2,565,478
14e	Payments-Public Transit Carriers	0	0	0	0	0
14f	Payments to other districts	0	0	0	0	0
14g	Supplies	1,167	0	500	179	1,846
14h	Other	0	0	0	0	0
15	Sub Total - Costs Paid from Fund 40 Transportation	1,713,739	0	734,782	263,234	2,711,755
Transportation Related Building and Building Maintenance						
16a	Costs paid from Fund 10 Education	0	0	0	0	0
16b	Costs paid from Fund 20 Operations and Maintenance	0	0	0	0	0
16c	Costs paid from Fund 60 Capital Projects Fund (under \$2,500.00)	0	0	0	0	0
17	Allowable Depreciation	0	0	0	0	0
18	Total Direct Costs (Lines 15-17)	1,713,739	0	734,782	263,234	2,711,755
Deductions						
19a	Payments received from other districts	0	0	0	0	0
19b	Payments received from parents	0	0	0	0	0
19c	Payments received from other sources	0	0	0	0	0
20	Total Deductions (Lines 19a-19c)	0	0	0	0	0
21	Net Direct Costs (Line 18 minus Line 20)	1,713,739	0	734,782	263,234	2,711,755
22	Indirect Costs 5% - District owned transportation services ((Line 21 - (Lines 16d+14e+14f) * 5%))	4,622	0	1,982		6,604
23	Total Transportation Costs (Line 21 + Line 22)	1,718,361	0	736,764	263,234	2,718,359

Mass Transit Exclusion: This entity DOES NOT utilize the Mass Transit Exclusion per 5/29-3 of the Illinois School Code.

[View Claim History](#) [Depreciation Schedule](#) [Computation Summary](#)

Hist Id: 126572



Illinois State Board of Education

Dr. Steven Isaye, Chairman

Dr. Carmen I. Ayala, State Superintendent of Education

Pupil Transportation Claims & Reimbursement System (PTCRS)

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East St Louis SD 189
50-082-1890-22

CLAIM REVIEW

FY 2023 : School Year 2021-2022

Claim Status: accepted and received by ISBE - [Revision#1 Submitted on: 11/10/2022]

Transportation Details

Regular Education Pupil Transportation (Regular School Term ONLY)

	Current Year	Last Year
K-12 public regular education students enrolled for transportation - Regular Route		
1a residing 1.5 miles or more from school	1,572	843
1b residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or a criminal gang activity safety hazard	41	11
1c residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	0	2
1d residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	700	444
1e total number of public school K-12 regular education pupils on a regular route	2,313	1,300
K-12 non-public regular education students enrolled for transportation - Regular Route		
2a residing 1.5 miles or more from school	46	42
2b residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or a criminal gang activity safety hazard	0	0
2c residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	0	0
2d residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	6	2
2e total number of non-public school k - 12 regular education pupils on a regular route	52	44
PreK regular education students enrolled for Transportation - Regular Route (NOT on an exclusive PreK Route)		
3a residing 1.5 miles or more from school on a Regular Route (<i>NOT on an exclusive pre-k route</i>)	0	0
3b residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or criminal gang activity safety hazard	0	0
3c residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	0	0
3d residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	0	0
3e total number of PreK students enrolled for transportation - Regular Route (line 3a + line 3b + line 3c + line 3d)	0	0
3f total number of PreK students enrolled for transportation - Exclusive PreK Route	93	0
3g total number of PreK students enrolled for transportation (line 3e + line 3f)	93	0
Students Transported for Curriculum-Related Field Trips (Not Enrolled on a Regular Route)		
4a Unduplicated headcount of students transported for Curriculum-Related Field Trips	540	0
4b Total days for students transported for Curriculum-Related Field Trips	616	0
Total days for PreK - 12 regular education students enrolled for transportation - Regular Route		
5a days for PreK - 12 students residing 1.5 miles or more from school plus Curriculum-Related Field Trips	194,442	160,960
5b days for PreK - 12 students residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or a criminal gang safety hazard	5,423	2,079
5c days for PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	0	388
5d days for PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	89,649	82,046
5e total number of days for PreK - 12 regular education students enrolled for transportation (line 5a + line 5b + line 5c + line 5d)	289,514	163,427
6 Number of Student Attendance Days on the School Calendar	175	194
Average Number of PreK - 12 regular education students transported per year		
7a PreK - 12 students residing 1.5 miles or more from school plus Curriculum-Related Field Trip days	1,111	830
7b PreK - 12 students residing less than 1.5 miles from school <i>WITHOUT</i> an approved vehicular and/or criminal gang activity safety hazard	31	11
7c PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved vehicular safety hazard	0	2
7d PreK - 12 students residing less than 1.5 miles from school <i>WITH</i> an approved criminal gang activity safety hazard	512	0
7e total average number of PreK - 12 regular education students enrolled for transportation	1,654	842

Transportation For Pupils Other Than In Regular Education

	Current Year	Last Year
8 Number of Vocational students enrolled to be transported	0	0
9 Number of Special Education students enrolled to be transported	207	133

Mileage Details

	Current Year	Last Year
Total Regular Education Transportation Miles to and from School		
10a Total regular route miles	171,900	162,107

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10b	Total regular curriculum-related field trip miles	1,444	0
Total Vocational Transportation Miles to and from School			
11a	Total vocational route miles	0	0
11b	Total vocational curriculum-related field trip miles	0	0
Total Special Education Transportation Miles to and from School			
12a	Total special education route miles	192,147	69,505
12b	Total special education curriculum-related field trip miles	0	0
Total Nonreimbursable Miles (Regular & Summer Terms)			
13a	Total non-curriculum-related field trip miles	39,914	11,269
13b	Total Pre-kindergarten miles	42,505	13,631

Expenditures and Deductions

	A Regular Transportation	B Vocational Transportation	C Special Ed. Transportation	D Non-Reimbursable Transportation	E Total
Direct Costs - Paid from Fund 40 Transportation					
14a	Salaries (Full or Part-time)	15,621	0	17,485	517,897
14b	Employee Benefits	3,836	0	4,294	3,750
14c	Purchased Services - Do not include contractual reported on Lines d, e, or f	238,221	0	266,644	232,860
14d	Contractual Transportation - Do not include contractual with other districts	1,164,160	0	1,266,520	1,649,671
14e	Payments-Public Transit Carriers	0	0	0	0
14f	Payments to other districts	0	0	0	0
14g	Supplies	1,508	0	1,688	1,474
14h	Other	0	0	0	0
15	Sub Total - Costs Paid from Fund 40 Transportation	1,423,346	0	1,556,631	2,405,652
Transportation Related Building and Building Maintenance					
16a	Costs paid from Fund 10 Education	0	0	0	0
16b	Costs paid from Fund 20 Operations and Maintenance	0	0	0	0
16c	Costs paid from Fund 60 Capital Projects Fund (under \$2,500.00)	0	0	0	0
17	Allowable Depreciation	0	0	0	0
18	Total Direct Costs (Lines 15-17)	1,423,346	0	1,556,631	2,405,652
Deductions					
19a	Payments received from other districts	0	0	0	0
19b	Payments received from parents	0	0	0	0
19c	Payments received from other sources	0	0	0	858,841
20	Total Deductions (Lines 19a-19c)	0	0	0	858,841
21	Net Direct Costs (Line 18 minus Line 20)	1,423,346	0	1,556,631	1,546,811
22	Indirect Costs 5% - District owned transportation services ((Line 21 - (Lines 16d+14e+14f) * 5%))	12,959	0	14,506	27,465
23	Total Transportation Costs (Line 21 + Line 22)	1,436,305	0	1,571,137	1,546,811

Mass Transit Exclusion: This entity DOES NOT utilize the Mass Transit Exclusion per 5/29-3 of the Illinois School Code.

[View Claim History](#) [Depreciation Schedule](#) [Computation Summary](#)

Hist Id: 137274

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend, **CHANDRES
JOHNSON**, and **A.M.**, by her father and next friend,
ANTONIO BROWN,

Plaintiffs,

vs.

**BOARD OF EDUCATION OF EAST ST. LOUIS
SCHOOL DISTRICT NO. 189**,

Defendant.

No. 22-CH-75

RESPONSE IN OPPOSITION TO CROSS-MOTION FOR SUMMARY JUDGMENT

Come now Defendant, **East St. Louis School District No. 189**, by and through its attorneys, **Becker, Hoerner & Yursa, P.C.**, and for its Response in Opposition to Cross-Motion for Summary Judgment, pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), state as follows:

1. In an apparent attempt to circumvent this Court’s interpretation of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) in its November 2, 2022 Order, Plaintiffs’ Cross-Motion for Summary Judgment belatedly shifts their position away from their contention at the inception of this case. Specifically, Plaintiffs’ Complaint for Declaratory Judgment and Injunctive Relief (Plaintiffs’ Complaint) seeks a declaratory judgment and injunctive relief against Defendant, East St. Louis School District No. 189 (District), requiring the District 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”; however, Plaintiffs’ Cross-Motion for

Summary Judgment now seeks “bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school.” Essentially, contrary to their Complaint, Plaintiffs now contend that “[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student’s home located on or near a regular route to their schools; or (ii) from the student’s school located on a regular route to their homes”, and that [t]he statute does not require that nonpublic school students must live on or near Defendant’s regular routes AND that the school be located on the same regular route.”¹ Clearly, Plaintiffs’ newfound position belies the plain language of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4), and this Court’s previous interpretation thereof.

2. “[I]nterpreting or construing a statute is a matter of law for the court and is appropriate for summary judgment.” *In re A.M.F.*, 311 Ill.App.3d 1049, 1051 (5th Dist. 2001). In statutory construction cases, the court’s primary and overriding concern is to ascertain and give effect to the intent of the legislature. *People v. Whitney*, 188 Ill. 2d 91, 97, 720 N.E.2d 225 (1999). Legislative intent is best determined from the language of the statute itself, which if unambiguous should be enforced as written. *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill. 2d 590, 595, , 837 N.E.2d 876 (2005); *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 473, 837 N.E.2d 1 (2005). In giving effect to the statutory intent, the court should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought. *People v. Donoho*, 204 Ill. 2d 159, 171-72, 788 N.E.2d 707 (2003). It is also

¹ Defendant notes that Plaintiffs’ Response in Opposition to Defendant’s Motion for Summary Judgment and Plaintiffs’ Cross-Motion for Summary Judgment abandons their prayer for a separate bus route, thereby effectively conceding this Court’s interpretation that “Section 29-4 permits but does not require separate routes.”

true that statutes must be construed to avoid absurd results. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 183 N.E.3d 810. When a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should be rejected. *Id.*

3. Again, Section 29-4 of the Illinois School Code defines the limited scope of transportation that a public school district must afford to pupils attending a charter school or nonpublic school as follows:

“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 ½ 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. *****”

Simply put, the scope of such transportation is limited to “points” on the “regular routes” of buses servicing the public school district students; Plaintiffs’ Complaint acknowledges as much by expressly seeking a declaratory judgment requiring the District 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). Indeed, consistent with precedent of our Illinois Appellate Court – Fifth Judicial District in *C.E. and C.L. v. Board of Education of East St. Louis School District No. 189*, 970 N.E.2d 1287 (5th Dist. 2012), this Court’s November 2, 2022 properly concluded:

“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.”

4. Plaintiffs’ newfound interpretation of Section 29-4 of the Illinois School Code is clearly erroneous in that it would necessarily require the District to modify an existing route (or “go out of their way”) contrary to this Court’s prior interpretation and our Appellate Court’s precedent, an obviously absurd result that this Court must avoid under Illinois law.

5. Likewise improper is Plaintiffs’ reliance on a Temporary Restraining Order in St. Clair County Circuit Court Case No. 15-CII-592, which this Court dissolved in its November 2, 2022 Order. 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).

6. Similarly misplaced is Plaintiffs’ contention that Defendants did not “offer” existing bus routes to Plaintiffs. Actually, this Court’s November 2, 2022 Order pertinently provided that “Plaintiffs and Defendants are ordered to confer and identify regular existing bus route(s) that can pick up Sr. Thea Bowman School students nearest their homes and drop them off near Sr. Thea Bowman in a safe manner”; accordingly, at a meeting on November 7, 2022, District representatives presented all of its existing regular routes for District students to Plaintiffs’ representatives, including Attorney John Baricevic and Attorney Susan Simone (by telephone). (See Exhibit A, Transcript of Deposition of Lawrence Tourijigian, pages 117-118²). Thereafter, Plaintiffs never identified any routes that it sought to utilize, and Sr. Thea Bowman Catholic School voluntarily dismissed its claims. Nevertheless, of course, any claim specific to the 2022-23 school year is rendered moot because that school year is over, and the District is

² Ms. Simone’s statement at deposition that “I was on the phone. I had COVID.” at page 117, line 23 is incorrectly attributed to Dr. Tourijigian.

now creating routes for the 2023-24 school year (See Exhibit A, Transcript of Deposition of Lawrence Tourijigian, pages 53-54). See *Adams v. Meyers*, 250 Ill. App. 3d 477, 620 N.E.2d 1290 (1st Dist. 1993) (The passage of time can render a claim moot based upon impossibility of relief.)

7. Finally, 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. Accordingly, Defendant is entitled to summary judgment on Plaintiff’s Complaint as a matter of law pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), and Plaintiffs are not.

8. The District adopts and incorporates by this reference Defendant’s Motion for Summary Judgment in this matter as though fully set forth herein.

WHEREFORE, Defendants, **East St. Louis School District No. 189**, respectfully request that this Court deny Plaintiffs’ Cross-Motion for Summary Judgment, grant Defendant’s Motion for Summary Judgment and enter summary judgment on Plaintiffs’ Complaint in Defendant’s favor and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), and order such other relief as this Court deems just and proper.

BECKER, HOERNER & YSURSA, P.C.

By: 

Garrett P. Hoerner

No. 6243119

Case No. 22-CII-75

Page 5 of 6

ATTORNEYS FOR DEFENDANTS

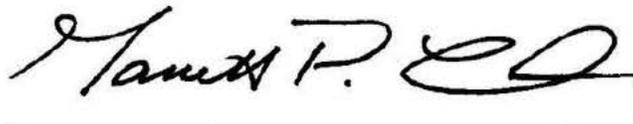
5111 West Main Street
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Phone: (618) 235-0020
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CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rule 12(b), the undersigned certifies that a copy of this instrument was served upon the following persons via electronic mail and U.S. Mail, postage prepaid, by depositing same in the U.S. Mailbox located at 5111 West Main Street, Belleville, Illinois at 4:00 p.m. on this 11th day of August, 2023, to:

Susan M. Simone
Land of Lincoln Legal Aid
8787 State Street, Suite 201
East St. Louis, Illinois 62203
ssimone@lincolnlegal.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.



Case No. 22-CH-75
Page 6 of 6

C 282

A261

EXHIBIT A

C 283

A262

Deposition of:
Dr. Lawrence Tourijigian

Date: June 27, 2023

Case: E.W., by his mother and next friend, Chandres Johnson,
and A.M., by her father and next friend, Antonio Brown v.
Board of Education of East St. Louis School District #189

Reporter: Holly A. McCullough, CSR

Keefe Reporting Company
618-277-0190
reporter@keefereporting.com

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and
next friend, Chandrea
Johnson, and A.M., by
her father and next
friend, Antonio Brown,) No. 2022-CH-0075
Plaintiffs,)
vs.)
BOARD OF EDUCATION OF
EAST ST. LOUIS SCHOOL
DISTRICT #189,)
Defendant.)

DISCOVERY DEPOSITION OF
DR. LAWRENCE TOURIJIGIAN

Taken on behalf of Plaintiffs
June 27, 2023

INTERROGATION INDEX:
BY MS. SIMONE: PAGE 5
BY MR. HOERNER: PAGE 117

Reported by Holly A. McCullough,
C.S.R., C.C.R., R.P.R.

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INDEX OF EXHIBITS:

1 Plaintiff's Exhibit No. 1 -- Page 28, 28-30, 39-41
2 Plaintiff's Exhibit No. 2 -- Page 23, 46-47
3 Plaintiff's Exhibit No. 3 -- Page 65-67
4 Plaintiff's Exhibit No. 4 -- Page 65-73
5 Plaintiff's Exhibit No. 5 -- Page 73
6 Plaintiff's Exhibit No. 6 -- Page 73, 76-79
7 Plaintiff's Exhibit No. 7 -- Page 80-84
8 Plaintiff's Exhibit No. 8 -- Page 85-86
9 Plaintiff's Exhibit No. 9 -- Page 86-88, 91-98
10 Plaintiff's Exhibit No. 10 -- Page 102-105
11 Plaintiff's Exhibit No. 11 -- Page 102, 105-109
12 Plaintiff's Exhibit No. 12 -- Page 108-111
13 Plaintiff's Exhibit No. 13 -- Page 108, 111 112
14 Plaintiff's Exhibit No. 14 -- Page 108-109, 116-117
15 (Plaintiff's Exhibits No. 1 through No. 14 are
16 attached to the original transcript only.)
17
18
19
20
21
22
23
24

Page 2

1 IN THE CIRCUIT COURT
2 TWENTIETH JUDICIAL CIRCUIT
3 ST. CLAIR COUNTY, ILLINOIS

4 E.W., by his mother and)
5 next friend, Chandrea)
6 Johnson, and A.M., by)
7 her father and next)
8 friend, Antonio Brown,) No. 2022-CH-0075
9 Plaintiffs,)
10 vs.)
11 BOARD OF EDUCATION OF)
12 EAST ST. LOUIS SCHOOL)
13 DISTRICT #189,)
14 Defendant.)

15 APPEARANCES:
16 For Plaintiffs:
17 Land of Lincoln Legal Aid
18 by: Susan M. Simone
19 and Noah Halpern
20 Dorothy O. Cook Community Law Center
21 8787 State Street, Suite 201
22 East St. Louis, IL 62203
23 For Defendant:
24 Becker, Hoerner & Ysursa, P.C.
by: Garrett P. Hoerner
5111 West Main Street
Belleville, IL 62226

Page 4

1 IT IS STIPULATED AND AGREED by and between counsel
2 for Plaintiffs and counsel for Defendant, that the
3 deposition of DR. LAWRENCE TOURIJIGIAN may be taken
4 for discovery purposes pursuant to and in accordance
5 with the provisions of the Illinois Code of Civil
6 Procedure and Supreme Court Rules pertaining to such
7 depositions, by and on behalf of the Plaintiffs on
8 June 27, 2023, at Becker, Hoerner & Ysursa, P.C.,
9 before Holly A. McCullough, an Illinois CSR, a
10 Missouri CCR and a RPR, that the issuance of notice is
11 waived and that this deposition may be taken with the
12 same force and effect as if all statutory requirements
13 had been complied with.

14 IT IS FURTHER STIPULATED AND AGREED that the
15 signature of the deponent is waived.
16 DR. LAWRENCE TOURIJIGIAN produced, sworn and
17 examined on behalf of the Plaintiffs, testified and
18 deposed as follows:
19
20 (Deposition commences at 1:28 p.m.)
21
22
23
24

1 (Pages 1 to 4)

Keefe Reporting Company

Page 5

1 EXAMINATION
 2 by Ms. Susan M. Simone:
 3 Q. Good afternoon. Doctor, can you please
 4 state your name and spell it for the record -- your
 5 full name?
 6 A. Lawrence Tourijigian, L-A-W-R-E-N-C-E,
 7 T-O-U-R-I-J-I-G-I-A-N.
 8 Q. My name is Susan Simone, and I'm an attorney
 9 at Land of Lincoln Legal Aid. This is my co-counsel,
 10 Noah Halpern.
 11 A. Howdy.
 12 Q. And we represent a couple of the parents --
 13 A. Uh-huh.
 14 Q. -- in this case. I just want to go over
 15 some ground rules with you. First is that you have to
 16 answer out loud.
 17 A. Huh.
 18 Q. You can't say "uh-huh" --
 19 A. Got you.
 20 Q. -- or "hub-huh," shaking your head, nodding
 21 your head. It has to be an out-loud answer so the
 22 Court Reporter can take it down.
 23 A. Good.
 24 Q. The other thing, we need to avoid talking

Page 6

1 over each other. So, let me finish my question before
 2 you start to answer, and then I will let you finish
 3 your answer before I ask my next question. Okay?
 4 A. Okay. Yes, ma'am.
 5 Q. If you need a break, that's fine. Just let
 6 me know or let Mr. Hoerner know, and we can do that,
 7 but I ask, if there's a question pending, that you
 8 answer the question before we take that break. Okay?
 9 A. Understood. Uh-huh.
 10 Q. If you don't understand a question that I've
 11 asked, let me know. I can rephrase it or try to
 12 clarify it for you. Is that all right?
 13 A. Yes.
 14 Q. Okay. And do you have any questions before
 15 we begin about what I've just told you?
 16 A. No, ma'am.
 17 Q. All right. Have you ever had your
 18 deposition taken before?
 19 A. No.
 20 Q. Are you on any medications today --
 21 A. No.
 22 Q. Let me finish my question. Okay? Are you
 23 on any medications today that would interfere with
 24 your memory or ability to testify truthfully?

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1 A. No.
 2 Q. Have you consumed any alcohol or other
 3 substances today?
 4 A. No.
 5 Q. Did you do anything to prepare for today's
 6 deposition?
 7 A. I looked over the documents that I sent
 8 you -- or shared out with Attorney Hoerner, which I
 9 assume you got.
 10 Q. Okay. Did you do anything else?
 11 A. No.
 12 Q. And what is your date of birth?
 13 A. 9-19-56.
 14 Q. How old are you today?
 15 A. 66.
 16 Q. Okay. Where do you live; what's your
 17 address?
 18 A. 8903 West Boul Avenue, East St. Louis,
 19 Illinois 62203.
 20 Q. And where do you work?
 21 A. East St. Louis School District 189.
 22 Q. What is your position at District 189?
 23 A. Director of Transportation, Student
 24 Information Systems and the 21st Century Grant.

Page 8

1 Q. So, that's three different titles?
 2 A. Uh-huh.
 3 Q. "Yes"?
 4 A. Yes.
 5 Q. How long have you been at District 189?
 6 A. Sum total or on this last stint?
 7 Q. I'm sorry?
 8 A. Sum total or this last stint?
 9 Q. Why don't we start with this last stint?
 10 A. I believe it's coming up on five years now.
 11 Q. So, that would be 2018 that you came back to
 12 East St. Louis School District?
 13 A. I believe so, ma'am, yeah.
 14 Q. Did you have a stint with them before?
 15 A. Oh, yeah.
 16 Q. When was that?
 17 A. It started in 1986.
 18 Q. And what was your position when you started
 19 at District 189?
 20 A. Schoolteacher.
 21 Q. What did you teach?
 22 A. Let's see. Physical science, chemistry,
 23 physics.
 24 Q. How long were you a teacher at District 189?

