IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

URBAN PREP ACADEMIES, Plaintiff, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO SCHOOL DISTRICT 299, Defendant.	No. 23 CH 03742 Calendar 15 Hon. Anna M. Loftus Judge Presiding

MEMORANDUM DECISION & ORDER

In this collateral attack on the decision by defendant Board of Education of Chicago School District 299 ("CPS" or "CPS Board") to non-renew two of plaintiff Urban Prep Academies' ("Urban Prep") school charters, the issue is whether the moratorium on school