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1 A. Oh, until nineteen -- No. I think it was
 2 2002 or 2003 I came out of the classroom.
 3 **Q. And where did you go after you left the**
 4 **classroom?**
 5 A. Well, I went downtown to work on attendance
 6 numbers.
 7 **Q. When you say "downtown," was that --**
 8 A. The central office.
 9 **Q. Of District 189?**
 10 A. Uh-huh. Yes, ma'am.
 11 **Q. Okay. Again, we've got to be careful about**
 12 **talking over each other. So, let me finish my**
 13 **question before you start to answer it. Okay?**
 14 A. Got you.
 15 **Q. At the central office of District 189 --**
 16 A. Uh-huh.
 17 **Q. -- what did you do there?**
 18 A. I summarize the attendance figures for the
 19 end-of-year claim.
 20 **Q. Is that a claim submitted to the Illinois**
 21 **State Board of Education?**
 22 A. Yes.
 23 **Q. And Illinois State Board of Education is**
 24 **nicknamed ISBE; is that correct?**

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1 A. Yes.
 2 **Q. I ask that for the benefit of the Court**
 3 **Reporter when I say that later. How long were you in**
 4 **District 189 administrative office working on**
 5 **attendance figures?**
 6 A. Oh, I believe it was from about 2003, 2004
 7 through 2018.
 8 **Q. What happened in 2018?**
 9 A. I got a better offer from another district.
 10 **Q. What school district was that?**
 11 A. Peoria School District 150.
 12 **Q. How long -- Did you go to --**
 13 A. No, no. It had to be through 2016 because I
 14 think it was 2018 I came back in the Fall.
 15 **Q. You came back in the Fall of 2018 to**
 16 **District 189?**
 17 A. Yes, ma'am. And I was gone for two years.
 18 So, I must have left at the beginning of school year
 19 either '15 or '16. I can't remember which one.
 20 **Q. How long were you at Peoria School District?**
 21 A. Two years.
 22 **Q. What did you do for Peoria School District?**
 23 A. The same thing. I worked in the Student
 24 Information System, reported out -- Well, I can't say

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1 it was entirely the same thing. I managed the student
 2 information database and prepped reports based on the
 3 information we had stored that were then transferred
 4 to the state.
 5 **Q. And that is a job you are doing for District**
 6 **189 at this point in time?**
 7 A. Yes.
 8 **Q. Okay. For student information, what other**
 9 **responsibilities in that role?**
 10 A. Just collect the demographics of the child,
 11 attendance, grades. We also collect discipline. We
 12 collect pre-K assessments, Kindergarten assessments,
 13 data that will then be transferred to the state.
 14 **Q. And what database management do you use for**
 15 **all this information?**
 16 A. We use Skyward.
 17 **Q. I saw a mention of Skyward in the documents.**
 18 A. Uh-huh.
 19 **Q. "Yes"?**
 20 A. Yes, I guess you did.
 21 **Q. Is Skyward where information is pulled in**
 22 **order to work on creating the bus routes?**
 23 A. Yes.
 24 **Q. You named two other roles you have at**

Page 12

1 **District 189 at this point in time besides student**
 2 **information. One was transportation, and one was**
 3 **Century 21?**
 4 A. 21st Century.
 5 **Q. 21st Century. Tell me about 21st Century?**
 6 A. It's a grant that allows us to pay for
 7 instructors, paraprofessionals, bus monitors and site
 8 coordinators to work after school. It's a
 9 supplementary program.
 10 **Q. What grades are Century -- I'm sorry -- 21st**
 11 **Century geared towards?**
 12 A. 2nd through 12th.
 13 **Q. What kinds of programs have you implemented**
 14 **with the 21st Century grant?**
 15 A. Oh, shoot. We try to hit ELA in math at
 16 least once a week.
 17 **Q. Can you tell me what "ELA" is?**
 18 A. English language arts.
 19 **Q. Okay.**
 20 A. Math. Then we try and broaden the kids'
 21 base by theater, music. There may be some
 22 recreational activities that take place, chess. There
 23 may be some games online. I don't think we're doing
 24 too much with, you know, the old board games. Most of

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1 those games are centered around improving child
 2 education.
 3 **Q. Is bus transportation a component of --**
 4 A. Oh, yes.
 5 **Q. Is bus transportation a component of the**
 6 **21st Century Grant?**
 7 A. Yes.
 8 **Q. And tell me about the bus transportation**
 9 **provided for students involved with the 21st Century**
 10 **Grant.**
 11 A. Okay. The bus transportation occurs at the
 12 end of the school day. The child is already there at
 13 school, and that's where the centers are. So, at the
 14 end of the school, the child will be there for an
 15 additional three hours, and we'll give them a bus ride
 16 home. Kids get door-to-door service.
 17 **Q. Is bus transportation for the students**
 18 **participating in the 21st Century program provided by**
 19 **Illinois Central?**
 20 A. Yes.
 21 **Q. What schools have the 21st Century program?**
 22 A. All of our schools, except Gordon Bush
 23 Alternative School and -- let's see -- Vivian Adams.
 24 They don't have it.

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1 **Q. Vivian Adams is the early childhood center?**
 2 A. Yes. Kids just aren't in the right grade
 3 range.
 4 **Q. But all other grade schools, elementary**
 5 **schools, middle schools and the high school have the**
 6 **21st Century program?**
 7 A. And charter.
 8 **Q. And the charter schools?**
 9 A. Uh-huh.
 10 **Q. How many charters schools does East St.**
 11 **Louis have?**
 12 A. Just one.
 13 **Q. What's the name of the charter --**
 14 A. Southern Illinois University Edwardsville
 15 Charter High School.
 16 **Q. Okay. Is that the one located downtown?**
 17 A. Yes.
 18 **Q. Okay. And is bus transportation provided**
 19 **for the SIUE charter school students?**
 20 A. Only through 21st Century. Home to school
 21 routes for a.m. and p.m. are not.
 22 **Q. How do SIUE charter students get to school**
 23 **then?**
 24 A. Ma'am, I'm guessing, but I think they may be

Page 15

1 passing out Bi-State or the old Metro Link passes to
 2 the kids. I always see kids making a beeline to I
 3 think it's 6th and Missouri where the central stop is
 4 for Metro Link.
 5 **Q. What grades does the SIUE charter school**
 6 **cover?**
 7 A. 9th through 12th.
 8 **Q. Did District 189 ever provide bus**
 9 **transportation outside of the 21st Century program for**
 10 **the SIUE charter school?**
 11 A. Never.
 12 **Q. What is your educational background?**
 13 A. BS was in civil engineering and chemistry.
 14 Master's was in chemistry. I also have a specialist's
 15 degree in education, and my superintendent's
 16 endorsement in education.
 17 **Q. So, you are eligible to become a**
 18 **superintendent?**
 19 A. Yes, ma'am. Uh-huh.
 20 **Q. Where did you complete your Ph.D.?**
 21 A. Edwardsville.
 22 **Q. And was that in education, or was that in**
 23 **something else?**
 24 A. Well, I received my engineering and my

Page 16

1 specialist's and my superintendent's endorsement at
 2 Edwardsville. I got my BS in chemistry from Eastern.
 3 And I also did a little time up at Southwestern
 4 Illinois College.
 5 **Q. Okay. And what is your Ph.D. in?**
 6 A. Educational administration.
 7 **Q. Do you have any continuing education**
 8 **requirements to maintain any of your certifications or**
 9 **licensures?**
 10 A. Yes. You've always got the -- let's see --
 11 I think it's 135 hours now that you have to do in
 12 CEU's to recertify each year.
 13 **Q. 135 hours per year?**
 14 A. No, no. Over a five-year span. Plus,
 15 you've got at least one academy that you've got to do
 16 every year, too.
 17 **Q. Tell me about the continuing education that**
 18 **you've had in the last two to three years.**
 19 A. I've just done academy so far. I figured
 20 I'd wait -- I retire on Friday.
 21 **Q. Oh.**
 22 A. So, I'm just gonna go to school until I get
 23 enough CEU's. I think for every three-semester hours
 24 you take, I think you're good for 45 CEU's.

Page 17

1 **Q. Okay. Have you had any special classes or**
 2 **training for bus transportation?**
 3 A. Engineering, ma'am.
 4 **Q. Engineering?**
 5 A. There's a facet of engineering that is
 6 transportation.
 7 **Q. Okay.**
 8 A. But training has been specifically with
 9 Versatrans. They provide the software that we use to
 10 transport children with.
 11 **Q. And how much training have you had through**
 12 **Versatrans?**
 13 A. Oh, shoot. When I took it over, ma'am, I
 14 believe it was -- I know -- I'd guesstimate anywhere
 15 from 20 to 40 hours when I initially took it over.
 16 **Q. When did you take it over?**
 17 A. It was right when the pandemic was -- I
 18 can't say coming to an end. I believe it was in --
 19 Let's see. '19-'20, that school year I believe was
 20 the first year of the pandemic. I think we went home
 21 in third quarter, and then the following school year,
 22 2021, was the first year that we were in the pandemic,
 23 but we tried to bring the kids back in the Spring of
 24 2021, and I believe that's when I was asked to take

Page 19

1 A. Keisa Garrett for 21st Century and Delfaye
 2 Jason for the transportation system.
 3 **Q. What is Mr. Jason's --**
 4 A. Ms.
 5 **Q. What is Ms. Jason's position?**
 6 A. She's Chief Financial Officer.
 7 **Q. And she is in charge of -- She oversees your**
 8 **transportation department aspect?**
 9 A. Yes. Uh-huh.
 10 **Q. How long has she been in that position to**
 11 **your knowledge?**
 12 A. As CFO, I believe last year. I'm not sure
 13 about the timetable here, but --
 14 **Q. To the best of your knowledge.**
 15 A. I believe this is her second full year in
 16 that position I think.
 17 MR. HOERNER: If you know.
 18
 19 BY MS. SIMONE:
 20 **Q. If you know.**
 21 A. I think, ma'am.
 22 **Q. Do you know who was in her position before?**
 23 A. It was a young lady named Sherry Whitaker.
 24 **Q. Who is Laquita Epps?**

Page 18

1 over transportation. We had just lost our old
 2 transportation director to another school district,
 3 and we were just trying to get someone in there to
 4 take care of it.
 5 **Q. Okay. Who was the old transportation**
 6 **director prior to Spring of 2021?**
 7 A. A young lady named Norquise Cooper.
 8 **Q. Norquise Cooper?**
 9 A. Yes.
 10 **Q. And you are retiring on Friday?**
 11 A. Uh-huh.
 12 **Q. Well, congratulations. Who is gonna take**
 13 **your position?**
 14 A. A young lady named Lori Chalmers.
 15 **Q. Is she currently an employee of District**
 16 **189?**
 17 A. Yes.
 18 **Q. And she'll be covering the transportation**
 19 **aspect of District 189?**
 20 A. Yes.
 21 **Q. That name rings a bell. I'm not sure where.**
 22 **Who is your immediate supervisor?**
 23 A. I have two.
 24 **Q. Okay.**

Page 20

1 A. She's the assistant that works in my
 2 department for transportation.
 3 **Q. How many people work in the transportation**
 4 **department under you?**
 5 A. There's just me and Ms. Epps.
 6 **Q. Just you and Ms. Epps?**
 7 A. Uh-huh.
 8 **Q. "Yes"?**
 9 A. Yes.
 10 **Q. Do you anticipate that she'll remain in the**
 11 **transportation department after you retire Friday?**
 12 A. I don't know, ma'am. I don't know. It's
 13 kind of a hard job, ma'am.
 14 **Q. Does Ms. Garrett have any involvement with**
 15 **the transportation decisions for District 189?**
 16 A. She's chief of schools, and from time to
 17 time, we do consult with her when decisions have to be
 18 made with her and Ms. Jason simultaneously, and it's
 19 mostly about when schools start and stop because that
 20 is important.
 21 **Q. Okay. After you retire, do you plan to**
 22 **move?**
 23 A. No.
 24 **Q. All right. Let's talk about your**

Page 21

1 responsibilities for the transportation department.
 2 A. Okay.
 3 Q. You took over this position two years ago
 4 you said?
 5 A. I believe so. I think it was right before
 6 we came back in person with the kids, which I believe
 7 was school year '21.
 8 Q. All right. And what are your
 9 responsibilities as the Transportation Director?
 10 A. Well, we prep the routes that the kids use
 11 to get back and forth to school. You make hard
 12 decisions about the way we operate. You field
 13 complaints, you speak with building representatives,
 14 and you just try and make things work getting the kids
 15 back and forth to home and school.
 16 Q. Who -- You said "we" at the beginning of
 17 your answer. Who is the "we"?
 18 A. Well, there's me and Ms. Epps and, of
 19 course, you know, the people at the next tier above
 20 you that have some say so in the way business is
 21 conducted.
 22 Q. Okay. Do the principals of the schools or
 23 other school personnel in the individual buildings --
 24 A. Uh-huh.

Page 22

1 Q. -- have say in the decisions you make for
 2 transporting the students?
 3 A. Always. You've got to take care of your
 4 customers, and they are our customers.
 5 Q. Who is Illinois Central?
 6 A. That's our vendor for transportation.
 7 Q. Do you know how long they have been District
 8 189's vendor?
 9 A. Oh, shoot, ma'am. Now you'd have me
 10 guessing. I don't know. I know they've been there
 11 since I've been there and before.
 12 Q. Okay. Who is the primary contact between
 13 District 189 and Illinois Central?
 14 A. A young lady named Keisha Welch.
 15 Q. Do you know what her position is?
 16 A. She is as the local yard manager.
 17 Q. Who is the primary contact at District 189
 18 with Ms. Welch?
 19 A. For?
 20 Q. Illinois Central District 189 bus issues.
 21 A. Well, I'm the primary contact with Illinois
 22 Central.
 23 Q. So, is it fair to say that you are the one
 24 who has the most contact with Ms. Welch at Illinois

Page 23

1 Central?
 2 A. Oh, yeah. Uh-huh.
 3 Q. About how often do you and she discuss bus
 4 transportation issues?
 5 A. Oh, ma'am. It's almost every day.
 6 Q. Almost every day?
 7 A. Almost every day, yes.
 8 Q. And has there been anyone else at Illinois
 9 Central, besides Ms. Welch, who has been your primary
 10 contact in the last two years or so?
 11 A. No, not the primary.
 12 Q. How often are you usually at work at
 13 District 189 during the school year?
 14 A. How often?
 15 Q. Uh-huh. Are you in the office every day?
 16 A. Oh, yeah. Yeah. I've got 75 vacation days
 17 I haven't been able to take.
 18 Q. Okay.
 19
 20 (Plaintiff's Exhibit No. 1 and No. 2 are marked
 21 for identification.)
 22
 23 BY MS. SIMONE:
 24 Q. Mr. -- Sorry. Dr. Tourijigian, am I

Page 24

1 pronouncing that correctly?
 2 A. That's fine, ma'am.
 3 Q. You're used to butchering of your name. How
 4 do you define a "route" -- a "bus route"?
 5 A. I've heard it defined many ways. A "route"
 6 can be single tier, which means kids are picked up and
 7 they go to one school, and then they get picked up by
 8 that same bus in the evening and taken home. We also
 9 have routs that have two tiers, which means there are
 10 two stops at schools before that bus is considered
 11 complete for the a.m. portion or the p.m. portion of
 12 the route. We also have routes that have three tiers
 13 to them. They'll visit three schools before they're
 14 done with their morning route and then three in the
 15 evening to get the kids home from those three schools.
 16 Q. So, at the beginning of that, you said that
 17 you've heard it defined different ways.
 18 A. Right.
 19 Q. My question is, how do you define a
 20 "route" -- a "bus route"?
 21 A. It's just the number of the schools that are
 22 visited in the a.m. and the number of the schools that
 23 are visited in the p.m., and it could be as many as
 24 one school, two schools or three schools that are

Page 25

1 visited in the morning or in the afternoon to get kids
 2 in and out of the buildings.
 3 **Q. If you have one bus taking students for**
 4 **three tiers, do you consider that one route or three**
 5 **routes?**
 6 A. Usually one route.
 7 **Q. And how many schools are there in District**
 8 **189?**
 9 A. Oh, shoot. East Side, Lincoln, Mason/Clark.
 10 **Q. East Side is a high school. Mason/Clark and**
 11 **Lincoln are the two middle schools.**
 12 A. Then you've got Dunbar, Vivian Adams and
 13 Arnette Officer, Wyvetter Younge, James Avant. It's
 14 either 10 or 11, ma'am. Fingers. Okay. Let's see.
 15 East Side, Lincoln, Mason/Clark, then you've got
 16 Dunbar, Vivian Adams, Officer. That's 6. Then you've
 17 got Wyvetter Younge, James Avant, Gordon Bush. That's
 18 9. And then you've got Katie Harper Wright. That's
 19 10. Then you've got SIU charter, and that's 11. Now,
 20 this is my own personal opinion. Because we pay for
 21 those kids' education. So, I consider that one of our
 22 schools. People will argue that with me, ma'am, but I
 23 believe they're our kids.
 24 **Q. Okay. But you do not provide bus**

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1 So, let's say you ride a route that has three
 2 schools on it, high, middle and elementary, and let's
 3 say he rides a bus route that only has two routes.
 4 maybe just high and elementary. So, if you're missing
 5 that day, he might be asked to take that middle
 6 portion of your route, and then another driver who may
 7 have off time on that first tier would be asked to
 8 take her first portion of the route, and then someone
 9 else who might not have a third tier would be asked to
 10 take that portion of the route.
 11 **Q. Assuming no bus driver absences -- I**
 12 **understand that might be a big assumption. Assuming**
 13 **no absence, one driver would take three of those**
 14 **routes, an elementary, a middle -- as you described,**
 15 **an elementary, a middle and a high, and the second**
 16 **driver would take the two-tiered route with -- for**
 17 **elementary and high school?**
 18 A. Ma'am, I don't know exactly how you're
 19 trying to put that together, but that route normally
 20 is split up. I don't know if you've ever worked in a
 21 school building before, but when the teacher is out,
 22 the kids are dispersed to other classrooms sometimes
 23 when a sub can't be found. It's the same way with
 24 busing. If someone is out, those tiers of that route

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1 **transportation to SIUE charter?**
 2 A. No, ma'am. No one provides transportation
 3 to a charter, at least for the two districts that I've
 4 been in.
 5 **Q. Okay. So, based on that count, it sounds**
 6 **like there are ten schools within District 189 for**
 7 **which District 189 provides bus transportation?**
 8 A. Yes.
 9 **Q. So, that would be ten routes in the morning,**
 10 **ten routes in the afternoon?**
 11 A. No, ma'am. No, ma'am. We normally run 1
 12 think we're somewhere around 50 or 55 routes during
 13 the regular school year, and I think right now we're
 14 probably running about maybe 30 or so for Summer.
 15 **Q. And a driver -- Is it true that a driver**
 16 **will drive more than one route?**
 17 A. It depends on the definition. Now, if we're
 18 subbing folks, too many people are out, we don't have
 19 enough standbys to cover routes, yes, they will. Not
 20 a complete route. They might ride just a component of
 21 it. We try and offset routes, especially routes with
 22 just one or two buses, so that there are gaps in the
 23 schedule throughout the day. We're on a three-tiered
 24 system.

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1 will have to be shopped out to other drivers who do
 2 have the capacity to bring those children in and take
 3 them home.
 4 **Q. Okay.**
 5 A. That's how I would say it.
 6 **Q. All right. Assuming no driver absence --**
 7 **Okay?**
 8 A. Okay.
 9 **Q. You described a bus that might have -- take**
 10 **students to three different schools?**
 11 A. Uh-huh.
 12 **Q. "Yes"?**
 13 A. Yes.
 14 **Q. If there is no driver absence, would it be**
 15 **the same driver that takes the students to those three**
 16 **different schools?**
 17 A. Oh, yeah. Yeah.
 18 **Q. Okay. You've lived here all -- for many**
 19 **years?**
 20 A. Oh, yeah.
 21 **Q. I assume you are familiar with the geography**
 22 **of the City of East St. Louis?**
 23 A. Yes.
 24 **Q. Let me show you what's been marked**

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1 **Plaintiff's Exhibit 1. This is a document --**
 2 **Exhibit 1 is a document entitled "Criteria for Bus**
 3 **Route Creation"?**
 4 A. Uh-huh.
 5 **Q. "Yes"?**
 6 A. Yes, ma'am. Okay. That's what you're
 7 calling it. All right.
 8 **Q. What is the title at the top of Exhibit 1?**
 9 A. Criteria for Bus Route Creation Route,
 10 Attaching the Child to a School."
 11 **Q. Did you create this document, Exhibit 1?**
 12 A. I could have.
 13 **Q. This is -- Exhibit 1 is a document that was**
 14 **produced to us, and I was wondering if it was --**
 15 A. Uh-huh.
 16 **Q. -- produced or created just in response to**
 17 **our request for production, or is this a working**
 18 **document for the transportation department at District**
 19 **189?**
 20 A. Now, if I put this together, this is my
 21 opinion on how routes are created.
 22 **Q. But you don't know if you put this together?**
 23 A. It looks like it, ma'am. It's a screenshot.
 24 The format is a little bit different, but -- I'm

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1 assuming that you got this -- So, you're saying you
 2 got this from 189 and myself?
 3 **Q. I got this from Mr. Hoerner.**
 4 A. Okay. All right. Is this what I gave to
 5 you? If it is -- I don't know if this has been
 6 adulterated or not. I'm assuming not. So, I probably
 7 did create it.
 8 **Q. Have you ever seen it before?**
 9 A. Ma'am, you guys asked for this awhile back,
 10 and you're asking me to say looking at this in the
 11 format it's in now, that I created it. Now --
 12 **Q. I'm asking if you ever saw it before to your**
 13 **knowledge.**
 14 A. Kind of fuzzy on that one. Go ahead and ask
 15 me questions about it.
 16 **Q. All right. Can you attach a child to more**
 17 **than one school?**
 18 A. Normally, no.
 19 **Q. Do you have any children that might attend**
 20 **one school for regular education classes and then a**
 21 **different school for 21st Century or some other**
 22 **program?**
 23 A. Yeah. There's kids, you know, there's a
 24 route to bring them into and take them from home, and

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1 then there's another home to take them home from 21st
 2 Century because we only meet three times a week.
 3 **Q. But do you ever take a student from their**
 4 **home school to another school during the day or after**
 5 **school?**
 6 A. After school, yes, we have. This is the
 7 first time I've seen it happen.
 8 **Q. So, that child, that student would be**
 9 **somehow attached to two schools; is that right?**
 10 A. Yes. Uh-huh. We did what we call dual
 11 enrollment.
 12 **Q. Tell me about "dual enrollment".**
 13 A. That's when a child is getting part of their
 14 education here and then part of their education there
 15 at another school.
 16 **Q. About how many students do you have who are**
 17 **dually enrolled?**
 18 A. Oh, there's a very small amount. We had a
 19 grant where we were trying to do -- catch up with the
 20 kids learning loss, trying to fight that, and I
 21 believe there was probably about maybe I'm thinking 20
 22 or 30 kids that were attached to the high school, and
 23 we were trying to get them over to another facility to
 24 make use of software there after school, try and get

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1 them caught up with their credits.
 2 **Q. Okay. Do you still have that program?**
 3 A. No. It's over with for the regular school
 4 year.
 5 **Q. If we were still in school, would you still**
 6 **have that program?**
 7 A. If school started tomorrow, I would say I
 8 don't know because I don't know if the funding is
 9 there.
 10 **Q. When school ended -- Did school end May of**
 11 **year?**
 12 A. May 25th, yes, was the last day of regular
 13 education.
 14 **Q. Did you have the dual enrollment program on**
 15 **May 25th, the last day of regular education?**
 16 A. It stopped sometime in May. I can't exactly
 17 remember. It was mid to late May when that program
 18 ended.
 19
 20 (A brief discussion off the record.)
 21
 22 BY MS. SIMONE:
 23 **Q. What is a "catchment area"?**
 24 A. That's the area of the school district that

8 (Pages 29 to 32)

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<p style="text-align: right;">Page 33</p> <p>1 is tied to either an elementary or a middle school, 2 and, of course, the high school has the entire 3 district as its catchment area.</p> <p>4 Q. Does it mean that a child who lives 5 outside — What does it mean for a child who lives out 6 the catchment area; how is that child assigned?</p> <p>7 A. It depends. There are circumstances when 8 you might take a child that's out of the catchment 9 area into another school's area, and generally 10 speaking that child has to be homeless. There's a 11 McKinney-Vento Act that says that if a child becomes 12 homeless at one school and they're forced to stay with 13 another relative or friend or whoever in another 14 catchment area, we are bound to take that child back 15 to the area that they were going to school and that 16 school for their education.</p> <p>17 Q. Are those students assigned as open 18 enrollment program — to the open enrollment program?</p> <p>19 A. Yes, ma'am. Uh-huh.</p> <p>20 Q. Are any other students, besides homeless 21 students, assigned to the open enrollment program?</p> <p>22 A. No. We try not to. It really wears on the 23 system when you do that.</p> <p>24 Q. How so?</p>	<p style="text-align: right;">Page 35</p> <p>1 housing developments there, and if that child stays 2 with a relative in that area, we can't transport 3 because we're not allowed to move Illinois Central 4 buses out of our school district. So, another program 5 has to come in and pick those kids up and take them to 6 school.</p> <p>7 Q. Would that be Cahokia?</p> <p>8 A. The cost is split between the two school 9 districts evenly.</p> <p>10 Q. But the actual transporting is done by 11 Cahokia?</p> <p>12 A. Oh, no. Cahokia normally would give you a 13 gas card if you had a car, or you might have to go 14 with somebody like FMT, Express Medical Transport. 15 There's a couple other vendors out there that will 16 move a child if they are homeless for us or for 17 Cahokia. Usually the home school district is 18 responsible for finding the vendor for transportation 19 for the child.</p> <p>20 Q. But for students who live in the boundaries 21 of East St. Louis --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- but their home school is in a different 24 catchment area --</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Well, it extends the length of the route. 2 You've got kids that are on routes that are in things 3 that are already running, and if I have to reach out 4 to another catchment area to bring a child in, then 5 that child is gonna really increase the length of that 6 route.</p> <p>7 Q. Tell me the mechanics of how you implement 8 an open enrollment student.</p> <p>9 A. An open enrollment student?</p> <p>10 Q. How do you implement the open enrollment 11 program for a student who is homeless?</p> <p>12 A. Well, we tell people that if you live 13 outside of a catchment area and you want to take your 14 child to that school, that's fine, but we're not gonna 15 transport, but if the child is homeless because of 16 that displacement, then we will transport, but not if 17 they are outside of School District 189. Then another 18 program kicks in and transports the child.</p> <p>19 Q. If you're talking about a homeless student 20 who is outside of District 189 boundaries.</p> <p>21 A. Yeah. This happens not too frequently, but 22 it does happen. Let's say the kid winds up living in 23 Cahokia, and it's real easy to because at 50th and 24 Bond, that's where we stop, but there's a set of</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Okay.</p> <p>2 Q. -- what bus will take them to their home 3 school?</p> <p>4 A. We just take a regular route bus, whichever 5 one is running closest to that area where the child 6 lives, and we'll attach them to that route, and the 7 bus has to go outside of that route to pick up that 8 child and then bring them back into that catchment 9 area.</p> <p>10 Q. Is that student transported like at the end 11 of the route to their home school and picked up first 12 or last?</p> <p>13 A. Generally speaking, I like to do it that way 14 because that way it doesn't -- I find it in my opinion 15 it doesn't disrupt the route that badly if you do it 16 that way.</p> <p>17 Q. About how many students have you had in the 18 open enrollment program during school year 2022 and 19 2023?</p> <p>20 A. I've never counted, ma'am, but there's 21 always at least 1 or 2 kids per building we have to do 22 that with.</p> <p>23 Q. Per building and you have 10 buildings. So, 24 at least 20 kids?</p>

9 (Pages 33 to 36)

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1 A. Well, now you have to remember, East St.
 2 Louis Senior High School feeds from the entire
 3 district. So, there's never any kids that are outside
 4 of the catchment area. Gordon Bush Alternative School
 5 is another school that feeds on the entire school
 6 district. So, there's never any kids outside of their
 7 catchment area. But when you start talking about
 8 middle schools, elementary schools, then, yes, you can
 9 be outside of the catchment area. The early childhood
 10 program, if Katie Harper Wright is filled up and you
 11 have to educate that child, you may not -- they're not
 12 considered outside of that area because they're pre-K,
 13 and pre-K pays for their own routes. So, we just move
 14 them when they tell us to move them regardless of
 15 where they are.

16 **Q. Okay. So, if we exclude Gordon Bush and we**
 17 **exclude East St. Louis High School, that leaves 8 --**
 18 **and we exclude Vivian Adams, that leaves 7 schools,**
 19 **about 2 students per school in the open enrollment**
 20 **program?**

21 MR. HOERNER: I'll object. His testimony was 1 to
 22 2.

23 A. Ma'am, that's a guessimate, too. I haven't
 24 really looked at how many open enrollment students we

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1 transport, but I know that there are kids out there
 2 that are open enrollment. I'm guessing one to two.
 3 That's an estimate.

4

5 BY MS. SIMONE:

6 **Q. Are you required to report open enrollment**
 7 **or McKinney-Vento students to ISBE?**

8 A. Yeah. They want to know who -- You know,
 9 the number of homeless kids we have will dictate
 10 funding, and those kids just don't get transportation.
 11 They may get school supplies and school uniforms. So,
 12 we need to report them out if we're gonna keep our
 13 levels of funding current.

14 **Q. So, there's a report somewhere that tells us**
 15 **how many students were enrolled in the open enrollment**
 16 **program?**

17 A. No. There's a report that tells you how
 18 many homeless children that you have. Now, open
 19 enrollment is a report I can pull from Versatrans, but
 20 it's not something that goes to the state. They don't
 21 care about open enrollment kids. What they care about
 22 is whether that child is homeless or not.

23 **Q. And District 189 is limiting the open**
 24 **enrollment program to homeless children; correct?**

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1 A. Yes. There may be other kids in there, too.
 2 There are children who are moved for disciplinary
 3 reasons or their parents have some reason for not
 4 wanting them in the building and administration has
 5 made a decision to allow that child to go to a school
 6 out of area, but I don't get into that conversation.
 7 I don't -- I'm not in that decision. I am told if
 8 that child can be transported out of area.

9 **Q. Okay. Could you have a child, for example,**
 10 **who lives in Gompers, you know, 450 North 6th Street,**
 11 **attached to Katie Harper Wright at 7710 State?**

12 A. Oh, yeah. Yeah. Yes, you can.

13 **Q. By definition -- I just want to be clear.**
 14 **By definition, open enrollment students do not reside**
 15 **in their defined catchment area; right?**

16 A. Right. Uh-huh.

17 **Q. Prior to terminating bus service for the**
 18 **Sister Thea Bowman students, were those students**
 19 **considered open enrollment students?**

20 A. No. Huh-huh.

21 **Q. Why not?**

22 A. Because they feed from the entire city.
 23 That was their catchment area.

24 **Q. Again, looking at or referring to**

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1 **Plaintiff's Exhibit 1, you talk about -- or this**
 2 **document talks about three tiers of bus routes?**

3 A. Uh-huh.

4 **Q. "Yes"?**

5 A. Yes.

6 **Q. What are those tiers?**

7 A. Well, we have high school convening at
 8 7:00 a.m. in the morning -- or not convening, but
 9 that's what time we drop them off, 7:00 a.m. Then you
 10 have the middle school, which we drop those children
 11 off at 7:30, and, finally, you have elementary, which
 12 has their children arriving between 8:15 and 8:30.

13 **Q. And those are the three tiers?**

14 A. Yes.

15 **Q. Is one tier essentially a bus route?**

16 A. I wouldn't call -- This gets nebulous. It
 17 really does. Now, in my mind, a bus route can be made
 18 up of one tier or made up of three tiers. So, it
 19 depends. For example, Illinois Center for Autism, we
 20 take kids there. That is its own bus route. It's a
 21 one-tier route generally because of the amount of time
 22 to gather those children up and then move them to
 23 Fairview Heights. We also have kids going to William
 24 BeDell. The same thing. It may take a half hour to

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1 45 minutes to an hour to gather those kids up across
 2 the city and then another 30 to 45 minutes to get that
 3 bus down to William BeDell. That's a route.
 4 **Q. And those are all the special education**
 5 **routes?**
 6 A. Yes. Those two examples are, yes, ma'am.
 7 **Q. And just for clarification, in the documents**
 8 **that we were provided, the "Z" in a bus route number**
 9 **signifies special education; is that right?**
 10 A. That "Z" designator, that's exactly what
 11 that means.
 12 **Q. Exhibit 1 indicates that bus routes cannot**
 13 **take more than 20 to 25 minutes.**
 14 A. Uh-huh.
 15 **Q. "Yes"?**
 16 A. Yes, ma'am. We try not to let them take
 17 more than that, yes, ma'am.
 18 **Q. And there are bus routes that do take more**
 19 **than 25 minutes; correct?**
 20 A. Oh, yes. Yes.
 21 **Q. What is "one-touch routing"?**
 22 A. Oh. That's the computer operated routing
 23 system.
 24 **Q. Versatrans?**

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1 A. Yes.
 2 **Q. Is that another name for Versatrans, or is**
 3 **--**
 4 A. No.
 5 **Q. -- that a particular operation of**
 6 **Versatrans?**
 7 A. That's a module that's contained within
 8 Versatrans.
 9 **Q. Okay. What is the Versatrans modular for**
 10 **one-touch routing do?**
 11 A. Computerized routing.
 12 **Q. What information does it need in order to be**
 13 **able to use the one-touch routing?**
 14 A. Oh, shoot. Everything about the child's
 15 address, the child's program, the child's pick-up and
 16 drop-off times. It needs the length of time that you
 17 want the routes to run. It needs the length of time
 18 you want that bus to stop and stay at the anchor
 19 points. It needs to know how long that bus is gonna
 20 stay at that stop for pick up, you know, everything
 21 that you want to use to factor in how that route is
 22 going to run that day.
 23 **Q. And after you input all that information,**
 24 **then the one-touch routing takes over?**

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1 A. Oh, yeah.
 2 **Q. You just said that one of the factors of**
 3 **input that you put in for routing information is how**
 4 **long you want a bus to stay at an anchor; did I**
 5 **understand that right?**
 6 A. Yes.
 7 **Q. What does that mean?**
 8 A. Well, you've got a bus that comes in and
 9 pulls up at a school. Now, you don't want that bus
 10 taking off 30 seconds later because you can't get kids
 11 off a bus that fast. So, you program it at a time you
 12 want it to stop and stay, and it's indicative of how
 13 long you think it's gonna take for that bus to unload.
 14 Normally it's around five minutes.
 15 **Q. Okay. Do you put in factors for letting a**
 16 **bus idle at a school between tiers?**
 17 A. That's that five minutes, ma'am.
 18 **Q. I thought the five minutes was to give**
 19 **students time to get off the bus?**
 20 A. Right, and that's how long we want it to
 21 stay at that school.
 22 **Q. Do you build in any idle time for school**
 23 **buses between routes, between tier routes?**
 24 A. I try not to. I don't know. Maybe others

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1 do. Now, ma'am, we want that bus moving kids. We
 2 don't want it sitting somewhere. Now, a lot of kids
 3 don't ride that day. Their buses will idle at school.
 4 It happens.
 5 **Q. Is 44 the maximum number of students a bus**
 6 **can hold?**
 7 A. I believe so. Some of those buses have --
 8 There's generally speaking 22 sets of benches, and
 9 people will say, "Well, if you've got little guys, you
 10 can sit them 3 to a bench, and you can take up to 72
 11 kids." I don't think anybody wants that on a bus. I
 12 try not to route more than 44 kids to a route. You
 13 can do it at high school, but that's because generally
 14 speaking high school kids don't like riding the yellow
 15 buses.
 16 **Q. So, do you mean that for high school kids**
 17 **you can assign more to the bus because a lot won't**
 18 **ride it?**
 19 A. You try and do something like maybe in some
 20 cases 51. There are some routes that will run at
 21 capacity at the high school, but not all of them will.
 22 But we can schedule -- I think I saw a route this
 23 morning that had 51 kids attached to it. Now, if we
 24 find out that that bus is running packed and has to

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1 reject children, then we'll have to split that route.
 2 **Q. What is the capacity of a bus?**
 3 A. I say 44. Others will say 72.
 4 **Q. Okay. Did you implement COVID procedures**
 5 **for the buses --**
 6 A. Yes, ma'am.
 7 **Q. -- during the COVID pandemic?**
 8 A. Uh-huh.
 9 **Q. What were those procedures?**
 10 A. Initially when COVID was out and we were
 11 picking up kids for school, before the child got on
 12 the bus -- And all the stops were door to door, which
 13 is a heck of a lot harder to do than it is come
 14 stops. Kids were getting their temperatures taken.
 15 Anybody who was outside of the accepted range, anybody
 16 above 99 was not allowed on the bus. It didn't happen
 17 a lot, but it did happen.
 18 **Q. Did you have limits on passengers in the**
 19 **seats?**
 20 A. No. No. There was no limit on passengers
 21 on the seats, but so few kids came back to school that
 22 we never had to worry about overcrowding a bus.
 23 Parents didn't want their kids on buses.
 24 **Q. Is that still true -- Was that still true**

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1 **step through a route creation.**
 2 A. Oh, okay. All right. So, now what we do
 3 is, for example, with this school year we're prepping
 4 for that right now, and, generally speaking, anybody
 5 who was a rider last year, if they haven't graduated
 6 or moved out, will be a rider -- be considered a rider
 7 for this school year. Now, since they haven't changed
 8 their status, they're still riders. What's gonna
 9 happen is all of those kids will be considered in that
 10 pool of kids that we're gonna route for that building.
 11 Now, we then do one-touch routing. The parameters are
 12 pretty much as what we did the year before. We try
 13 and keep routes 20 to 25 minutes, and we let the
 14 computer do the work, and we do outbound routes first
 15 because outbound routes are crucial because if the
 16 high school route runs too long -- that's the first
 17 tier -- that means everything after it is gonna run
 18 late. So, we try and make sure the outbound routes
 19 obey that rule of 20 to 25 minutes because we then can
 20 get kids dropped off, wherever the last stop is, gives
 21 us about 5 or 10 minutes to get to the next school --
 22 pardon me -- to pick up those schools and then get
 23 their route started.
 24 Now, we go through each route by school. The high

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1 **for school year 2022 to 2023?**
 2 A. No, ma'am. No. COVID protocols pretty much
 3 were relaxed by that time. In fact, I think we were
 4 more overprotective of our kids than other districts
 5 were. But '22, '23 I think everybody wanted to put
 6 COVID behind them.
 7 **Q. Has the school bus ridership gone back to**
 8 **normal levels for school year 2022 to 2023?**
 9 A. I believe so. I believe so. We've got
 10 about 3,500, 3,600 kids routed.
 11 **Q. Is 3,600 students the student population for**
 12 **all of District 189?**
 13 A. No. No, ma'am. I believe we're somewhere
 14 around a little bit over 4,700 kids right now.
 15 **Q. Are only 3,600 routed?**
 16 A. Approximately. I'd have to -- Yeah, I'd say
 17 that's a pretty good number.
 18 **Q. What about the other 1,100?**
 19 A. Mom and dad brings them or they're within
 20 walking distance.
 21 **Q. I'm showing you what's been marked**
 22 **Plaintiff's Exhibit 2.**
 23 A. Okay.
 24 **Q. And I want to ask you to walk us step by**

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1 school dictates everything because they're the first
 2 route that brings kids in the morning. They're also
 3 the first route that takes kids home in the evening.
 4 So, we have to make sure that those routes obey that
 5 limit. Then middle school pretty much the same way,
 6 and middle school in my mind gets even touchier
 7 because if you don't get to the middle schools on
 8 time, then that will push the routes a little bit
 9 later for the elementary kids that are trying to get
 10 home. So, those first two routes in the afternoon are
 11 the ones that really have to obey that rule.
 12 Now, you can let an elementary route run a little
 13 long because there's no other routes after it. Now,
 14 if you have a lot of high school activity or middle
 15 school activity after school, you may then become
 16 mindful of how long you're gonna let those routes run.
 17 **Q. On page 3 I believe of Exhibit 2, there are**
 18 **a number of flowcharts on page 3 and 4.**
 19 A. Okay.
 20 **Q. When you are entering information into**
 21 **Versatrans, do you have to choose one of these flows,**
 22 **or do you input for all of these flows?**
 23 A. Well, Versatrans, there's nothing done by
 24 hand, ma'am. It's an automated update. We dump data

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1 from the database into Versatrans.
 2 **Q. So, Versatrans goes through these flowcharts**
 3 **through the one-touch; right?**
 4 A. Well, not just the one-touch, ma'am. Now,
 5 when that data is put in, Versatrans is also making
 6 decisions about that data at that time. Like, for
 7 example -- let's see -- North 39th Street. Now, if
 8 someone doesn't get that address right, Versatrans
 9 will kick it out because it doesn't come in like
 10 what's been programmed into Versatrans. North, N
 11 space 39, then you have the --
 12 **Q. T-H.**
 13 A. -- suffix there T-H, then you've also got
 14 space street type. So, if somebody just say North
 15 39th, that kid is not gonna be routed.
 16 **Q. Okay. But Versatrans will run a report for**
 17 **those kinds of errors for you?**
 18 A. Yes, it will. Yeah, it will. But normally
 19 we don't pay too much attention to it because you'll
 20 find out sooner than later if that address is right.
 21 **Q. Can you put two schools on one route?**
 22 A. Yeah. Routes can be three tiered. You can
 23 put three schools on one route.
 24 **Q. I mean in a separate tier. Can you put more**

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1 **than one school along that route?**
 2 A. Well, it sounds like you're saying that in
 3 that 30-minute period, which we consider a tier, are
 4 there two schools that will be there? And the answer
 5 is, no, you don't do that.
 6 **Q. But you do that for open enrollment**
 7 **students; correct?**
 8 A. No. No. That's not two schools. That's
 9 one child that doesn't live in the school's area going
 10 to a school that's not in that child's catchment area
 11 based on where they reside.
 12 **Q. So, that open enrollment child is not -- For**
 13 **instance, they are living now in Dunbar catchment**
 14 **area, but they want to go to Katie Harper Wright**
 15 **School.**
 16 A. Okay.
 17 **Q. Would they ride the route that takes**
 18 **students to Dunbar and one be dropped off at --**
 19 A. No.
 20 **Q. -- Katie Harper Wright?**
 21 A. No.
 22 **Q. So, how is that student getting to Katie**
 23 **Harper Wright?**
 24 A. They get on Katie Harper Wright ride bus

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1 that's coming way out of area to take that child to
 2 Katie Harper Wright.
 3 **Q. Okay. And then it resumes its regular route**
 4 **for the Katie Harper Wright catchment area?**
 5 A. That is part of the Katie Harper Wright
 6 route, ma'am. There's no getting around it.
 7 **Q. Okay. Is it possible, though, for that**
 8 **Katie Harper Wright bus route to stop at Dunbar as a**
 9 **drop-off or pick-up point and then with the anchor**
 10 **being Katie Harper Wright?**
 11 A. Yes, you can do that, but when you do that,
 12 there's a consequence.
 13 **Q. What is the consequence?**
 14 A. The bus company charges you more money
 15 because you just turned that bus route into a shuttle.
 16 **Q. Into a what?**
 17 A. Into a shuttle. You have it moving between
 18 schools.
 19 **Q. And what is the extra charge for the bus**
 20 **being a shuttle?**
 21 A. It's over a hundred dollars, ma'am.
 22 **Q. Does District 189 ever use the Illinois**
 23 **Central buses as a shuttle?**
 24 A. No.

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1 **Q. Is that part of the contract, that shuttle**
 2 **provision?**
 3 A. They will do whatever you tell them to do,
 4 but there's a charge associated with it. Yeah, there
 5 is a provision there, but, you know, ma'am, it's like
 6 everything else. You pay for that.
 7 **Q. Is the procedure for establishing bus routes**
 8 **that you've described the same procedure that was used**
 9 **for '21 to '22 school year?**
 10 A. When we came back in school year '21, in
 11 that last part of the school year for COVID, I tried
 12 the route myself. And I mean, I had the bus company
 13 so mad. I don't think they ever wanted to see me
 14 again, but now I learned from that. And we had -- In
 15 '21-'22, we brought in Versatrans, and we had them
 16 design the routes for school initially.
 17 **Q. So, District 189 did not start using**
 18 **Versatrans until '21-'22?**
 19 A. No, ma'am, I didn't say that. I said we
 20 used Versatrans personnel to design our routes.
 21 **Q. Okay. I see. But you tried to design them?**
 22 A. In school year '21.
 23 **Q. And it did not work out?**
 24 A. No. They weren't happy with me at all.

<p style="text-align: right;">Page 53</p> <p>1 Q. And you brought in Versatrans personnel to 2 work out the routes for '21-'22? 3 A. I believe it was '21-'22. Let's see. This 4 is '22-'23. No. I designed them in '21-'22. I did 5 them for '23, and -- What happened was we used the 6 Versatrans routes, the ones that were designed within 7 the first half of the school year. Then working with 8 Illinois Central to make the routes work, we 9 redesigned it midyear. 10 Q. Midyear '21 to '22? 11 A. I believe so. I believe that was what we 12 did. 13 Q. And prior to '21-'22, Versatrans had been 14 designing the route -- 15 A. Well, no. 16 Q. -- to your knowledge? 17 A. Some people like routing. I don't. There's 18 too many decisions that have to be made. But if you 19 have all your parameters set up and in the database, 20 it will make good decisions for you, and if they 21 don't, the bus company will let you know that, "This 22 isn't gonna work," and then you go in and make the 23 adjustment manually. 24 Q. For school year '22 to '23, the year that</p>	<p style="text-align: right;">Page 55</p> <p>1 three. But what was crucial, ma'am, was, after 2 Ms. Cooper left, the support I got from Versatrans 3 trumped Transfinder, and they spelled their own doom. 4 Q. So, you never transitioned to Transfinder it 5 sounds like? 6 A. No. No. Never. 7 Q. Are routes ever adjusted manually after the 8 system has published them? 9 A. Oh yeah. You've got to. 10 Q. And who is responsible for manually 11 adjusting the routes? 12 A. Myself and Ms. Epps. 13 Q. Give me some examples of how you manually 14 adjust a bus route. 15 A. Okay. Attorney Hoemer comes into the area. 16 He's now a new student at Paul Laurence Dunbar, and 17 his mom wants transportation. All right? I've got to 18 put Garrett Hoemer on the route. 19 Q. And that's a manual adjustment? 20 A. Yeah. 21 Q. Is adding and subtracting students to the 22 route the only manual adjustments you make? 23 A. Pretty much, yes. Are routes ever redone? 24 Of course, they are. They have to be. Our early</p>
<p style="text-align: right;">Page 54</p> <p>1 just ended -- 2 A. Uh-huh. 3 Q. Who made -- 4 A. I did. 5 Q. Let me finish my question -- who made the 6 routes for school year '22 to '23? 7 A. I did. 8 Q. Did you do that without the Versatrans 9 personnel? 10 A. Yes. Yes, I did. 11 Q. Is that the same procedure that will be used 12 for school year '23-'24? 13 A. Well, my relief has a hand in it, but me and 14 Ms. Epps have started the process. 15 Q. Did District 189 have a plan to transition 16 from Versatrans to Transfinder? 17 A. There was one in place, yes, and the person 18 that pushed the transition was also the same young 19 lady who I had to relieve, Ms. Norquise Cooper. She 20 liked Transfinder, and that was her software of 21 choice, but when I looked around, there's some other 22 software. I don't know. I forget the name of it. 23 But they were number one. Versatrans in people's 24 opinion was number two. Transfinder came in at number</p>	<p style="text-align: right;">Page 56</p> <p>1 childhood program is the biggest example of it. We 2 normally start servicing kids when they reach the age 3 of three, and kids will turn three years old at any 4 point during the school year, and as those numbers 5 increase, at Vivian Adams, requests for transportation 6 go up, too. We may start the year with 7, 8 routes to 7 Vivian Adams, but by the end of year, you're probably 8 at 10 or 11 routes. 9 Q. Because of the addition of students? 10 A. Yes. Yes. 11 Q. Do you know -- To your knowledge, how many 12 buses pick up and drop off at the Gompers Homes' area 13 between -- the address is 450 North 6th -- between 14 6th, 7th, 8th and between Summit and Ohio? 15 A. You generally speaking have at least one bus 16 per school that will pick up and drop off at the 17 Gompers. You've got the Vivian Adams' kids that are 18 there. They're the three- to four-year old crowd, but 19 you can't run too many of them on a bus because of 20 what you have to do to get them on the bus and get 21 them secured to a seat, and then you may have a 22 special needs' route from let's say Wyvetter Younge, 23 Lincoln Middle that goes there, because when you're 24 transports SpEd, you just transport SpEd. So, there</p>

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1 may be one general ed bus from Lincoln picking up
 2 Gompers' kids, and then you might have a SpEd bus from
 3 Lincoln picking up Gompers' kid, and then you would
 4 say the same for Wyvetter Younge kids. Well, we've
 5 had two buses from Wyvetter Younge picking up Gompers'
 6 children.

7 **Q. And then how many high school buses pick up**
 8 **Gompers' children?**

9 A. It's only one I think off the top of my
 10 head. We were looking at the map today. I believe
 11 there's -- Right now we don't have any new kids yet
 12 because we don't know if any other kids are gonna move
 13 into the Gompers. I think we've got about 30 kids
 14 from the Gompers going to the high school.

15 **Q. Okay. So, it sounds like you have about 6**
 16 **different buses picking up children at Gompers?**

17 A. Oh, yeah, because they're part of that many
 18 school's catchment area. You've Vivian Adams,
 19 Lincoln, Wyvetter Younge, and they you've got special
 20 needs' buses that may carrying program children from
 21 the Gompers to schools with certain programs. I think
 22 some of the lower functioning kids may go to Wyvetter
 23 Younge. Your BDEd kids may go out to Katie Harper
 24 Wright. You may have some cross cats that go to

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1 Wyvetter Younge.

2 **Q. Where is Vivian Adams?**

3 A. They call it Katherine Dunham Place, but
 4 it's the old 10th Street.

5 **Q. Okay. To your knowledge, how many buses**
 6 **pick up and drop off at the Orr-Weathers' homes?**

7 A. The same situation. You may have one bus
 8 going there for East Side. That's another Lincoln
 9 Middle School catchment area. And then you've got the
 10 Dunbar kids, but now Dunbar probably has two buses
 11 that go to the Orr-Weathers normally speaking. We try
 12 not to do it, but it happens.

13 **Q. Why do you try not to do it?**

14 A. Well, let's say you're on the first
 15 Orr-Weathers' bus and you're on the second
 16 Orr-Weathers' bus. Well, nobody gets up for the first
 17 Orr-Weathers' bus. They put them all on the second
 18 Orr-Weathers' bus, and now all of a sudden you've got
 19 a bus that's running over its maximum.

20 **Q. Okay. Were any Sister Thea Bowman students**
 21 **put into the Versatrans system for the 2021 to 2022**
 22 **school year?**

23 A. Whenever we routed Sister Thea Bowman kids,
 24 they were in Versatrans, yes. There was no automatic

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1 upload. They were manually done.

2 **Q. Were any Sister Thea Bowman students**
 3 **inputted into the Versatrans for the school year 2022**
 4 **to 2023?**

5 A. 2022 to 2023? They were already in there if
 6 they were former riders. They become part of a
 7 student file, and that file isn't deleted at the end
 8 of the year. It's used to help propagate the data for
 9 the upcoming school year.

10 **Q. Were routes created for the 2022 to 2023**
 11 **school year --**

12 A. No.

13 **Q. -- for Sister Thea Bowman?**

14 A. No. I'm sorry.

15 **Q. So, no routes were even created for 2022 to**
 16 **2023 --**

17 A. No, ma'am.

18 **Q. -- for Sister Thea Bowman?**

19 A. No, ma'am.

20 **Q. Is Sister Thea Bowman the anchor point in**
 21 **Versatrans for the 2021 to 2022 school year?**

22 A. You can't take a school out of Versatrans
 23 once it's in there. So, it is an anchor point in the
 24 system still. Yes, it is.

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1 **Q. Who made the decision not to create any**
 2 **routes for Sister Thea Bowman students for the school**
 3 **year 2022 to 2023?**

4 A. Mr. Culver.

5 **Q. And who is Mr. Culver?**

6 A. He's our Superintendent of the schools.

7 **Q. And that is Arthur Culver?**

8 A. Arthur Ray Culver, yes, ma'am.

9 **Q. When did he make the decision not to**
 10 **create routes for Sister Thea Bowman students for**
 11 **school year 2022 to 2023?**

12 A. Early in the Summer of 2022.

13 **Q. Do you know why he made that decision?**

14 A. Ma'am, we were short on drivers, and we were
 15 doing anything to try to make those buses run on time.
 16 The bus company at the time I think for the grand
 17 majority of school year '22-'23, they were doing good,
 18 turnover considered, to have enough buses and bus
 19 drivers -- well, buses were never a consideration, but
 20 enough bus drivers just to get all of our regular
 21 routes covered.

22 **Q. You said that Mr. Culver -- Is it Mr. or Dr.**
 23 **Culver?**

24 A. Mr. Arthur Ray Culver.

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1 **Q. You said Mr. Culver made the decision in**
 2 **early Summer 2022 not to route --**
 3 **A. Yes.**
 4 **Q. -- the Sister Thea Bowman students?**
 5 **A. Yes, ma'am. Uh-huh.**
 6 **Q. Do you remember, was it before or after**
 7 **July 1st, 2022?**
 8 **A. I believe it was before.**
 9 **Q. Were you part of the recommendation for**
 10 **whether or not to route Sister Thea Bowman students --**
 11 **A. No, ma'am.**
 12 **Q. -- for the school year 2022?**
 13 **A. No, ma'am, I wasn't.**
 14 **Q. Were you just told that you weren't to route**
 15 **Sister Thea Bowman students by Culver?**
 16 **A. Yes, ma'am.**
 17 **Q. Do you know how he -- I understand I'm**
 18 **asking you what someone else did. To your knowledge**
 19 **or to the best of your knowledge, how did he make the**
 20 **decision not to route Sister Thea Bowman students?**
 21 **A. Ma'am, I wasn't part of that decision. I**
 22 **didn't question that decision. When superior tells**
 23 **you what to do, you just do it with a smile on your**
 24 **face.**

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1 **Q. Do you know who else was involved in that**
 2 **decision?**
 3 **A. No, ma'am. No idea.**
 4 **Q. You said that decision was made prior to**
 5 **July 1st, 2022 to the best of your knowledge?**
 6 **A. Yes, ma'am. Uh-huh.**
 7 **Q. If I understand your testimony, that**
 8 **decision to stop bus service for Sister Thea Bowman**
 9 **had to do with a shortage of bus drivers?**
 10 **A. Now, ma'am, you're asking me to think for**
 11 **Mr. Culver. I don't know how that decision was made.**
 12 **I don't know what it was based on. I can tell you**
 13 **what I thought would be the reason why those routes**
 14 **were cut out, but they would be strictly mine. I**
 15 **cannot speak for the school district or Mr. Culver.**
 16 **Q. You were the main point of contact for**
 17 **Illinois Central and still are the main point of**
 18 **contact for Illinois Central?**
 19 **A. Yes, ma'am.**
 20 **Q. At any time in June or -- In June, 2022, did**
 21 **you have a conversation with Illinois Central about a**
 22 **driver shortage?**
 23 **A. Oh, ma'am, that's been an ongoing**
 24 **conversation ever since I took over that position back**

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1 in '21.
 2 **Q. In June of 2022, prior to the decision to**
 3 **stop bus service for Sister Thea Bowman students --**
 4 **A. Uh-huh.**
 5 **Q. -- did you have a conversation with anyone**
 6 **at Illinois Central about driver shortage that would**
 7 **result in the stoppage of Sister Thea Bowman**
 8 **transportation?**
 9 **A. Ma'am, you know, it was never in reference**
 10 **to stopping routes for Sister Thea Bowman. It's**
 11 **always, "How many routes are we going to have, and how**
 12 **many drivers are we going to need?" So, it wasn't**
 13 **like, you know, "Do we have enough? Let's consider**
 14 **Sister Thea Bowman." It was never that way. It's**
 15 **always, "How many routes do you have? How many**
 16 **drivers do you have?"**
 17 **Q. Why did you have the impression that the**
 18 **reason Sister Thea Bowman students were -- their bus**
 19 **transportation was stopped based on the shortage of**
 20 **bus drivers; why did you have that understanding?**
 21 **A. Because we never had enough drivers.**
 22 **Q. Did anyone tell you it was because of a**
 23 **shortage of drivers?**
 24 **A. No. No. It's purely conjecture on my part.**

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1 **Q. Did you have any conversations with anyone**
 2 **at Illinois Central about a bus driver shortage with**
 3 **regard to Sister Thea Bowman?**
 4 **A. No. The conversations were always, like I**
 5 **said, ma'am, "How many routes do we have? How many**
 6 **bus drivers do we have?"**
 7 **Q. And in June of 2022, Illinois Central knew**
 8 **how many bus drivers they would have for the school**
 9 **year that would begin in August of 2022?**
 10 **A. Oh, now, ma'am, that's -- I don't know.**
 11 **There are always people in the training pipeline --**
 12 **always. How many of them make it to the end, you**
 13 **don't know, and then once they make it to the end of**
 14 **the training pipeline, they don't necessarily have to**
 15 **remain bus drivers. They may take their credentials,**
 16 **and go over the road with them with -- not with buses,**
 17 **but with tractor trailer trucks.**
 18 **Q. Did you speak personally with Mr. Culver**
 19 **about the decision to stop bus transportation for**
 20 **Sister Thea Bowman?**
 21 **A. There was never any debate or asking me, "Is**
 22 **this feasible?" I was told that, "We're not gonna**
 23 **route for Sister Thea Bowman."**
 24 **Q. And who told you that?**

<p style="text-align: right;">Page 65</p> <p>1 A. Mr. Culver.</p> <p>2 Q. Did he give you a reason why?</p> <p>3 A. No. I didn't ask, ma'am.</p> <p>4 Q. I'm gonna go back a little bit.</p> <p>5</p> <p>6 (Plaintiff's Exhibits No. 3, and No. 4 are marked</p> <p>7 for identification.)</p> <p>8</p> <p>9 BY MS. SIMONE:</p> <p>10 Q. Dr. Tourijigian, I'm showing you what's been</p> <p>11 marked Plaintiff's Exhibit 3. Do you know what that</p> <p>12 is?</p> <p>13 A. Yes, ma'am. It looks like the proposal that</p> <p>14 went out a couple of years -- Let's see. I think</p> <p>15 we're in year three of our contract with Illinois</p> <p>16 Central, and then they have a clause in there that</p> <p>17 gives them the right to rebid the job, and this looks</p> <p>18 like, you know, what I gave Attorney Hoerner. That</p> <p>19 was part of that rebidding process.</p> <p>20 Q. This is a request for proposal number 1293;</p> <p>21 correct?</p> <p>22 A. Yes, that's what it says.</p> <p>23 Q. And this is for student transportation for</p> <p>24 school year beginning 2021 and then ending in school</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. So, that's different than the one -- than</p> <p>2 Exhibit 3 that you provided to us; correct?</p> <p>3 A. Yeah, just from the front page, it looks</p> <p>4 like these are different documents, yes, ma'am.</p> <p>5 Q. The request for proposal is a three-year</p> <p>6 contract for bus transportation; correct?</p> <p>7 A. That's what this says, yes, ma'am.</p> <p>8 Q. And do you understand there to be an option</p> <p>9 for two additional years?</p> <p>10 A. I'm not that well familiar with it, ma'am.</p> <p>11 I wasn't -- You know, I was given it, you know, just</p> <p>12 as a courtesy. I wasn't part of the bidding process.</p> <p>13 I was there strictly for reference purposes.</p> <p>14 Q. Do you know if District 189 intends to</p> <p>15 extend the contract for an additional two years at</p> <p>16 this point in time?</p> <p>17 A. Oh, ma'am, I'm not privy.</p> <p>18 Q. Who would make that decision?</p> <p>19 A. Well, I guess it would initiate finance.</p> <p>20 Q. Is that Mr. Tamer?</p> <p>21 A. No, no, no. Mr. Tamer works in the</p> <p>22 purchasing department, and he's responsible for the</p> <p>23 bidding process, you know, getting the materials</p> <p>24 together, and Ms. Jason would be part of that</p>
<p style="text-align: right;">Page 66</p> <p>1 year 2024?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. With the proposal opening date of</p> <p>4 December 14th of 2020?</p> <p>5 A. That's what it says, yes, ma'am.</p> <p>6 Q. Where did you get this proposal from?</p> <p>7 A. It was given to me.</p> <p>8 Q. Who gave this to you?</p> <p>9 A. Yulrie Tamer gave me the material.</p> <p>10 Q. Is that the person responsible for requests</p> <p>11 for proposals?</p> <p>12 A. He was the one responsible for the bidding</p> <p>13 process, yes.</p> <p>14 Q. Now I am showing you what's been marked as</p> <p>15 Exhibit 4. This is a request for proposal that we got</p> <p>16 from Illinois Central. Have you seen this request for</p> <p>17 proposal before?</p> <p>18 A. Ma'am, all I've seen are the ones that I've</p> <p>19 given Attorney Hoerner. Now, I may not have seen</p> <p>20 this. I don't know.</p> <p>21 Q. This has a proposal opening date of</p> <p>22 February 29, 2021?</p> <p>23 A. That sounds like the time things were being</p> <p>24 rebid, ma'am.</p>	<p style="text-align: right;">Page 68</p> <p>1 decision, along with Mr. Culver and the other cabinet</p> <p>2 members, and, of course, the board members have final</p> <p>3 authority on whether to approve whatever proposal has</p> <p>4 been submitted.</p> <p>5 Q. If you turn to page 33 of Exhibit 4.</p> <p>6 A. Is that this document right here, ma'am?</p> <p>7 Q. That's correct.</p> <p>8 A. Okay. 33. All right. I'm there.</p> <p>9 Q. Under the request for proposal, how many</p> <p>10 buses was the bidding contractor supposed to provide</p> <p>11 for District 189 students?</p> <p>12 A. Somewhere in the mid 70's. They were</p> <p>13 supposed to run 76, 77 routes.</p> <p>14 Q. Okay. Did the 40 routes on page 33 of</p> <p>15 Exhibit 4 for a.m./p.m. regular one to three tier</p> <p>16 routes include Sister Thea Bowman students?</p> <p>17 A. Where do you see 33?</p> <p>18 Q. I'm sorry. On page 33 --</p> <p>19 A. I'm on page 33.</p> <p>20 Q. -- of Plaintiff's Exhibit 4.</p> <p>21 A. This is Plaintiff's Exhibit 4. Okay. Got</p> <p>22 you.</p> <p>23 Q. The chart indicates 40 buses to be provided</p> <p>24 for the a.m./p.m. regular routes; do you see that?</p>

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1 A. Point it out to me.
 2 (Ms. Simone pointing.)
 3 A. Oh, okay. That's what that is. Ma'am, I
 4 paid attention to this in the past, and I look at
 5 this, and they've never been able to provide us with
 6 that many routes.
 7 **Q. Do you know whether or not when this request**
 8 **for proposal went out if those 40 routes included**
 9 **routes for Sister Thea Bowman students?**
 10 A. I'm not for sure, ma'am. All I know is
 11 we -- they said they would be able to provide that
 12 number of routes, and, ma'am, I can tell you now that
 13 they've never been able to do that. When we had the
 14 routes designed by Versatrans, Versatrans came back
 15 with 77 routes. This is not my doing. This is
 16 Versatrans, and the woman that was used to create
 17 those routes had been -- at least I was told, that she
 18 had plenty of experience with routing, and when those
 19 70-some-odd routes came back, Versatrans -- that's
 20 what Versatrans said should be ran with, but when I
 21 took them out to Illinois Central, she looked at it,
 22 and she goes --
 23 **Q. Who is "she"?**
 24 A. Ms. Welch.

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1 **Q. Okay.**
 2 A. -- said, "That needs to be cut down by ten
 3 routes," and then after I took the axe to that, then
 4 they had to be cut again.
 5 **Q. How many routes to your knowledge did**
 6 **District 189 have with Illinois Central -- regular**
 7 **routes, not special education routes, including Sister**
 8 **Thea Bowman in school year '21 to '22?**
 9 A. I can't tell you about '21 to '22. I'd have
 10 to look it up, ma'am. But in this past year, it's
 11 about the same as we did the year before. I'd say
 12 maybe we're in the mid 30's gen ed.
 13 **Q. 30 gen ed buses. So, that --**
 14 A. Mid 30's.
 15 **Q. Mid 30's buses for school year 2022 to 2023,**
 16 **excluding special education buses?**
 17 A. Yes, ma'am.
 18 **Q. If you would please turn to page 31 of**
 19 **Exhibit 4.**
 20 A. Got you.
 21 **Q. The request for proposal, Exhibit 4,**
 22 **indicates that the contractor, Illinois Central, would**
 23 **be penalized \$100 a day per route for failure to**
 24 **provide properly licensed bus drivers.**

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1 A. Uh-huh.
 2 **Q. "Yes"?**
 3 A. Yes.
 4 **Q. To your knowledge, do you know if District**
 5 **189 has ever imposed that penalty on Illinois Central?**
 6 A. I don't think -- I don't know. I don't
 7 know.
 8 **Q. Okay.**
 9 A. But only a fool would put somebody behind a
 10 wheel of a bus that isn't properly licensed and
 11 certified, especially as litigious as people are now.
 12 **Q. On page 30 of Plaintiff's Exhibit 4, the**
 13 **request for proposal, the very first sentence under**
 14 **"Routes and Schools" says, "The contractor shall be**
 15 **responsible for establishing bus routes." To your**
 16 **knowledge, has Illinois Central ever been responsible**
 17 **for establishing the bus routes?**
 18 A. I don't think so. They wanted that.
 19 **Q. They wanted it?**
 20 A. Yeah.
 21 **Q. Illinois Central wanted to be able to**
 22 **establish the bus routes?**
 23 A. Uh-huh.
 24 **Q. And District 189 said, "No"?**

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1 A. Right.
 2 **Q. Why?**
 3 A. Our kids. We want to be the ones
 4 responsible for saying when the kids will be picked
 5 up, when they'll be dropped off and how many routes
 6 you're gonna have. We want to make sure the length of
 7 the route isn't too long, you know. We wanted to be
 8 able to make that statement.
 9 **Q. But Exhibit 4 is East St. Louis District**
 10 **189's request for proposal; correct?**
 11 A. Uh-huh.
 12 **Q. "Yes"?**
 13 A. I believe so, yes, ma'am.
 14 **Q. And on page 30 of Plaintiff's Exhibit 4, the**
 15 **East St. Louis District 189 request for proposal**
 16 **indicates that regular bus routes should be no more**
 17 **than 60 minutes; is that correct? If you look at the**
 18 **fourth paragraph.**
 19 A. That's what it says.
 20 **Q. So, though your preference is to limit bus**
 21 **routes to 25 minutes --**
 22 A. Uh-huh.
 23 **Q. -- the proposal --**
 24 A. Yes, ma'am.

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1 **Q. -- actually allows up to 60 minutes;**
 2 **correct?**
 3 A. Yes, ma'am, that's what it says.
 4
 5 (Plaintiff's Exhibits No. 5 and No. 6 are marked
 6 for identification.)
 7
 8 BY MS. SIMONE:
 9 **Q. All right. I'm showing you what's been**
 10 **marked Plaintiff's Exhibit 5 --**
 11 A. Okay.
 12 **Q. -- which is the actual proposal submitted by**
 13 **Illinois Central in response to request for proposal**
 14 **1239. Have you ever seen Exhibit 5 before?**
 15 A. I probably have.
 16 **Q. I'm wondering -- We also got Exhibit 5 from**
 17 **Illinois Central.**
 18 A. Okay.
 19 **Q. So, I'm again wondering why District 189 did**
 20 **not produce this to us.**
 21 A. Ma'am, I don't know.
 22 **Q. Exhibit 5, at page 13, it's marked --**
 23 A. Ma'am, I don't see page numbers on here.
 24 **Q. Is it your understanding that the request**

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1 A. Yeah, I don't know, ma'am. I know normally
 2 feedback is our best indicator of whether they have
 3 the ability to run the routes.
 4 **Q. Feedback from whom?**
 5 A. The only people that are important, the
 6 parents.
 7 **Q. And what kind of feedback did you get from**
 8 **the parents at the beginning of school year 2022 to**
 9 **2023?**
 10 A. Oh, ma'am, it varies by degree. Some of
 11 them are hostile, some of them are a little more
 12 professional with it, but you'll get it. The first
 13 two weeks of school I don't think anybody who hasn't
 14 been routed is happy, and they're mad about the length
 15 of time that it takes to get them there, but normally
 16 I'd say by that first week in September, things have
 17 died down. We've got all the kids taken care of.
 18 **Q. Who else at Illinois Central, besides Keisha**
 19 **Welch do you work with?**
 20 A. Well, there's always two dispatchers that
 21 they have now.
 22 **Q. And who are those dispatchers?**
 23 A. A young lady named Nigeria Canada (phonetic)
 24 and Lena Payne (phonetic). We also work with a safety

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1 **for proposal by District 189 required that any**
 2 **contractor provide documentation of their ability to**
 3 **recruit and retain qualified drivers?**
 4 A. I don't know.
 5 **Q. You don't know. Have you ever had the**
 6 **opportunity to consult with Illinois Central about**
 7 **their recruitment and retention of qualified drivers?**
 8 A. There's been a couple very light
 9 conversations around it. I know when we had pandemic
 10 protocols in place, I know there were retention
 11 bonuses that were offered one year, and, like I said,
 12 I don't think anybody would not put -- would put
 13 someone behind the wheel of a bus that wasn't
 14 qualified.
 15 **Q. Who at District 189 would be in charge of**
 16 **making sure that the qualifications that were provided**
 17 **for in the request for proposal and in the proposal**
 18 **actually submitted by Illinois Central were complied**
 19 **with?**
 20 A. I don't know.
 21 **Q. To your knowledge, did District 189 make any**
 22 **investigation to determine the ability of Illinois**
 23 **Central to fulfill the proposed requirements? If you**
 24 **don't know, that's an adequate answer.**

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1 person there, Vincent Brown, and we've just got
 2 another person in, Christy -- I forget her last --
 3 Sousa. Yeah, that's right. She's actually a relative
 4 of Sousa the band director. But we work with her,
 5 too.
 6 **Q. Did District 189 lose 712 students when the**
 7 **Alorton, Centreville and Cahokia merged?**
 8 A. No.
 9 **Q. Did you anticipate losing 712 students?**
 10 A. Oh, ma'am, it's always projected. You have
 11 to know if something is going to occur and then what
 12 effects it's going to have.
 13 **Q. Was the student population of District 189**
 14 **affected at all by the merger?**
 15 A. No, ma'am, I don't believe so, because
 16 regardless of whether they merged or not, they were
 17 still part of School District 189.
 18 **Q. Showing you what's been marked Plaintiff's**
 19 **Exhibit 6, an Agreement to Provide Pupil**
 20 **Transportation Services signed -- or entered into**
 21 **March 16th, 2021 between District 189 and Illinois**
 22 **Central. Have you ever seen this document before?**
 23 A. I believe I have. Wait a minute. Is this
 24 the original one from when Lonzo signed it?

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1 **Q. If you look on page 5 of Exhibit 6 --**
 2 A. I see that, ma'am.
 3 **Q. -- do you recognize those signatures?**
 4 A. I recognize the names, but is this the
 5 original agreement, or is this the extension?
 6 **Q. This is the agreement that was produced to**
 7 **us by Illinois Central because District 189 did not**
 8 **produce such an agreement.**
 9 A. Okay. This is 2021. Yes, then I have seen
 10 this before. This looks like the renegotiated
 11 agreement.
 12 **Q. Was this renegotiated after the request for**
 13 **proposal 1293?**
 14 A. 1293? I don't know. Now, this is what I
 15 know: Right when I took on transportation, Illinois
 16 Central was in the third year of its contract and,
 17 from what I understand, by right had the ability to
 18 relet for a proposal for services for the remaining
 19 years of the contract. That's when I got involved,
 20 and I believe this is the fruit of that renegotiation.
 21 **Q. Do you know if there is an extension or a**
 22 **modified agreement --**
 23 A. I don't know.
 24 **Q. -- thereafter, after Exhibit 6 was entered**

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1 into?
 2 A. Ma'am, I don't know what you guys call it.
 3 All I know is, in the third year, they had the right
 4 to renegotiate and relet the bid, and other companies
 5 did come in and submit proposals, and I know that at
 6 the end Illinois Central was judged to be the lowest
 7 responsible bidder.
 8 **Q. Do you know if there were other bidders?**
 9 A. Oh, yeah. Yeah. I think -- I know First
 10 Student put in a bid. I can't remember if Carlyle put
 11 in a bid, and that's another company out of Chicago.
 12 Am I not supposed to look at my phone?
 13 **Q. Do you know who drafted this agreement --**
 14 A. No.
 15 **Q. -- which is Exhibit 6?**
 16 A. No, I have no idea, ma'am.
 17 **Q. Would your office have made a recommendation**
 18 **to the School Board to approve the contract with**
 19 **Illinois Central?**
 20 A. No, ma'am. It didn't come out of my office.
 21 It didn't come from me. All right? That came from
 22 the CFO at the current time.
 23 **Q. Was that not Ms. Jason?**
 24 A. No.

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1 **Q. Who was that?**
 2 A. A young lady named Sherry Whitaker. Sherry
 3 Whitaker was on her way out when this was signed.
 4 They she made the recommendation. I was considered at
 5 the time I believe -- this is my opinion -- that I
 6 didn't know enough about transportation or the bidding
 7 process to have anything that might be worth hearing.
 8 **Q. Now, Illinois Central proposed 76 drivers in**
 9 **its proposal; is that right?**
 10 A. They said they would be able to deliver
 11 that, ma'am, at least that's what was part of the
 12 proposal.
 13 **Q. Do you know how many drivers were available**
 14 **at the start of the beginning 2021-2022?**
 15 A. We had 67 routes, and I don't believe they
 16 had 67 drivers. That's my own personal opinion.
 17 **Q. Is that for year 2022 to 2023 or the prior**
 18 **school year?**
 19 A. '21-'22.
 20 **Q. Okay. How many did you have for school year**
 21 **-- How many bus drivers did you have for 2022 to 2023,**
 22 **this past year?**
 23 A. I don't know, but I believe we had presented
 24 approximately 50-some-odd routes that we needed

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1 driven.
 2
 3 (Plaintiff's Exhibit No. 7 is marked for
 4 identification.)
 5
 6 BY MS. SIMONE:
 7 **Q. Doctor, I'm showing you what's been marked**
 8 **Plaintiff's Exhibit 7.**
 9 A. Uh-huh.
 10 **Q. Do you recognize Exhibit 7?**
 11 A. It looks like the beginnings of a PTRC.
 12 **Q. What's the "PTRC"?**
 13 A. "Pupil Transportation Reimbursement Claim."
 14 **Q. Is this the document -- Plaintiff's**
 15 **Exhibit 7 the document that District 189 has to submit**
 16 **to ISBE each year to get reimbursed for transportation**
 17 **costs?**
 18 A. Yes, ma'am.
 19 **Q. When is this claim submitted each year?**
 20 A. I think the due date is in August. Then
 21 there's a window that opens back up again in case you
 22 want to resubmit, you know, you've got some more
 23 information, I think it re-opened for about two weeks
 24 in October.

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1 **Q. Do you submit for reimbursement for**
 2 **transportation for the prior school year?**
 3 A. We'll submit, for example, this pupil
 4 transportation reimbursement plan for '22-'23, but we
 5 will be paid for it in school year '23-'24.
 6 **Q. So, the state is about a year behind in**
 7 **paying for student transportation?**
 8 A. They're only gonna pay you for what you
 9 submit, yes, ma'am.
 10 **Q. Looking at Plaintiff's Exhibit 7, on page 1,**
 11 **it indicates that there were 42 students transported**
 12 **on non-public regular education students in '20 to**
 13 **'21; is that correct?**
 14 A. That's correct.
 15 **Q. Are that all Sister Thea Bowman students?**
 16 A. Yes. Yes.
 17 **Q. And looking at 2d of page 1 of Exhibit 7, it**
 18 **indicates that 2 of those students were within**
 19 **improved criminal gang activity safety hazard area?**
 20 A. Okay.
 21 **Q. Is that correct?**
 22 A. That's what it says.
 23 **Q. Tell me about the criminal gang activity**
 24 **safety hazard grant?**

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1 A. Okay. If a child lives within an area that
 2 a local police department states is dangerous, we can
 3 present them with paperwork, they present us with
 4 evidence, and then they will sign off on it saying
 5 that that area is hazardous, dangerous, and we can
 6 submit it to the state, and that way we can transport
 7 kids that live closer than one-and-a-half miles to
 8 their educational center.
 9 **Q. And District 189 will be reimbursed for**
 10 **those students who live in a criminal gang activity**
 11 **safety hazard area that's within one-and-a-half miles**
 12 **of the school?**
 13 A. Yes, ma'am. Uh-huh.
 14 **Q. Is part of that grant also the vehicular**
 15 **safety hazard grant?**
 16 A. I don't know. What is "vehicular safety
 17 hazard"?
 18 **Q. If you look on Exhibit 7, the first page, 1c**
 19 **--**
 20 A. Uh-huh.
 21 **Q. -- it indicates that you can claim students**
 22 **who reside within one-and-a-half miles of the school**
 23 **in an approved vehicular safety hazard area.**
 24 A. Okay. There's something like railroad

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1 tracks or maybe an extremely busy thoroughfare that
 2 children would have to cross to get to that school, I
 3 believe that's what that means, and there are a couple
 4 of schools that do have that in place.
 5 **Q. And District 189 is reimbursed the same rate**
 6 **as the other students?**
 7 A. Now that I don't know.
 8 **Q. Okay.**
 9 A. I don't know what rates they're being
 10 reimbursed at.
 11 **Q. Looking at page 3 of Plaintiff's Exhibit 7,**
 12 **is this the transportation claim review for school**
 13 **year '21 to '22?**
 14 A. I believe that's where it came from, all the
 15 data, yes, ma'am.
 16 **Q. I'm sorry. Page 3 of Exhibit 7.**
 17 A. Now, this is 1. This is 2. This is 3.
 18 **Q. That's correct.**
 19 A. All right.
 20 **Q. Page 3 is the claim review for school year**
 21 **'21 to '22; is that correct?**
 22 A. Yes.
 23 **Q. And for school year '21 to '22, did District**
 24 **189 claim reimbursement for 52 Sister Thea Bowman**

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1 **students?**
 2 A. Yes, ma'am, that's what it looks like.
 3 **Q. What is the rate of reimbursement for school**
 4 **bus transportation?**
 5 A. It varies by fund availability. Somewhere
 6 between 80 and 88 percent, ma'am.
 7 **Q. In the last few years, was Illinois**
 8 **reimbursing District 189 and other schools at**
 9 **100 percent of the transportation costs?**
 10 A. As far as I know, that's never happened. As
 11 far as I know. It may have happened some year, but I
 12 don't think the state has ever been that generous,
 13 ma'am.
 14 **Q. Does District 189 get reimbursed for**
 15 **transporting Sister Thea Bowman students at the same**
 16 **rate it gets reimbursed for transporting students of**
 17 **District 189?**
 18 A. As far as I know, I believe that to be true.
 19 **Q. And just for clarification, District 189 was**
 20 **approved for a criminal gang activity safety hazard**
 21 **grant?**
 22 A. Yes.
 23 **Q. And does District 189 continue to receive**
 24 **that grant for bus transportation?**

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1 A. I believe it's a claim, not a grant, ma'am.
 2 Yes, we had it in '22-'23. I believe we also had it
 3 in '21-'22. And we're gonna apply for it again in the
 4 upcoming school year.
 5
 6 (Plaintiff's Exhibit No. 8 is marked for
 7 identification.)
 8
 9 BY MS. SIMONE:
 10 **Q. I show you what's been marked Plaintiff's**
 11 **Exhibit 8, and I'll just represent to you that I**
 12 **received this as one of those supplemental**
 13 **attachments.**
 14 A. Got you.
 15 **Q. Have you ever seen Exhibit 8 before?**
 16 A. Yeah, I think this is what was requested,
 17 and we supplied to you. It looks like the Carl Holman
 18 prepped it.
 19 **Q. Who is Carl Holman?**
 20 A. He was a consultant that worked with the
 21 district and used to be a state auditor. So, Carl
 22 would come in and give his opinion on, you know,
 23 various matters of the finance.
 24 **Q. He asked the question in Exhibit 8 if the**

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1 **number of routes for FY '21 was 86 and for FY '22 was**
 2 **83. Do you know what the response was to that?**
 3 A. No.
 4 **Q. So, Ms. Jason might have that information;**
 5 **is that right?**
 6 A. Good luck.
 7
 8 (Plaintiff's Exhibit No. 9 is marked for
 9 identification.)
 10
 11 BY MS. SIMONE:
 12 **Q. I'm showing you what's been marked**
 13 **Plaintiff's Exhibit 9. It's a series of emails or a**
 14 **group exhibit of emails. Do you know if Mr. Culver**
 15 **explored any other avenues of continued transportation**
 16 **for Sister Thea Bowman students before deciding**
 17 **whether to terminate Sister Thea Bowman**
 18 **transportation?**
 19 A. I don't know.
 20 **Q. To your knowledge, did District 189 provide**
 21 **bus transportation for Sister Thea Bowman students for**
 22 **at least six years prior to school year 2022 to 2023?**
 23 A. I don't know that one either, ma'am.
 24 **Q. Looking at Exhibit 9, page 1, the email**

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1 **dated December 31st, 2021 indicating that District 189**
 2 **is going remote --**
 3 A. Uh-huh.
 4 **Q. -- as I understand this email, you were**
 5 **offering to Sister Thea Bowman continued**
 6 **transportation while District 189 was remote; is that**
 7 **right?**
 8 A. Let's see. December, 2021. Now, if I
 9 remember right, we were getting ready to shut down the
 10 district because there was a flare-up with COVID
 11 numbers, and this should have been around it looks
 12 like Christmas break, and, ma'am, it says what method
 13 of instruction. So, I'm assuming we're trying to find
 14 out if they were going to be in person or operating
 15 remotely.
 16 **Q. And then if you read the rest of that**
 17 **sentence, "so we can provide the appropriate level of**
 18 **transportation services." What did you mean by that**
 19 **in Exhibit 9?**
 20 A. Okay. Which page are you on, ma'am?
 21 **Q. I am on page 1 of Exhibit 9, the email dated**
 22 **December 31st, 2021 that you sent at 4:06 p.m.**
 23 A. Okay. It says, "Can you please tell me what
 24 method of instruction your school will be using so we

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1 can provide the appropriate level of transportation
 2 services. Please respond as soon as possible." We
 3 were just trying to find out if they were gonna be in
 4 person or remote.
 5 **Q. And if Sister Thea Bowman was going to**
 6 **continue to be in person, District 189 was going to**
 7 **continue bus transportation?**
 8 A. I'm assuming so.
 9 **Q. Page 2 of Exhibit 9 is an email dated**
 10 **April 5th, 2022 from Christine Kolaz. Do you see that**
 11 **email?**
 12 A. This is 1. This is 2. I don't see
 13 anything.
 14 **Q. I'm very sorry. I keep forgetting I**
 15 **double-sided.**
 16 A. I see the one on page 3.
 17 **Q. Page 3 of Exhibit 9 is an email from**
 18 **Christine Kolaz dated April 5th, 2022 to you regarding**
 19 **transportation to another private school.**
 20 A. Okay.
 21 **Q. This indicates that you received a query**
 22 **from a student attending Unity Lutheran.**
 23 A. A parent, yes, ma'am.
 24 **Q. Did District 189 provide school bus**

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1 transportation for the child attending Unity Lutheran
 2 after April 5th, 2022?
 3 A. No.
 4 Q. Why not?
 5 A. Taking on another expense. Once you start a
 6 practice, generally it's continued, and that would be
 7 expensive.
 8 Q. So, did you make the decision to decline
 9 providing transportation for the student attending
 10 Unity Lutheran?
 11 A. I probably consulted with someone about
 12 this, but we didn't want to open up another expensive
 13 practice. I know that. Only one child and one parent
 14 wanted this service.
 15 Q. Where is Unity Lutheran located in East St.
 16 Louis?
 17 A. Right at the corner of 39th and Caseyville.
 18 Q. And where was the student coming from?
 19 A. I don't remember.
 20 Q. Do you know -- That would be in the Wyvetter
 21 Youngue catchment area if it were an elementary
 22 student?
 23 A. Now, that school resides in the Wyvetter
 24 Youngue catchment area, yes.

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1 Q. Was this student who was requesting
 2 transportation also a resident of the Wyvetter Youngue
 3 catchment area?
 4 A. I don't know.
 5 Q. You don't know?
 6 A. Don't know. Huh-huh.
 7 Q. So, the student was turned down just based
 8 on not wanting to incur another expense for
 9 transporting a non-public school student?
 10 A. I did not transport this child -- for
 11 District 189, did not transport this child.
 12 Q. Who is Christine Kolaz?
 13 A. She was the Director of Transportation for
 14 the State of Illinois at the time.
 15 Q. Is she no longer with the state?
 16 A. Now, that I don't know. I've heard rumors.
 17 Q. Do you have a different contact at the State
 18 of Illinois for transportation issues?
 19 A. Well, one gentleman is still there, a fellow
 20 named Mike Stier, but the person who is in charge of
 21 transportation for the state, I believe it's a man,
 22 and I think he's a recent hire.
 23 Q. Do you know his name?
 24 A. No. Huh-huh.

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1 Q. All right. Turning to page 5 of Exhibit 9,
 2 this is an email dated June 8th, 2022, again, from
 3 Christine Kolaz to you. Do you see that email in
 4 Exhibit 9?
 5 A. The top one?
 6 Q. Yes.
 7 A. Yes, I do.
 8 Q. Why were you inquiring about the rate of
 9 reimbursement for a private school student?
 10 A. I wanted to find out if the school district
 11 would be reimbursed for those kids.
 12 Q. Were you asked to get this information to
 13 factor into the decision of whether or not to
 14 continue --
 15 A. No.
 16 Q. -- transporting Sister Thea Bowman?
 17 A. No.
 18 Q. You were not aware that the state was
 19 reimbursing for transporting Sister Thea Bowman
 20 students?
 21 A. Ma'am, I've only been in that position now
 22 I'm guessing two-and-a-half years. There's a lot of
 23 facets in transportation.
 24 Q. But it was confirmed that, yes, District 189

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1 is reimbursed for transporting non-public school kids?
 2 A. I believe so.
 3 Q. Turning to the next page, an email dated
 4 June 14th, 2022, of Exhibit 9 --
 5 A. Uh-huh.
 6 Q. -- do you see this email from Christine
 7 Kolaz -- yes, to you from Christine Kolaz, June 14th?
 8 A. I see it, ma'am.
 9 Q. All right. Does District 189 provide bus
 10 transportation for its Summer school students?
 11 A. Yes, they do.
 12 Q. Does District 189 get reimbursed for Summer
 13 school transportation for your students?
 14 A. General education students do not get
 15 reimbursed. It's strictly general fund liability.
 16 Q. After the June 14th, 2022 email from
 17 Ms. Kolaz --
 18 A. Uh-huh.
 19 Q. -- did you stop transporting Sister Thea
 20 Bowman Summer school students?
 21 A. We've never, as far as I know, ma'am,
 22 transported their students for Summer school.
 23 Q. So, to your knowledge, you don't know if you
 24 provided it for the Summer of 2021 to Sister Thea

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1 **Bowman?**
 2 A. Summer of 2021, I don't think anybody had
 3 Summer school that year, ma'am.
 4 **Q. Okay. How about Summer of 2022? I'm sorry.**
 5 **Summer of 2022?**
 6 A. That was COVID.
 7 **Q. Pre-COVID, school year 2019?**
 8 A. Ma'am, I don't know. I wasn't in the
 9 position.
 10 **Q. Fair enough. Fair enough. Let us turn to**
 11 **the next page of Exhibit 9, which is an email from you**
 12 **to Francine Gordon dated August 4th, 2022.**
 13 A. Uh-huh.
 14 **Q. Do you see that email?**
 15 A. Yeah.
 16 **Q. Is that an email that you sent to Francine**
 17 **Gordon?**
 18 A. Yes. Well, no. It goes to -- It was to
 19 Ms. Gordon. I thought it was to Mr. Birdsong.
 20 **Q. Who is Francine Gordon?**
 21 A. She's a clerk out there at the building.
 22 **Q. At Sister Thea Bowman?**
 23 A. Yes.
 24 **Q. Towards the bottom of Exhibit 9, page -- the**

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1 **email that's on page -- The email August 4th, 2022, at**
 2 **the bottom of that page of Exhibit 9 begins an email**
 3 **to Ms. Jeffries from you?**
 4 A. Okay.
 5 **Q. Who is Ms. Jeffries?**
 6 A. She's the Director of the charter school.
 7 **Q. Why were you providing her with the names of**
 8 **the Terminal Manager at Illinois Central and**
 9 **Ms. Gordon's name?**
 10 A. She was inquiring about transportation
 11 services for her kids, and I let her know that we
 12 wouldn't be able to transport her children, but she
 13 was also wondering what it would cost to run a bus
 14 route for SIU charter. So, I told her to get in
 15 contact with Ms. Welch.
 16 **Q. On that same page of Exhibit 9, the email**
 17 **dated August 4th, 2022 to Ms. Gordon, you state that**
 18 **District 189 will not be routing Sister Thea Bowman**
 19 **students as you have in prior years; is that correct?**
 20 A. We told them we wouldn't be moving their
 21 kids, yes.
 22 **Q. It says you will strictly follow state --**
 23 **Illinois State School Code with respect to**
 24 **transporting children?**

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1 A. Yep. Yep. Yep.
 2 **Q. What did that mean to you, to strictly**
 3 **follow the Illinois State School Code regarding**
 4 **transporting?**
 5 MR. HOERNER: Just for the record, that calls for
 6 a legal conclusion. I think we know what the
 7 respective parties' interpretation of the statute are.
 8 Just look at the pleadings and denial and temporary
 9 restraining order. Subject to that, you can answer.
 10
 11 BY MS. SIMONE:
 12 **Q. What did it mean to you when you told**
 13 **Francine Gordon that District 189 was going to**
 14 **strictly follow the Illinois State School Code with**
 15 **respect to transporting children?**
 16 A. That we wouldn't veer from what they said
 17 was allowable.
 18 **Q. Who is "they"?**
 19 A. Illinois School Code, ma'am.
 20 **Q. You were interpreting the school code?**
 21 MR. HOERNER: Well, I'm gonna object. You just
 22 asked him to interpret the school code. He said if
 23 you look at the emails, that we were gonna follow what
 24 the school code provides as was provided, interpreted

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1 by ISBE. It's in there. It's already been asked and
 2 answered.
 3 MS. SIMONE: I'm asking what his interpretation of
 4 the Illinois School Code was when he conveyed that
 5 information to Ms. Gordon.
 6 MR. HOERNER: Yeah, and he answered that. And,
 7 again, you're calling for a legal conclusion. We can
 8 argue about what the school code requires again in
 9 court, but the Court has already ruled on it.
 10 MS. SIMONE: But I'm asking what his
 11 interpretation of that code was.
 12 MR. HOERNER: He's not qualified to render a legal
 13 opinion. Come on.
 14 MS. SIMONE: That's what he's telling Ms. Gordon,
 15 "I'm basing it on this school code." I'm asking what
 16 his interpretation was that he was conveying to
 17 Ms. Gordon.
 18 MR. HOERNER: And he just answered that question.
 19 MS. SIMONE: He just said that -- Could you read
 20 his answer back?
 21
 22 (Court Reporter read back following: "Question:
 23 What did it mean to you when you told Francine Gordon
 24 that District 189 was going to strictly follow the

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1 Illinois State School Code with respect to
 2 transporting children? Answer: That we wouldn't veer
 3 from what they said was allowable."
 4
 5 BY MS. SIMONE:
 6 Q. And you were telling Ms. Gordon that you did
 7 not think the school code allowed you to transfer
 8 Sister Thea Bowman students?
 9 MR. HOERNER: Same objection and it
 10 mischaracterizes his testimony. Come on. You're
 11 asking an administrator to provide -- You know better
 12 than this. He's not here to provide legal opinions.
 13 MS. SIMONE: But he's providing a legal opinion to
 14 Sister Thea Bowman, and I'm asking what he meant by
 15 that.
 16 MR. HOERNER: We weren't there to object, right?
 17 Just because he said it in an email doesn't mean that
 18 you get to act like he's an attorney. He's already
 19 answered your question. Come on.
 20 MS. SIMONE: I will certify the question for --
 21 MR. HOERNER: You don't have to certify the
 22 question. It's asked and answered. I never
 23 instructed him not to answer. He answered it. You
 24 just don't like the answer.

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1 MS. SIMONE: He did not answer. That's why.
 2
 3 BY MS. SIMONE:
 4 Q. Let me move on to the next email dated
 5 August 11th, 2022, and, actually, this email chain
 6 starts on the back page at the bottom at 8:28 a.m. Do
 7 you see that email from Jonathan Birdsong? It's on
 8 Exhibit 9, a collection of emails.
 9 A. Got you.
 10 Q. Got you. Okay. You respond at 9:54 on
 11 August 11th to Mr. Birdsong, and you say, "Let me know
 12 when your next parents' meeting is, and I'll be there
 13 to explain what the Illinois School Code says about
 14 transporting private school students." Did you tell
 15 Mr. Birdsong that?
 16 A. If that's what's stated in the email, ma'am,
 17 yes.
 18 Q. Did you send the email that is dated
 19 August 11th, 2022 at 9:54 to Jonathan Birdsong?
 20 A. Yeah.
 21 Q. Did you make a presentation to the Sister
 22 Thea Bowman parents' meeting?
 23 A. No.
 24 Q. Why not?

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1 A. I was never asked to come out.
 2 Q. What would you have told the parents if you
 3 had gone out there?
 4 MR. HOERNER: Objection. That calls for
 5 speculation. Its improper characterization of his
 6 testimony and calls for a legal conclusion.
 7
 8 BY MS. SIMONE:
 9 Q. Subject to that objection --
 10 MR. HOERNER: Subject to that, you can answer, but
 11 you don't have to guess or speculate.
 12 A. Ma'am, I just would have provided them with
 13 a copy of the school code. Just like you two are
 14 saying, you know, I'm not a lawyer, but I would let
 15 them see exactly what could and couldn't be done and
 16 how far it does and doesn't go.
 17
 18 BY MS. SIMONE:
 19 Q. Okay. The effect of the decision by
 20 District 189 based on your interpretation of the
 21 school code was effectively to deny transportation for
 22 Sister Thea Bowman students; correct?
 23 A. I don't know if I'd say that, ma'am. We
 24 stated what we could and what we couldn't do, and no

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1 one wanted to participate.
 2 Q. What did you state you could do?
 3 A. Exactly what's in the school code.
 4 Q. Tell me what you told Mr. Birdsong you could
 5 do.
 6 A. What's in the school code.
 7 Q. Do you know what's in the school code?
 8 A. I've read it, yes, ma'am.
 9 Q. Okay. What did you -- I'm asking you about
 10 a conversation you had apparently with Mr. Birdsong.
 11 A. Okay.
 12 Q. Did you have a conversation with
 13 Mr. Birdsong?
 14 A. Yes, ma'am. I went out there and told him
 15 we wouldn't be providing services in the upcoming
 16 school year in the manner in which they had been
 17 accustomed to.
 18 Q. And the reason you relied on was the school
 19 code?
 20 A. Ma'am, I was told not to route Sister Thea
 21 Bowman students, and I didn't.
 22 Q. Okay. And who told you that?
 23 A. Arthur Ray Culver.
 24 Q. So, there was no option offered to Sister

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1 **Thea Bowman; is that correct?**
 2 A. No.
 3 MR. HOERNER: Objection. That's not what his
 4 testimony is, and, again, you're asking him to provide
 5 a legal opinion.
 6 MS. SIMONE: He's answered it.
 7 MR. HOERNER: I know he answered it. I don't know
 8 why it's continued to be asked.
 9
 10 BY MS. SIMONE:
 11 Q. Do you agree that there are regular routes
 12 that pick up and drop off at Gompers Homes?
 13 A. Oh, yeah.
 14 Q. And regular routes that pick up and drop off
 15 at Orr-Weathers homes?
 16 A. Yes.
 17 Q. And there are regular routes that go past
 18 Sister Thea Bowman; isn't that correct?
 19 A. I believe there's one.
 20 Q. What route would that be?
 21 A. I think it's -- In the past school year,
 22 there may have been one that serviced Katie Harper
 23 Wright and had a bus going down Church Lane that
 24 passed the old St. Philip's school, Sister Thea

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1 can't tell if that marking -- It looks like it's one
 2 street off of St. Clair Avenue. That could possibly
 3 be Church Lane.
 4 Q. And Church Lane is where Sister Thea Bowman
 5 is located?
 6 A. I believe so, yes.
 7 Q. So, that is a regular route of District 189
 8 that goes right past Sister Thea Bowman?
 9 A. Those kids wouldn't be allowed on that
 10 route.
 11 Q. Why?
 12 A. Those are alternative children.
 13 Q. And why wouldn't Sister Thea Bowman be
 14 allowed on a route with alternative children?
 15 A. I don't know if the Sister Thea Bowman
 16 children would want to ride that route, ma'am. Those
 17 children have challenges with respect to bureaucracy.
 18 I'm gonna put it that way. Standard institutional
 19 schools. They're at an alternative site for a reason,
 20 ma'am. And Sister Thea Bowman kids are also outside
 21 the grade range of the children that are transported
 22 on that route. There's no child on that bus that's in
 23 a grade lower than 5th or 6th. I don't know if you
 24 would want to put kids on that route that were

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1 Bowman.
 2 Q. And Katie Harper Wright would be the
 3 elementary school?
 4 A. Yes. Uh-huh.
 5
 6 (Plaintiff's Exhibits No. 10 and No. 11 are marked
 7 for identification.)
 8
 9 BY MS. SIMONE:
 10 Q. Doctor, I'm showing you what's been marked
 11 Plaintiff's Exhibit 10 --
 12 A. Uh-huh.
 13 Q. -- which is the school bus route for which
 14 school?
 15 A. It looks like Gordon Bush Alternative
 16 inbound route.
 17 Q. Does the "MS" indicate Gordon Bush Middle
 18 School?
 19 A. Yes. Uh-huh.
 20 Q. This is route number 2200; correct?
 21 A. Yes, ma'am.
 22 Q. This route goes right past Sister Thea
 23 Bowman; doesn't it?
 24 A. Somebody has marked on this, ma'am, and I

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1 Kindergarten, 1st Grade, 2nd Grade with those other
 2 children.
 3 Q. But it is true that this is a regular route
 4 of District 189?
 5 A. I wouldn't call it regular, ma'am.
 6 Q. You have three routes regular, open
 7 enrollment and special education; correct?
 8 A. Uh-huh.
 9 Q. "Yes"?
 10 A. Yes.
 11 Q. Is this a special education route?
 12 A. No, it's not.
 13 Q. Is it an open enrollment route?
 14 A. Yes.
 15 Q. So, these are homeless children?
 16 A. No, they're not homeless children. When
 17 they're put in the program in Veisatrans, they're
 18 considered open enrollment.
 19 Q. And is that just so that they can be
 20 transported outside one specific catchment area?
 21 A. Right. Uh-huh.
 22 Q. Do you agree that this route in
 23 Exhibit 10 -- on page 1 of Exhibit 10 goes right by
 24 Gompers?

<p style="text-align: right;">Page 105</p> <p>1 A. Gompers, it looks like it's down in that 2 area, yes, ma'am. 3 Q. And does this regular route -- Or does this 4 route also go near Orr-Weathers? 5 A. I can't readily tell, but it does look like 6 it operates in that area. 7 8 (A brief discussion off the record.) 9 10 BY MS. SIMONE: 11 Q. I'm showing you what's been marked 12 Plaintiff's Exhibit 11 because I have a question about 13 a discrepancy between the routes that were produced to 14 us and this document, Exhibit 11. 15 A. Okay. 16 Q. In the routes that were produced to us, I 17 think it's your Exhibit A in the document production, 18 for school year '21 to '22, there is no route number 19 2248 or 2250. 20 A. And which route is that, ma'am? 21 Q. The documents that were produced to us by 22 District 189 -- 23 A. Okay. 24 Q. -- in Exhibit A, it ends at about 2235, the</p>	<p style="text-align: right;">Page 107</p> <p>1 A. Yeah. Remember, I told you we had the 2 routes designed by the personnel with Versatrans, and 3 this was the start of that year, and they were 4 reworked at midyear. 5 Q. Okay. I'm sorry. I thought that was in the 6 Spring of 2021 that that happened, the reworking. 7 A. Let's see. Now, COVID struck in the Spring 8 of 2020, the fourth quarter, we were not in session in 9 person. In school year '21, we were remote up until 10 the third quarter, Spring of '21, when we instituted 11 in-person learning. I believe, if I remember right, 12 that Sister Thea Bowman came back online in person at 13 that time. I believe everybody did that was 14 associated with the school district. Then in 15 '21-'22 -- school year '22, we had routes designed by 16 Versatrans because we knew everyone was coming back. 17 We wanted to make sure that we had the best possible 18 set of routes to service the kids. 19 Q. And, so, when Versatrans came in, that would 20 have been after September, 2021? 21 A. No. Before. Before. 22 Q. Okay. 23 A. Now, remember, we had the routes designed in 24 that Spring/Summer of 2021. So, these routes had this</p>
<p style="text-align: right;">Page 106</p> <p>1 route numbers. 2 A. Okay. 3 Q. There is no route 2248 or 2250 in the 4 documents that were produced to us. 5 A. Okay. Now, what year are we talking about? 6 Q. '21 to '22. 7 A. Okay. So, this didn't appear with the rest 8 of the routes? 9 Q. That's correct. 10 A. Okay. 11 Q. And I'm wondering why there's that 12 discrepancy, if you know. 13 A. Now, I don't know exactly how you asked for 14 those routes. Your question could have filtered out 15 this set of routes, ma'am. 16 Q. Is the route number for the Sister Thea 17 Bowman students 2248 and 2250? 18 A. It has to be, yes, ma'am. Let's see. This 19 was done in September of 2021. Whether those route 20 numbers were maintained throughout the course of the 21 year, I don't know. They could have changed because I 22 told you earlier that we did redo the routes at 23 midyear. 24 Q. In 2021-'22 school year?</p>	<p style="text-align: right;">Page 108</p> <p>1 number at the beginning of the school year. These 2 were the routes designed by Versatrans personnel, and 3 we reworked all of those routes over Christmas break. 4 Q. Okay. Christmas 2021? 5 A. Well, December of 2021, yes. 6 Q. Okay. 7 A. They weren't instituted until after we came 8 off break in the Winter of 2022. 9 Q. So, in that Winter 2021/January, 2022, were 10 routes consolidated? 11 A. Oh, we tried our best to reduce the number 12 of routes, ma'am. We had to. It just wasn't working. 13 We didn't have the drivers. 14 15 (Plaintiff's Exhibits No. 12, No. 13 and No. 14 16 are marked for identification.) 17 18 BY MS. SIMONE: 19 Q. I'm going a little bit out of order. I'm 20 showing you Plaintiff's Exhibit 14. Now, this 21 indicates that Vivian Adams' students would arrive at 22 Vivian Adams School at 8:30. "This" being Exhibit 14. 23 Is that correct? 24 A. That's what it says, ma'am.</p>

27 (Pages 105 to 108)

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1 **Q. Is it possible that District 189 could have**
 2 **then transported Sister Thea Bowman students after**
 3 **dropping off the Vivian Adams' students?**
 4 A. No.
 5 **Q. Why not?**
 6 A. If I remember right, the start time for
 7 Sister Thea Bowman was like 7:30, 7:00 o'clock in the
 8 morning. Now, there's no way that we could have
 9 collected all their kids and got them to school on
 10 time and then started this route, and then this route
 11 is --
 12 **Q. "This route" being the Vivian Adams' route?**
 13 A. It's a pre-K route, ma'am.
 14 **Q. And there's a gap between the 7:30 drop off**
 15 **for Mason, which you can see on Exhibit 14, page 3.**
 16 A. Okay. Exhibit 14, page 3. Okay. So,
 17 that's Mason/Clark. It looks like they start at 7:05,
 18 and they arrive at Mason/Clark at 7:30.
 19 **Q. And then there's a 30-minute gap between**
 20 **resuming pick up for Vivian Adams' students; isn't**
 21 **that correct?**
 22 A. Well, yeah. Yeah. Yes, there is.
 23 **Q. I'm showing you what's been marked**
 24 **Plaintiff's Exhibit 12.**

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1 of benches on each side of the bus, which means 12
 2 fewer kids can ride that bus, and the tradeoff is you
 3 can probably put at least 4 wheelchair children in
 4 that area where the seats have been removed.
 5 **Q. Do I understand you to say that there are 6**
 6 **remaining seats in this bus --**
 7 A. No, no.
 8 **Q. -- to your knowledge?**
 9 A. I'm thinking you could probably put 30 more
 10 kids on that bus, but if that bus has been outfitted
 11 -- and this looks like the Lincoln Middle School
 12 wheelchair bus -- there's other things that are on
 13 that bus that are used to fasten children to seats.
 14 You've got harnesses.
 15 **Q. But my question is, just how many seats does**
 16 **this bus hold for non-wheelchair students?**
 17 A. Ma'am, I don't know. I'd have to see that
 18 bus because there's star seats that could be on that
 19 bus, there are harnesses that could be on that bus,
 20 and once you start putting those on seats, you're
 21 reducing the capacity of the bus even further.
 22 **Q. All right. I'm showing you what's been**
 23 **marked Plaintiff's Exhibit 13. When is it District**
 24 **189 start providing transportation to Menta Academy in**

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1 A. Okay.
 2 **Q. How many students can this bus in Exhibit 12**
 3 **transport?**
 4 A. Ma'am, I don't know. Now, this is a special
 5 needs' route, but it's also got a Lincoln route on
 6 there, and this looks like the wheelchair bus from
 7 where it's going. So, there's probably about I'm
 8 thinking at least four, possibly six benches that have
 9 been removed from this bus. So, you've diminished the
 10 capacity -- not you, but the bus' capacity has been
 11 diminished by 12 seats -- 12 kids, and you never want
 12 to use a wheelchair bus on a regular route. It's just
 13 a waste of resources. We've got wheelchair kids that
 14 need this bus, and we only have one or two of them.
 15 And -- No. Three. Two of the buses are tied up with
 16 William BeDell at that time. Those are the kids that
 17 are severe and profound, and they are strictly, you
 18 know, for those kids. And we have I believe one
 19 wheelchair bus that's used in the school district for
 20 our industry population.
 21 **Q. Okay. And I'm asking -- You indicated that**
 22 **12 seats have been removed for wheelchair access. I'm**
 23 **wondering how many seats remain.**
 24 A. Probably -- I'm thinking at least three sets

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1 **Belleville?**
 2 A. I don't know.
 3 **Q. Because I didn't see any bus routes for**
 4 **Menta in Exhibit A, the 2021 to 2022 routes that were**
 5 **produced.**
 6 A. It's a special needs' bus, ma'am, but I
 7 don't know how long we've been doing business with
 8 Menta. I know that we reduced our use of the juvenile
 9 transition center, and we are transporting a lot of
 10 kids to Menta Academy.
 11 **Q. But this is a route that is over 56 minutes**
 12 **long; is that correct -- or right at 56 minutes?**
 13 A. Yes, ma'am. Yeah, it looks like it's almost
 14 an hour long.
 15 **Q. And I think you may have answered this, but**
 16 **is it District 189 intention to again deny bus**
 17 **transportation for Sister Thea Bowman students in this**
 18 **upcoming school year?**
 19 A. I'm not privy to that conversation, ma'am.
 20 MS. SIMONE: All right. Could we take a
 21 five-minute break?
 22 MR. HOERNER: Sure.
 23 A. No, ma'am. I would like to keep going. I
 24 have an appointment that I wanted to keep at 3:00

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1 o'clock. Is there any way we can get through this?
 2 MS. SIMONE: Let me confer with Mr. Halpern and
 3 see if he has any questions.
 4 MR. HOERNER: Yeah, let's just take a few minutes.
 5
 6 (A brief recess off the record at 3:48 p.m.)
 7 (Back on the record at 3:55 p.m.)
 8
 9 BY MS. SIMONE:
 10 **Q. Just a few more questions, Doctor. To**
 11 **clarify, are open enrollment routes also considered**
 12 **regular routes at least in terms of Gordon Bush**
 13 **Alternative School?**
 14 A. There is -- Well, for, ma'am, I can't say
 15 that that would be the case because you keep taking
 16 children who have been identified as not being able to
 17 function in a standard environment, and you want to
 18 try -- and just by definition of what is an open
 19 enrollment and what is a closed enrollment, you can't
 20 define those kids that way. You know, they're all --
 21 We define them in Versatrans as open enrollment, but
 22 they're not there at Gordon Bush because they can
 23 educated in a regular environment. They can't.
 24 They've shown that. That's why they're at Gordon

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1 Bush. No, we don't want those children mixing with
 2 other children because they've shown themselves to be
 3 in need of supports and interventions.
 4 **Q. So, these definitions that we talked about**
 5 **early on, open enrollment, regular route and special**
 6 **ed routes -- Special ed routes I can see rigid lines,**
 7 **but the other two have more squooshy boundaries?**
 8 A. You're in a gray area there, but, ma'am,
 9 these people have children have a track record of
 10 either being behind in attendance, academics or
 11 behavior, and that's why they're at an alternative
 12 school.
 13 **Q. Switching gears.**
 14 A. Uh-huh.
 15 **Q. Were there days in the Fall semester of 2021**
 16 **where routes were not completed?**
 17 A. Not completed?
 18 **Q. Not completed.**
 19 A. Do you mean kids didn't get home?
 20 **Q. Or didn't get to school.**
 21 A. There were probably times when mistakes were
 22 made, yes. I mean, it's always gonna happen. You're
 23 driving her route. Maybe you missed a stop. You
 24 know, it's gonna happen.

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1 **Q. All right. Do you know if any penalties**
 2 **were imposed upon Illinois Central when those mistakes**
 3 **happened?**
 4 A. Ma'am, due to the pandemic, I tried not to
 5 be punitive with Illinois Central -- I really tried
 6 not to be because I understood the conditions they
 7 were operating under. It's the same conditions that a
 8 school operates under. No, I can't educate to my
 9 fullest ability because I've got 5 teachers out today
 10 and my building only has 30 teachers in it, and those
 11 children are being split up between different
 12 classrooms. You can't -- You can't do things to the
 13 best of your ability if you don't have the staffing.
 14 **Q. After you did the consolidation of routes in**
 15 **December of 2021, during the Winter break, were Sister**
 16 **Thea Bowman students transported for the rest of**
 17 **school year of 2022?**
 18 A. I believe so. That was the -- That was the
 19 last year that they were transported; right? If that
 20 was the last year they were transported, then, yes,
 21 they were subject to the same conditions. They may
 22 have been tiered with something else or taken off a
 23 tier. I don't know.
 24 **Q. And I didn't ask this question early on**

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1 **because I assumed it, but when a bus route starts with**
 2 **21 or 22 or 23, that indicates the ending school year;**
 3 **correct?**
 4 A. That's the year that the school year ends.
 5 This is school year '23 we just completed, yes, ma'am.
 6 **Q. So, all bus routes start with 23?**
 7 A. For this past school year. Any routes that
 8 we create this year will start with 24.
 9 **Q. Okay. We've talked about a 30-minute gap in**
 10 **Plaintiff's Exhibit 14. I think you have it here.**
 11 A. I've got 12. Okay. 14.
 12 **Q. We talked about a 30-minute gap between the**
 13 **Vivian Adams and the Mason/Clark bus route. Is that a**
 14 **time period a tier that could be covered if there was**
 15 **a shortage of drivers or a driver calls off?**
 16 A. So, you're saying that because Vivian Adams'
 17 route started at 8:00 and Mason/Clark route started at
 18 7:30 --
 19 **Q. Ended at 7:30.**
 20 A. Right -- that you might be able to squeeze
 21 something in there?
 22 **Q. You -- Early on in the deposition, you**
 23 **talked about having gaps in some of the routes to**
 24 **accommodate --**

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1 A. Right.

2 **Q. -- a driver call off.**

3 A. Right. Uh-huh.

4 **Q. Is this gap between Vivian Adams and**

5 **Mason/Clark one of those gap provisions if there was a**

6 **shortage of drivers for that tier that gets picked up**

7 **in that time period?**

8 A. No, I don't think so. This route right

9 here, you have high school, middle, elementary.

10 Vivian Adams would be considered elementary.

11 Mason/Clark would be considered middle school. This

12 is a three-tier route, 2300. Yeah, this gets all the

13 kids from Caseyville, yeah. This is a three-tier

14 route.

15 MS. SIMONE: Okay. I have no more questions.

16

17 EXAMINATION

18 by Mr. Garrett P. Hoerner:

19 **Q. Just real quick. Do you recall a meeting on**

20 **November 7th, 2022 at the district administration**

21 **building where we were there, Ms. Simone was there,**

22 **John Barkevich was there.**

23 A. I was on the phone. I had COVID.

24 **Q. By telephonic.**

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1 A. I remember meeting --

2 **Q. Sister Thea Bowman representatives were**

3 **there.**

4 A. Yes, I remember that meeting.

5 **Q. And at that meeting, did you present the**

6 **existing regular routes and all the routes that**

7 **District 189 had for its students?**

8 A. Yes. Whatever was asked for. I presented,

9 yes.

10 **Q. And did -- I think it was a Ms. Rupert**

11 **(phonetic), a representative of Sister Thea Bowman,**

12 **provided a list of 30-something names of students that**

13 **were interested in transportation?**

14 A. Right, and we had to do a route mock-up for

15 those children.

16 **Q. And you provided with a route mock-up for**

17 **consideration?**

18 A. Right.

19 **Q. And that would have been a route I think**

20 **that exceeded an hour?**

21 A. I think the route was split in two, and the

22 routes did run long because, once again, like I said,

23 we would split the routes -- we were trying a northern

24 route and a southern route, and they would then meet

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1 on the eastern end at Sister Thea Bowman.

2 **Q. So, those would be separate routes?**

3 A. Oh, yeah. Yeah, they were long routes.

4 **Q. They were additional routes?**

5 A. Yes.

6 **Q. And those would incur additional costs for**

7 **the district?**

8 A. It wouldn't incur additional costs, but it

9 would be -- If they weren't paired with anything else,

10 they would cost the same thing that a three-tier route

11 would. Anytime you have something that starts and

12 stops and a driver has a break and doesn't come back

13 until they do an afternoon route, that would be one

14 route in itself, and it would be an expensive route.

15 **Q. It depends on I guess what it's tiered with?**

16 A. Yes, and who else is there.

17 **Q. But that was something that was evaluated by**

18 **the district back in November of 2022 pursuant to that**

19 **meeting; correct?**

20 A. Right. Right. When we were asked to

21 produce, we did the mock-up, yes, sir.

22 MR. HOERNER: That's all I have. Thank you.

23 (Waive signature)

24 (Deposition concluded at 4:03 p.m.)

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1 STATE OF ILLINOIS)

2) SS

3 COUNTY OF ST. CLAIR)

4 I, HOLLY A. MCCULLOUGH, a Certified Shorthand

5 Reporter, a Certified Court Reporter and a Registered

6 Professional Reporter, do HEREBY CERTIFY that pursuant

7 to agreement between the parties there appeared before

8 me on June 27, 2023, at Becker, Hoerner & Yursa,

9 P.C., 5111 West Main Street, Belleville, Illinois, DR.

10 LAWRENCE TOURIJIGIAN, who was first duly sworn by me

11 to tell the whole truth of all knowledge touching upon

12 the matter in controversy aforesaid so far as the

13 witness should be interrogated concerning the same;

14 that the witness was examined and said examination was

15 taken down in shorthand by me and afterwards

16 transcribed, signature having been waived by agreement

17 of counsel, and said deposition is herewith returned.

18 Dated this 28th day of June, 2023.

19

20 _____

21 HOLLY A. MCCULLOUGH

22 Notary Public

23 IL CSR #084-004265

24 MO CCR #1011

RPR #821968

**IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS**

E.W., by his mother and next friend,
Chandres Johnson, and A.M by her father,
and next friend, Antonio Brown,

Plaintiffs,

v.

BOARD OF EDUCATION OF EAST
ST. LOUIS SCHOOL DISTRICT #189,

Defendant.

No. 2022-CH-0075

**REPLY TO RESPONSE IN OPPOSITION TO
PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT**

NOW COME Plaintiffs, E.W., by his mother and next friend, Chandres Johnson, and A.M., by her father and next friend, Antonio Brown; by and through their attorneys Susan M. Simone and Noah J. Halpern, Land of Lincoln Legal Aid, pursuant to 735 ILCS 5/2-1005 and for their Reply to Response in Opposition to Plaintiffs' Cross-Motion for Summary Judgment, state as follows:

1. Plaintiffs have always maintained that Defendant Board of Education of East St. Louis School District #189 (hereinafter "District 189") has a statutory obligation to transport Plaintiffs from their homes to their school, Sr. Thea Bowman Catholic Elementary School (hereinafter "Sr. Thea Bowman"). Plaintiffs have always interpreted 105 ILCS 5/29-4 differently than Defendant.

2. Plaintiffs' Complaint is not contrary to the argument Plaintiffs have set forth in their Cross-Motion for Summary Judgment and supporting brief. To the extent that this Court finds that the Complaint does not conform to the argument and relief requested as set forth in the

Cross-Motion for Summary Judgment and supporting memorandum of law, then Plaintiffs ask for leave to amend pursuant to 735 ILCS 5/2-616.

3. At issue is the interpretation of the Illinois statute entitled "Pupils attending a charter school or nonpublic school," a statute that requires public school districts to provide bus transportation to nonpublic school students on the same basis as the school district provides transportation for its students. 105 ILCS 5/29-4. Specifically, the parties disagree as to the meaning of this clause of the statute: "...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."

4. The statute directs school districts to provide transportation for nonpublic school students either (i) from the student's home located on or near a regular route to their schools; or (ii) from the student's school located on a regular route to their homes.

5. An actual controversy exists in that Plaintiffs and Defendant disagree as to the correct interpretation of Illinois statute 105 ILCS 5/29-4.

6. Plaintiffs have a clear and ascertainable right to transportation to their school under Illinois statute. Plaintiffs maintain that the statute requires Defendant to transport Plaintiffs from their homes on a route nearest their homes and to and from their school, Sr. Thea Bowman, OR on a route near Sr. Thea Bowman to and from their homes. A third option would be to transport Plaintiffs from a regular route near their homes to a transfer point on a route that travels near Sr. Thea Bowman school. Regardless of which option the Defendant chooses to utilize, Defendant has a statutory obligation to provide transportation for Plaintiffs to and from their school.

7. The statute allows the Defendant to choose to use a separate route for transporting Plaintiffs if that is safer, more economical and more efficient. See 105 ILCS 5/29-4.

8. The statute does not require that nonpublic school students must live on or near Defendant's regular routes AND that the school be located on the very same regular route.

9. Defendants maintain that they are only required to transport Plaintiffs on an existing route near their home but do not have to transport Plaintiffs to their school if that route does not also go near Sr. Thea Bowman. This is contrary to the statute and the statutory purpose. Such an interpretation is much too narrow to achieve the legislative purpose and would make the statute easily thwarted.

10. As our Illinois Supreme Court set forth in *Board of Education v. Bakalis*, "section 29-4 was enacted for the secular legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools." 54 Ill. 2d 448, 461 (1973).

11. Illinois public policy of getting all school children to school safely is also evidenced by the Illinois Administrative Code which provides reimbursement to school districts for transportation of nonpublic school students when transportation is provided on the same basis as public school students. 23 Ill. Admin. Cod Sec. 120.30(a)(3).

12. Further, the Illinois General Assembly amended the School Code in 2018 to allow public and nonpublic school students who live in an area deemed unsafe because of criminal activity or vehicular traffic to be transported to and from school without cost even if they live within 1 ½ miles from their school. 105 ILCS 5/29-3. This is a program that Defendant has taken advantage of for the safety of its students.

13. Plaintiffs' interpretation upholds the legislative intent of getting all students to school safely. Defendant's interpretation does not.

14. The Illinois statute only allows Defendant to consider costs if it chooses a separate route. Contrary to Defendant's position, the statute DOES NOT consider costs when transporting nonpublic school students on routes near the students' homes to their school or on routes near the students' school to their homes.

15. Defendant's reliance on *C.E. v. Bd. Of Educ.* is misplaced because *C.E.* involved transporting Sr. Thea Bowman students on days when District 189 was not in session, which by its very nature would require a separate route. *C.E. v. Bd. Of Educ.*, 2012 IL App (5th) 110390. *C.E.* does not address, and should not be expanded to include, transporting Sr. Thea Bowman students on days when both District 189 and Sr. Thea Bowman students are in session. Such an interpretation would conflict with *Board of Education v. Bakalis*.

16. The attached Affidavits of E.W.'s mother, Chandres Johnson, and A.M.'s father, Antonio Brown, evidences the irreparable harm that their children have incurred because they missed numerous school days due to the lack of transportation and are likely to continue missing school days into this next school year unless District 189 reinstates bus transportation. See Affidavits attached hereto and marked Exhibits 1 and 2.

17. Only declaratory judgment and injunctive relief are adequate to remedy the harm being caused by Defendant's refusal to comply with its statutory obligation.

18. Defendant's argue that at the November 22, 2022, conference to try to resolve the dispute, routes were offered to Plaintiffs. That is simply not the case. As set forth in the attached Affidavit of John Baricevic, who was representing Sr. Thea Bowman at the November meeting, it was clear that District 189 would not consider transporting students from regular routes near their homes to Sr. Thea Bowman. See Affidavit of John Baricevic attached hereto and marked Exhibit 3.

19. Aside from the propriety of asserting a meeting to try to settle the dispute as evidence, Plaintiffs note that Arthur Culver was not present at the November 2022. As Dr. Tourijigian stated at deposition, it was Superintendent Culver who ordered him to not provide routes to Sr. Thea Bowman students and “[w]hen a superior tells you what to do, you just do it with a smile on your face.” See Deposition of Dr. Lawrence Tourijigian, pages 60, line 1 through page 61, line 24, marked Exhibit A and attached to Defendant’s Response in Opposition to Cross-Motion for Summary Judgment. Dr. Tourijigian was told not to route Sr. Thea Bowman students and he didn’t. Deposition of Dr. Tourijigian, page 100, lines 20-21. In other words, Dr. Tourijigian had no authority to resolve the transportation issue in November 2022.

20. This matter is not moot. School year 2023-2024 has begun and again Defendant will not provide transportation for Plaintiffs from their home to their school, Sr. Thea Bowman. Plaintiffs’ harm is ongoing.

21. Further, even if the issue were moot, which it is not, the public interest exception would apply because the question presented is of a public nature, there is need for an authoritative determination, and there is a likelihood of future recurrence. *Lakewood Nursing & Rehab Ctr., LLC v. Dep’t of Pub. Health*, 2015 IL App (3d) 140899, *P23.

22. In conclusion, Defendant have the technology and the power to route Plaintiffs to their school, Sr. Thea Bowman, but in the Spring and Summer of 2022, Defendant’s decided that they were no longer going to provide transportation because that would mean having to accede to the requests of Unity Lutheran and SIUE Charter. Defendant’s actions are in violation of their statutory duty to provide transportation to nonpublic school students.

WHEREFORE, Plaintiffs, by and through their attorneys, pray that this Court:

A. Deny Defendant’s Motion for Summary Judgment;

- B. Enter summary judgment in favor of Plaintiffs;
- C. Declare that Plaintiffs are entitled to bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home to Sr. Thea Bowman, or a regular route near their school to their homes;
- D. Declare the Defendant's decision not to route Plaintiffs for the past school year was unlawful;
- E. Enjoin Plaintiffs from failing to provide Plaintiffs with bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home and to Sr. Thea Bowman, or a regular route near their school to their homes; and
- F. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

/s/ Susan M. Simone

Susan M. Simone, ARN: 6204458

Noah Halpern, ARN: 6342199

Land of Lincoln Legal Aid

Dorothy O. Cook Community Law Center

8787 State Street, Suite 201

East St. Louis, IL 62203

618-398-0574 ext. 1221

ssimone@lincolnlegal.org

nhalpern@lincolnlegal.org

Efile: efileCRO@lincolnlegal.org

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned hereby certifies that a copy of the foregoing was served upon Garrett Hoerner, attorney for Defendant Board of Education of East St. Louis School District #189, by electronic mail at email address gph@bhyllaw.com on August 21, 2023, at 7:00 pm.

/s/ Susan M. Simone

Susan M. Simone

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend,)	
Chandres Johnson, and A.M,)	
by her father and next friend,)	
Antonio Brown,)	
)	
)	
Plaintiffs,)	
	)	No. 2022-CH-0075
v.)	
)	
BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT #189,)	
)	
Defendants.)	

AFFIDAVIT OF CHANDRES JOHNSON

COUNTY OF ST. CLAIR)
) ss
STATE OF ILLINOIS)

Affiant, Chandres Johnson, on oath state as follows:

1. I, CHANDRES JOHNSON, am over the age of eighteen (18) and am of sound mind.
2. I am the mother of my 10-year-old son, E.W., who is now a fifth grader at Sr. Thea Bowman Catholic Elementary School located in District 189. My son E.W. has attended Sr. Thea Bowman Catholic School since he started kindergarten.
3. My son and I reside in the Orr Weathers Homes in East St. Louis, Illinois, approximately 6.3 miles from St. Thea Bowman Catholic School. Sr. Thea Bowman is approximately 8.4 miles from the nearest District 189 elementary school.
4. There are many school age children who reside at the Orr Weathers Homes and are transported to their District 189 schools by bus provided by District 189.



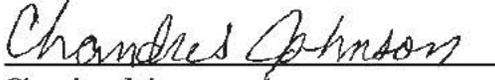
5. I have observed numerous School District 189 school buses that operate near my home and any one of these buses potentially could transport my son to school at Sr. Thea Bowman.
6. This school year and last school year, East St. Louis School District 189 refused to provide bus transportation for my son from home and to Sr. Thea Bowman and from Sr. Thea Bowman to home.
7. During the last school year, the lack of school bus transportation from District 189 caused an extreme hardship on my family to try to get my son to school at Sr. Thea Bowman without bus transportation provided by District 189. He missed many days of school due to lack of transportation.
8. It is expected that this hardship will continue as my son continues to attend Sr. Thea Bowman.
9. I have an older car that can be unreliable and sometimes my car does not work. Since District 189 stopped providing bus transportation I have to rely on others to help me get my son to school and I pay those friends for gas.
10. I also work as a home health aide and it has been very difficult trying to juggle transportation for myself to and from work and my son to and from school.
11. Because I do not have reliable and stable transportation to get my son to and from school, he missed more than 20 days of school last year and there was concern he might not be passed to the next grade.
12. My income is about \$1,800 per month. The added expenses of paying others to take my son to and from Sr. Thea Bowman twice a day has caused my family a great hardship and it is an unsustainable additional expense.
13. It is my hope that my son will have a better education than I received, and that Sr. Thea Bowman is the right place to start him on that path.

- 13. Sr. Thea Bowman Catholic School teaches children the importance of reliability, punctuality, and time management. When their attendance at school becomes erratic and uncertain, they cannot appreciate these valuable life lessons being taught in the classroom.
- 14. The information contained in this Affidavit is based upon facts and information personally known to me.
- 15. Further Affiant sayeth not.


CHANDRES JOHNSON

VERIFICATION BY CERTIFICATION

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


Chandres Johnson

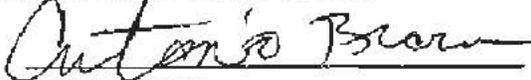
5. I have observed numerous School District 189 school buses that operate near my home and any one of these buses potentially could transport my daughter to school at Sr. Thea Bowman.
6. This school year and last school year, East St. Louis School District 189 refused to provide bus transportation for my daughter from home and to Sr. Thea Bowman and from Sr. Thea Bowman to home.
7. During the last school year, the lack of school bus transportation from District 189 caused an extreme hardship on my family to try to get my daughter to school at Sr. Thea Bowman without bus transportation provided by District 189. My daughter missed approximately 8 days of school due to lack of transportation. A.B
8. It is expected that this hardship will continue as my daughter continues to attend Sr. Thea Bowman.
9. I have a car but the added expenses of gas for my car to go to and from Sr. Thea Bowman twice a day have caused and will continue to cause my family a great hardship and will be an unsustainable additional expense.
10. It is my hope that my daughter will have a better education than I received, and that Sr. Thea Bowman is the right place to start her on the path.
11. Sr. Thea Bowman Catholic School teaches children the importance of reliability, punctuality, and time management. When their attendance at school becomes erratic and uncertain, they cannot appreciate these valuable life lessons being taught in the classroom.
12. The information contained in this Affidavit is based upon facts and information personally known to me.

13. Further Affiant sayeth not.


Antonio Brown

VERIFICATION BY CERTIFICATION

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


Antonio Brown

**IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS**

E.W., by his mother and next friend,)
Chandres Johnson, and A.M,)
by her father and next friend,)
Antonio Brown,)

Plaintiffs,)

No. 2022-CH-0075

v.)

BOARD OF EDUCATION OF EAST)
ST. LOUIS SCHOOL DISTRICT #189,)

Defendants.)

AFFIDAVIT OF JOHN BARICEVIC

COUNTY OF ST. CLAIR)
STATE OF ILLINOIS) ss
)

Affiant, John Baricevic, on oath state as follows:

1. I, JOHN BARICEVIC, am over the age of eighteen (18) and am of sound mind.
2. I am an attorney and I represented former Plaintiff, Sr. Thea Bowman Catholic Elementary School, in this matter until Sr. Thea Bowman voluntarily dismissed itself as a plaintiff.
3. Sr. Thea Bowman's voluntary dismissal was completely unrelated to the merits of the lawsuit and unrelated to the parties meeting held to attempt to resolve the matter.
4. I was present in person at the November 2022 meeting with School District 189 in an attempt to resolve this matter.
5. School District 189 was represented by attorney Garrett Hoerner and by Director of Transportation Lawrence Tourijigian. Superintendent Arthur Culver was not present.



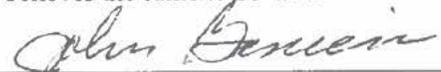
C 327

6. It was clear at that meeting that District 189 would not consider transporting students on their regular routes from Orr Weathers Homes or Gompers Homes to or near Sr. Thea Bowman School.
7. The information contained in this Affidavit is based upon facts and information personally known to me.
8. Further Affiant sayeth not.


JOHN BARICEVIC

VERIFICATION BY CERTIFICATION

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


John Baricevic

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next friend, **CHANDRES**)
JOHNSON, and **A.M.**, by her father and next friend,)
ANTONIO BROWN,)

Plaintiffs,)

vs.)

No. 22-CH-75

BOARD OF EDUCATION OF EAST ST. LOUIS)
SCHOOL DISTRICT NO. 189,)

Defendant.)

**DEFENDANT'S SURREPLY TO PLAINTIFFS' REPLY TO RESPONSE
IN OPPOSITION TO CROSS-MOTION FOR SUMMARY JUDGMENT**

Comes now Defendant, **East St. Louis School District No. 189**, by and through its attorneys, **Becker, Hoerner & Yursa, P.C.**, and for its Surreply to Plaintiffs' Reply to Response in Opposition to Cross-Motion for Summary, pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), state as follows:

1. In an apparent attempt to circumvent this Court's interpretation of Section 29-4 of the Illinois School Code (105 ILCS 5/29-4) in its November 2, 2022 Order, Plaintiffs' Cross-Motion for Summary Judgment belatedly shifts their position away from their contention at the inception of this case. Specifically, Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief (Plaintiffs' Complaint) seeks a declaratory judgment and injunctive relief against Defendant, East St. Louis School District No. 189 (District), requiring the District 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”; however, Plaintiffs’ Cross-Motion for Summary Judgment now seeks “bus transportation from their homes in East St. Louis to their nonpublic school and back, either on a regular route near their home or a regular route near their school.” Essentially, contrary to their Complaint, Plaintiffs now contend that “[t]he statute directs school districts to provide transportation for nonpublic school students either (i) from the student’s home located on or near a regular route to their schools; or (ii) from the student’s school located on a regular route to their homes”, and that [t]he statute does not require that nonpublic school students must live on or near Defendant’s regular routes AND that the school be located on the same regular route.”

2. In Defendant’s Response in Opposition to Cross-Motion for Summary Judgment, Defendant further noted that Plaintiffs’ Complaint, which is verified by both Plaintiffs, acknowledges that the scope of transportation required 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 because Plaintiffs’ Complaint expressly seeks a declaratory judgment requiring the District 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).

3. In Plaintiff’s Reply to Response in Opposition to Plaintiffs’ Cross-Motion for Summary Judgment, Plaintiff only responds to this distinction with the conclusory statement that “Plaintiffs’ Complaint is not contrary to the argument Plaintiffs have set forth in their Cross-Motion for Summary Judgment and supporting brief”, yet follows with the request that, “[t]o the

extent that this Court finds that the Complaint does not conform to the argument and relief requested as set forth in the Cross-Motion for Summary Judgment and supporting memorandum of law, then Plaintiffs ask for leave to amend pursuant to 735 ILCS 5/2-616.” (See Plaintiff’s Reply to Response in Opposition to Plaintiffs’ Cross-Motion for Summary Judgment, ¶ 2).

4. The purpose of a complaint is to crystallize the issues in controversy, so that a defendant will know what claims it has to meet. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 679, 832 N.E.2d 403 (2005), quoting *Pagano v. Occidental Chemical Corp.*, 257 Ill.App.3d 905, 911, 629 N.E.2d 569 (1994). In other words, the issues in controversy and the theories upon which recovery is sought are fixed in the complaint. *Kincaid v. Ames Department Stores*, 283 Ill.App.3d 555, 568, 670 N.E.2d 1103 (1996). When ruling on a motion for summary judgment, the trial court looks to the pleadings to determine the issues in controversy. *Gold Realty*, 358 Ill.App.3d at 679, 832 N.E.2d 403, quoting *Pagano*, 257 Ill.App.3d at 911, 629 N.E.2d 569. A party cannot seek summary judgment on a theory that was never pled in the complaint. *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill.App.3d 675, 680, 832 N.E.2d 403 (2005). Therefore, Plaintiffs cannot seek summary judgment on their newfound statutory interpretation position because same was never pled in Plaintiffs’ Complaint.

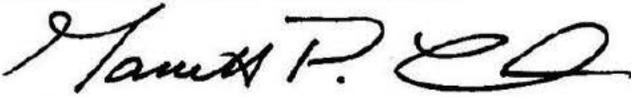
5. Nor would leave to amend Plaintiffs’ Complaint afford Plaintiffs the opportunity to shift their statutory interpretation position for summary-judgment purposes. Indeed, Illinois law is well established that, when a pleading is verified, it remains part of the record even upon the filing of an amended pleading. *Robins v. Lasky*, 123 Ill.App.3d 194, 198, 462 N.E.2d 774 (1984). A party’s admissions contained in an original verified pleading are judicial admissions that still bind the pleader even after the filing of an amended pleading that supercedes the

original. *Yarc v. American Hospital Supply Corp.*, 17 Ill.App.3d 667, 670, 307 N.E.2d 749 (1974). Simply put, Plaintiffs' remain bound by the verified allegations in their Complaint.

6. The District adopts and incorporates by this reference Defendant's Motion for Summary Judgment and Defendant's Response to Cross-Motion for Summary Judgment in this matter as though fully set forth herein.

WHEREFORE, Defendants, **East St. Louis School District No. 189**, respectfully request that this Court deny Plaintiffs' Cross-Motion for Summary Judgment, grant Defendant's Motion for Summary Judgment and enter summary judgment on Plaintiffs' Complaint in Defendant's favor and against Plaintiffs pursuant to Section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c)), and order such other relief as this Court deems just and proper.

BECKER, HOERNER & YSURSA, P.C.

By: 

Garrett P. Hoerner
No. 6243119

ATTORNEYS FOR DEFENDANTS
5111 West Main Street
Belleville, IL 62226
Phone: (618) 235-0020
Fax: (618) 235-8558
E-Mail: gph@bhylaw.com

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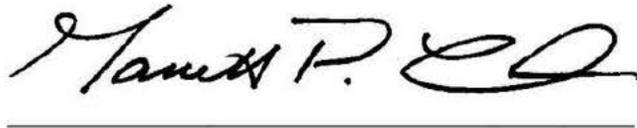
A311

CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rule 12(b), the undersigned certifies that a copy of this instrument was served upon the following persons via electronic mail and U.S. Mail, postage prepaid, by depositing same in the U.S. Mailbox located at 5111 West Main Street, Belleville, Illinois at 4:00 p.m. on this 22nd day of August, 2023, to:

Susan M. Simone
Land of Lincoln Legal Aid
8787 State Street, Suite 201
East St. Louis, Illinois 62203
ssimone@lincolnlegal.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.



Case No. 22-CH-75
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A312

13175
APPEAL TO THE APPELLATE COURT OF ILLINOIS
5th JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

BROWN A M BY HER FATHER

Plaintiff/Petitioner

5-23-0763

Appellate Count No: **5-23-0763**

Circuit Court/Agency No: **22-CH-0075**

Trial Judge/Hearing Officer: **Hon. Julie K. Katz**

E-FILED

Transaction ID: **5-23-0763**

File Date: **11/29/2023 1:39 PM**

John J. Flood, Clerk of the Court

APPELLATE COURT 5TH DISTRICT

V.

BOARD OF EDUCATION OF EAST ST LOUIS S

Defendant/Respondent

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

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<u>Proceeding</u>	<u>Title/Description</u>	<u>Page No.</u>
11/29/2023	Table of Contents - R1	R 1 - R 1
08/24/2023	REPORT OF PROCEEDINGS - R2	R 2 - R 26

A313

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

ST. CLAIR COUNTY, ILLINOIS

E.W., by his mother and next)	
friend, CHANDRES JOHNSON and)	
A.M., by her father and next)	
friend, ANTONIO BROWN,)	
)	
Plaintiffs,)	
	)	NO. 22-CH-75
VS.)	
)	
BOARD OF EDUCATION OF EAST)	
ST. LOUIS SCHOOL DISTRICT)	
NO. 189,)	
)	
Defendant.)	

REPORT OF PROCEEDINGS

(Transcribed from a Digital Recording)

Before the HON. JULIE KATZ, Associate Judge

AUGUST 24, 2023

APPEARANCES:

- MS. SUSAN SIMONE, Attorney at Law,
On Behalf of the Plaintiffs;
- MR. NOAH HALPERN, Attorney at Law,
On Behalf of the Plaintiffs;
- MR. GARRETT HOERNER, Attorney at Law,
On Behalf of the Defendant.

PAMELA L. SCHUBERT, CSR
Official Court Reporter
CSR License #084-002832

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: August 24, 2023, being one of the regular judicial
3 days of this Court, the matter as hereinbefore set forth came
4 on for hearing before the HONORABLE JULIE KATZ, Associate
5 Judge in and for the Twentieth Judicial Circuit, State of
6 Illinois, and the following was had of record, to wit:

7 *****
8

9 (The following was transcribed from a digital recording.)
10

11 THE COURT: We are on the record in cause number 22-
12 CH-75. The plaintiffs are E.W., by his mother and next friend,
13 Chandres, C-H-A-N-D-R-E-S Johnson, J-O-H-N-S-O-N, et al. Those
14 plaintiffs are represented by Susan Simone, S-I-M-O-N-E from
15 Land of Lincoln Legal Aid. And by Noah Halpern, H-A-L-P-E-R-N,
16 also from Land of Lincoln Legal Aid. And the defendant is the
17 Board of Education of East St. Louis School District No. 189.
18 And the defendant is represented by Mr. Garrett Hoerner, H-O-
19 E-R-N-E-R.

20 Each of the parties has filed a motion for summary
21 judgment. Each of the parties has responded to the other
22 party's motions and the court has, unless there's been
23 something since the surreply filed by defendant then I have
24 read everything.

1 So I think Mr. Hoerner your motion for summary judgment
2 was first. So I will allow you to argue first. Do you want to,
3 as part of the argument of your motion also to respond to Ms.
4 Simone's motion as part of your same argument and I'll allow
5 her to do the same thing and then I'll give everybody one more
6 chance to respond to the other one's arguments at the end,
7 does that seem to make sense logistically?

8 MR. HOERNER: Yes.

9 THE COURT: All right, then Mr. Hoerner you have the
10 floor.

11 MR. HOERNER: Okay, thank you Your Honor. As you know
12 Your Honor this case involves a statutory interpretation issue
13 involving section 29-4 of the Illinois School Code. An issue
14 that has been extensively briefed by the parties. It was heard
15 on October 31st, 2022 by the court and interpreted by order of
16 this court on November 2nd, 2022. The law has not changed since
17 this court's November 2nd, 2022 order. What has changed however
18 is plaintiff's position as to the interpretation of section
19 29-4.

20 Again, section 29-4 of the Illinois School Code defines
21 a limited scope of transportation that a public school
22 district must afford the pupils attending a charter school or
23 non-public school to include quote, such transportation to
24 extend from some point on a regular route nearest or most

1 accessible to their homes, to and from school attended or to
2 and from a point on such regular route which is nearest or
3 most easily accessible to the school attended by such
4 children.

5 As this court has already ordered on October - - on
6 November 2nd the scope of this transportation is limited to
7 points on the regular routes of buses servicing the public
8 school district students. Plaintiff's complaint acknowledges
9 as much by expressly seeking declaratory judgment requiring
10 the district to provide transportation for plaintiffs to
11 Sister Thea Bowman Catholic Grade School by quote, using
12 either a regular existing route nearest to the plaintiffs'
13 homes and to Sister Thea Bowman or by a separate regular bus
14 route if that is found to be safer, more economical or more
15 efficient in accordance with the provisions of 105 ILCS 5/29-
16 4.

17 Consistent with the precedent of our Appellate Court Fifth
18 District in *C.E. and C.L. v. East St. Louis School District*
19 *No. 189*, this court's November 2nd, 2022 order properly
20 concluded that quote, again the law remains in section 29-4 of
21 the Illinois School Code simply allows non-public school
22 students to utilize the public school district's existing bus
23 transportation and nothing more. In other words, the school
24 buses are not required to quote, go out of their way, end

1 quote, to transport non-public school students.

2 And so in the course of the cross motion for summary
3 judgment and the responses it appears that plaintiff is no
4 longer seeking a separate bus route but is focusing on the
5 existing bus routes. And in an apparent attempt to circumvent
6 this court's order and its interpretation of section 29-4 in
7 that order the cross motion for summary judgment belatedly
8 shifts their position away from their contention at the
9 inception of this case.

10 Plaintiff's complaint seeks a DJ and injunctive relief
11 against the defendant requiring again that they quote, provide
12 bus transportation, quote, using either a regular existing
13 route nearest to plaintiffs' homes and to Sister Thea Bowman
14 or - - and then the cross motion for summary judgment now
15 seeks quote, bus transportation from their homes in East. St.
16 Louis to their non-public school and back either on a regular
17 route near their home or a regular route near their school.
18 Essentially they're changing how they're interpreting the
19 statute and how this court has interpreted the statute and how
20 the Appellate Court has interpreted the statute to somehow
21 claim that we have to veer off the existing route if they live
22 on the existing route and take them to Sister Thea Bowman. Or
23 that if they get on an existing route near Sister Thea Bowman
24 that we have to veer off that existing route and take them to

1 their home. And that's not contemplated by the statute and
2 this court's previous interpretation of that statute.

3 This new founded interpretation of section 29-4 is clearly
4 erroneous in that it would necessarily require the district
5 to modify an existing route or quote, go out of their way, end
6 quote, which is exactly what the Appellate Court said 29-4
7 does not require contrary to this court's interpretation as
8 well which would be at the absurd result in the statutory
9 interpretation that courts are intended to avoid under
10 Illinois law.

11 When I raised this distinction the response in opposition
12 to - - in the reply to their response in opposition the
13 plaintiff's cross motion for summary judgment plaintiff only
14 responded to this distinction between plaintiff's complaint
15 and plaintiff's cross motion for summary judgment with a
16 conclusory statement that quote, plaintiff's complaint is not
17 contrary to the arguments plaintiffs have set forth in their
18 cross motion for summary judgment and supporting brief. Yet
19 they follow that with a request to amend the complaint if the
20 court deemed it necessary.

21 Now first I will point out and this is in the surreply
22 that a party can not seek summary judgment on a theory that
23 was never pled in the complaint. Therefore plaintiffs can not
24 seek summary judgment on their new found statutory

1 interpretation because that's not what they pled in their
2 complaint.

3 Secondly, when it comes to amendment a leave to amend
4 would not afford plaintiff the opportunity to shift their
5 statutory interpretation position for summary judgment
6 purposes. Illinois law is well established that when a
7 pleading is verified which plaintiff's complaint is it remains
8 part of the record even though the filing of an amended
9 pleading. A party's admissions contained in the original
10 verified pleading are judicial admissions that still bind the
11 pleader even after the filing of an amended pleading that
12 supercedes the original.

13 So simply put, plaintiff remains bound by the verified
14 allegations in the complaint. Those verified allegations
15 include the interpretation of the statute in a similar manner
16 to how this court has interpreted it, how C.E. has interpreted
17 it, how the district has interpreted it. And that is that the
18 transportation obligation under that statute is limited to the
19 existing regular routes of the district.

20 There's been some suggestion about transfer points and
21 different types of technology, that's not what was
22 contemplated by the statute. This statute is really simple. If
23 you have - - if you are a public school district and you have
24 an existing route then private - - the non-public district,

1 the charter school can get on the bus at some point on that
2 regular route and get off the bus at some point on that
3 regular route. When you're talking about transfers and the
4 like that's changing routes. That's not the existing route.
5 And the comparisons that have been made or I anticipate will
6 be made by the plaintiff to open enrollment students and
7 things of that nature, those are public school students. We're
8 obligated to get them there no matter what under a different
9 section of the code. But when it comes to the non-public
10 students the obligations are simply you can get on at some
11 point on a regular route and you can get off at some point on
12 a regular route. And those regular routes are created to serve
13 the public school students. And that's what the statute
14 required.

15 When the Appellate Court entered its order in C.E. that's
16 what the statute required. When this court entered its order
17 denying the temporary restraining order. And that statute
18 hasn't changed. The law has not changed in this case. And
19 again, what plaintiff is suggesting is that the district go
20 out of the way. And they're just simply not required to do
21 that.

22 So I would also note that the prayer for relief in this
23 complaint which frames the complaint and I cite the case law
24 in the surreply, the prayer for relief is the relief that the

1 plaintiff is seeking. And that's just generically to follow
2 the statute and of course the district believes that the
3 district is following the statute. And the court has the same
4 interpretation.

5 So for those reasons the district requests that this court
6 grant summary judgment in its favor and against plaintiffs and
7 deny the cross motion for summary judgment. Thank you.

8 THE COURT: Ms. Simone.

9 MS. SIMONE: Thank you, Your Honor. In the summer of
10 2022 Superintendent Arthur Culver directed Dr. Tourijigian,
11 the director of transportation for District 189 not to route
12 Sister Thea Bowman students. And Dr. Tourijigian followed his
13 orders. All transportation for Sister Thea Bowman students was
14 stopped and has continued - - and they have failed to provide
15 that transportation since that directive.

16 Fifty years ago the *Illinois Supreme Court and Board of*
17 *Education v. Bakalis* held that section 29-4 served an
18 important public person - - purpose of getting all students to
19 school safely. That is the purpose of this statute. It is not
20 the purpose of the statute to maybe get these students to
21 school if it's not too much of an inconvenience for the
22 district. It is a mandatory obligation, a mandatory duty
23 imposed by our general assembly on public school districts to
24 transport all students to school within their district.

1 In *Bakalis* it's interesting to note that the public school
2 district was complaining that it had to add two additional
3 buses to transport all the students. But the Supreme Court
4 said that didn't matter because section 29-4 required non-
5 public school students to be transported on the same basis as
6 public school students.

7 Mr. Hoerner's argument is basically putting Sister Thea
8 Bowman students and other non-public school students as second
9 class citizens in what he proposes for their transportation.
10 That is not what *Bakalis* says. That is not what 29-4, which
11 was enacted in 1933 for the secular legislative purpose of
12 protecting the health and safety of all kids, all school
13 children.

14 So it didn't matter that the two extra buses would cost
15 the district money because it was their obligation to
16 transport on the same basis which was from a point near their
17 home to their school. Not as the district says, a point near
18 their home if it's on the district route to a point somewhere
19 else on that route which is six miles away from their school.
20 That is an absurd result and it is no way considering the
21 safety of the school children, the primary legislative purpose
22 of this statute.

23 It has always been our contention that the statute
24 requires District 189 to transport plaintiffs from or near

1 their home to their school. And I'm confused by Mr. Hoerner's
2 argument and I'm looking at my complaint on page five to six
3 asking that they be enjoined by failing to provide appropriate
4 transportation using an existing route nearest their home to
5 Sister Thea Bowman. So I really don't get Mr. Hoerner's
6 argument.

7 But I mentioned amendment because 6-16, 2-616 which is to
8 be liberally construed says at any time before final judgment
9 amendments may be had. I don't really think amendment is
10 required because I think we have been clear throughout, from
11 the beginning with the hearing on the temporary restraining
12 order and throughout all the pleadings that we want
13 transportation from near their homes to their school. That's
14 what the statute requires.

15 The basic rules of statutory construction require that we
16 consider the statute as a whole and avoid constructions that
17 would defeat the statute's purpose or be absurd. The dispute
18 is over from where to where. Nearest, quote, unquote, nearest
19 in the statute and our complaint refers to routes near the
20 plaintiffs' homes and those routes are to take the students to
21 their school. Nearest does not modify or describe the
22 destination, only the starting point.

23 And the very next clause of the statute the general
24 assembly offered the district the option of using routes near

1 the public school, near the non-public school to get the kids
2 home. So you know it is a possibility that District 189 can
3 use the routes near their homes, take them to school and in
4 the afternoon use the routes near Sister Thea Bowman to take
5 them home. But it is still where to where, near their home to
6 their school or from their school near their home.

7 In the very next clause of the statute when the general
8 assembly uses nearest and saying from routes near the
9 students' home to their school, then they do the or and says
10 or from their school to home. That indicates that the
11 legislature knew that the routes would not be all one route
12 from the students' home to their non-public school. That it
13 could be - - that it wouldn't be the existing routes that Mr.
14 Hoerner argues that takes the schools - - the kids from
15 Gompers for example to Wyvetter Younge but you wouldn't need
16 two clauses for that. So it must mean from their home at
17 Gompers, maybe they drop off the kids at Wyvetter Younge and
18 then drop them off at Sister Thea Bowman. Conversely the next
19 clause, pick them up at Sister Thea Bowman or take a route
20 from Sister Thea Bowman, go pick them up and then bring them
21 back along that route.

22 The construction of the kids have to reside on the school
23 route for 189 students and be dropped off along the school
24 route for 189 students does not make sense in light of these

1 two separate clauses. And I want to point out that the verb to
2 extend from a point of the regular route to and from the
3 school attended by plaintiffs, not to and from the school
4 attended by the District 189 students.

5 So our request very nearly mirrors the statute at issue.
6 And it is a confusing statute. I think it is. But the core of
7 the lawsuit asks what is District 189's obligation under 29-4
8 and that question must be viewed in the light of the
9 legislative purpose and the answer must uphold that
10 legislative purpose.

11 District 189's position has been that they will not
12 provide transportation to plaintiffs to their school because
13 Dr. - - Mr. Culver, Superintendent Culver for whatever reason
14 said don't route them anymore. We think they saw Dr.
15 Tourijigian's deposition that other parents were asking about
16 - - other non-public school parents were asking about
17 transportation and the district said okay, nobody gets it, no
18 non-public school kids get transportation anymore.

19 Another thing I want to point out about the statute is
20 that the next sentence discusses high school districts being
21 enlisted to transport elementary school kids. So in non-
22 consolidated school districts that are only K through 8
23 instead of K through 12 like District 189 the legislature
24 provided the flexibility that the school district might need

1 to get these non-public school kids to their school. And then
2 the separate route provision also provides flexibility. So the
3 legislature knew they were putting a burden on public school
4 districts in mandating transportation which is why they have
5 offered various options for the districts to use to try to
6 come up with a route that's going to get the kids from near
7 their home to their school.

8 Defendant relies heavily on C.E. but C.E. and I understand
9 why they would, but CE only involved providing transportation
10 to students on days when the public school was not in session.
11 That requires a separate route and a separate route does
12 require consideration of cost. That required routes that did
13 not already exist, that were not a regular route because no
14 public school students were being picked up. So it's very
15 different from this case and very different from what's
16 contemplated by that first long sentence of the statute.

17 We're just asking that our kids be provided transportation
18 on the same basis that District 189 kids are provided
19 transportation. They are picked up near their homes. They are
20 taken to their school. In the afternoon they're taken from
21 their school to near their homes. That is what we are asking.
22 And cost does not come into that analysis unless the district
23 is contemplating a separate route. C.E. does not and can not
24 overrule *Bakalis*. *Bakalis* was the Illinois Supreme Court's

1 proclamation of this statute. And bus drivers go out of the
2 way a lot of times for students. Waiting for a student who is
3 running down the road to catch the bus. They're waiting an
4 extra thirty minutes - - thirty seconds, that's going out of
5 their way for the students. So in this context of getting
6 kids on regular school days from their home to their school
7 doesn't apply.

8 Public school students are also not required to identify
9 which exact route do they want to ride. And I understand Your
10 Honor's concern about us needing to identify something. But
11 the district uses sophisticated software to assign students to
12 routes. And to comply with the statute to transport plaintiffs
13 on the same basis the district would be required to assign our
14 plaintiffs to the routes to figure out they can get to school
15 on District 189 routes.

16 In his deposition Dr. Tourijigian discussed, explained
17 catchment areas, those are the boundaries that each elementary
18 school, middle school and the high school and the students
19 within that catchment area go to those schools. But they also
20 have open enrollment students. They are primarily homeless
21 children but they are not all homeless. And those students can
22 live anywhere in the city and get bus transportation from
23 where they live to their school. And the way it's done is
24 either the bus in that catchment area that the student lives

1 nearby takes the student after they drop off their other
2 students to the school that they normally attend or vice
3 versa. And that's what we would ask for these students, for
4 our plaintiffs, that they be put into the Versatrans database,
5 the sophisticated software that the district uses to figure
6 out how to route the thousands of students they route and to
7 put them in as open enrollment program students to get - - see
8 that the computer says would be the most optimal route to get
9 them from near their home to their school and back again in
10 the afternoon.

11 Because Your Honor what the district does for District
12 189 students they have to do on the same basis as the Sister
13 Thea Bowman students. Thank you.

14 THE COURT: Thank you Ms. Simone. Mr. Hoerner.

15 MR. HOERNER: Thank you, Your Honor. A couple things.
16 First, with the references to Superintendent Culver and the
17 statements about don't route, that was a separate route. As I
18 indicated before historically there were separate routes.
19 There were issues with the number of drivers. And so when it
20 was - - when it was determined not to route Sister Thea Bowman
21 that was separate routes. We don't have a separate route
22 anymore. We don't have enough drivers. I don't think it's an
23 issue anymore that in this case that they're not required to
24 do separate routes anyway.

1 With respect to *Bakalis* and the two extra buses that
2 wasn't separate routes either. So that was an issue where it
3 was the overall number of buses. So we're not suggesting a
4 crossed issue with respect to the district's existing routes
5 because the district has existing routes. So the issue is what
6 is required with respect to the existing routes. And I think
7 that's what the remaining dispute in this case is.

8 And when we talk about the same basis, the language from
9 the case about providing transportation on the same basis as
10 public school students that means they could use their
11 existing routes. If it was required that they be treated the
12 same as public school students section 29-4 would be identical
13 to section 29-3. 29-3 says hey district, if they live within
14 one and a half - - if they live beyond one and a half miles
15 you have to provide transportation to your own students.
16 That's public school students. 29-4 is different. 29-4 says if
17 you have an existing route you've got to provide them
18 transportation point to point on the existing route.

19 And we talked about C.E. Now I understand why the
20 plaintiff is trying to distinguish C.E. because C.E. is a case
21 which is contrary to their claim. The distinction that they're
22 drawing is a distinction without a difference. Because
23 regardless of whether it was an issue of hey, do you have to
24 provide them transportation on days they're off or what are

1 your obligations under the statute on days that you're on. It
2 was interpreting the statute. And when they interpreted the
3 statute they said that the public school district does not
4 have to go out of its way. And the whole reason they said that
5 was that it's an existing route situation and you just have to
6 give them the transportation that you give your students. But
7 that's not door to door, that's existing routes. Again, if it
8 were door to door it would be in 29-3.

9 With respect to the - - with respect to the prayer in the
10 complaint, what is being argued here on the cross motion for
11 summary judgment isn't what is sought in the complaint. And
12 you can not get summary judgment on something you don't
13 include in the complaint. So I think procedurally the cross
14 motion for summary judgment is subject to denial. Substantive
15 it's subject to denial because it's contrary to this court's
16 order. It's contrary to the Appellate Court's order. And it's
17 a position that is beyond the statute.

18 And for those reasons I would ask Your Honor that you
19 grant summary judgment in favor of the district and deny the
20 cross motion for summary judgment filed by plaintiff.

21 THE COURT: Thank you Mr. Hoerner. Ms. Simone.

22 MS. SIMONE: Yes, Your Honor. I know Mr. Hoerner
23 attached the entire deposition of Dr. Tourijigian and I
24 attached relevant excerpts from it and it speaks for itself.

1 He was told not to route Sister Thea Bowman and he didn't
2 route them. He didn't route them in existing routes as Mr.
3 Hoerner is defining it, he just - - they didn't want to do it
4 anymore so they stopped doing it.

5 29-4 uses the term on the same basis. When it talks about
6 in the last sentence of that first paragraph that the district
7 is going to provide transportation to students who live within
8 that one hundred - - one and a half miles from the school
9 attended then the school board is required to provide such
10 children on the same basis as it provides transportation to
11 its own pupils.

12 And as I mentioned in my memorandum of law the district
13 has taken advantage of Illinois law that allows school
14 districts that live within criminal gang activity or safety
15 hazards to provide those students transportation and they do
16 that. They provide students - - the first year it was the
17 entire city of East St. Louis. Last year or the year before
18 that it was sections down by the Orr-Weathers Homes. But it's
19 on the same basis. And on the same basis doesn't mean they
20 don't take District 189 students from their homes and then
21 drop them four miles away from their school. They take
22 District 189 students from near their homes to their school.
23 And that's what Sister Thea Bowman students, that's what the
24 plaintiffs are entitled to. I think that is what the meaning

1 of the statute is and that conforms to what the purpose of the
2 statute is which is the health and safety of all school
3 children no matter what school they go to.

4 And for that reason I ask that you deny Mr. - - the
5 district's motion for summary judgment and grant our cross
6 motion for summary judgment.

7 THE COURT: All right.

8 MR. HOERNER: Your Honor, if I may just briefly, you
9 know Ms. Simone just said something I think bolsters our
10 argument that when we're talking about the hazard, the
11 emergency hazard, safety hazard provision that's in 29-3.

12 THE COURT: Right.

13 MR. HOERNER: And if you look at 29-4 it doesn't make
14 any reference to that. And it still talks about who reside at
15 least one and a half miles from the school attended. So you
16 know again it just draws a further distinction with what is
17 required by public school districts to provide to public
18 school districts under 29-3 versus what is required for non-
19 public school students under 29-4. Those are markedly
20 different statutes. So I don't think that you can say you
21 provide something for - - you provide something for one and
22 you have to provide for the other. What it says, the plain
23 language of 29-4 is that it has to be on the existing route.
24 And the district has been - - is willing to do that but

1 there's no route that's been identified that they wanted to be
2 on. Now we're into the next school year. There's no route
3 identified for these two students. And again, I go back to
4 what this court - - what the Appellate Court said in C.E. and
5 what this court said in its order. And it may not be something
6 that anybody likes but it's the interpretation of the statute.
7 And I think that both the Appellate Court and this court
8 followed that. Followed the statute in its previous orders.
9 And I don't think there's any reason to change course as to
10 this court's interpretation. Thank you.

11 THE COURT: Thank you. I'll give you another chance
12 too but I have a question first for Mr. Hoerner.

13 So I think I asked this before we went on the record. But
14 as I understand it there is no existing route that picks up
15 near either of these children's homes and goes near Sister
16 Thea Bowman, am I correct in assuming that?

17 MR. HOERNER: That was true last year based on our
18 meeting in - - when this court ordered us to meet we met and
19 showed the existing routes. And there wasn't one that went by
20 the homes and went by the - -

21 THE COURT: Sister Thea Bowman.

22 MR. HOERNER: - - Sister Thea Bowman School. Maybe
23 within, I don't know, I'd have to go back and look at it. But
24 now we're into a new school year so I don't know how much

1 those routes have changed.

2 THE COURT: And I would have to assume that those
3 routes have been implemented because school has started. But
4 you don't know as you sit here what difference there might be
5 in the routes from last year to this year?

6 MR. HOERNER: I don't, Your Honor.

7 THE COURT: All right.

8 MR. HOERNER: But again, I think that we're - -
9 from a relief standpoint the scope of this case is set by a
10 prayer for relief in the complaint.

11 THE COURT: All right. Ms. Simone, you get one final
12 shot.

13 MS. SIMONE: Thank you, Your Honor. I just want to
14 point out that I believe Mr. Hoerner is wrong in comparing 29-
15 3 to 29-4 because 29-4 specifically says if any such children
16 reside within one and a half miles from the school attended
17 the school board shall afford such transportation to such
18 children on the same basis as it provides transportation for
19 its own pupils.

20 And also I want to point out the Administrative Code,
21 23, section 120.3, that also says transportation services
22 provided for non-public school students shall be provided on
23 the same basis as transportation services to public school
24 students. And then they get reimbursed, District 189 gets

1 reimbursed. I think that our position has remained the same.
2 We want transportation for the plaintiffs' kids, for the
3 plaintiffs to their school in a safe manner. And District 189
4 has a mandatory duty to provide it.

5 THE COURT: All right, thank you. So I'm going to want
6 you both to get me proposed orders. I realize the time line is
7 going to be fairly short. Because I do think it's going to be
8 important that the language - - because there is a difference
9 in the proper interpretation of the statute between the
10 parties I think whatever order I sign needs to be very clear.
11 So can you both get that to me by Monday, is that too quick?

12 MR. HOERNER: Your Honor, is there any way we can do
13 Tuesday simply because I've got to take one of my daughters
14 back to college and I don't get back till Tuesday morning.

15 THE COURT: I mean I'm fine with Tuesday. I just have
16 to make sure I rule by Thursday. And there won't be any
17 opportunity, which is fine, but you won't be able to ask - -
18 neither one of you is going to be able to ask me to
19 reconsider. If you decide to appeal you're going to have to go
20 straight up because I can't - - or you can ask Judge Captain
21 to reconsider but I don't know how comfortable she's going to
22 be reconsidering one of my orders. I don't know that she
23 couldn't but I just don't know that that would be a very
24 fruitful exercise on the part of either one of you. But I

1 don't think there's any prohibition against asking her to
2 reconsider.

3 So anyway, I just want to point out that you know it may
4 make things a little tight. But Tuesday is fine. By the end of
5 day on Tuesday, would that work?

6 MR. HOERNER: That would be great.

7 MS. SIMONE: That's fine with me. Thank you, Your
8 Honor.

9 THE COURT: All right.

10 MS. SIMONE: And it's been an honor, Your Honor.

11 THE COURT: Thank you, thank you very much. Everybody
12 take care.

13 MR. HOERNER: Thank you, Your Honor.

14 THE COURT: I'm going to end this call now.

15 MS. SIMONE: Thank you.

16 THE COURT: All right, off record.

17 *****

18

19

20 (END OF PROCEEDINGS THAT WERE REQUESTED TO BE TRANSCRIBED ON
21 THE ABOVE DATE.)

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24

1 TWENTIETH JUDICIAL CIRCUIT)
2 COUNTY OF ST. CLAIR) SS
3 STATE OF ILLINOIS)
4
5
6

7 I, Pamela L. Schubert, hereby certify that the
8 foregoing transcript is a true and accurate report of the
9 digitally recorded proceedings.

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11 Dated this 12th day of October, 2023.
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15 *Pamela L. Schubert*

16 Pamela L. Schubert, CSR
17 Official Court Reporter
18 CSR License # 084-002832
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PROOF OF SERVICE

Pursuant to Illinois Supreme Court Rules 12(b), 315(h) and 341(e), the undersigned certifies that, on October 29, 2025, 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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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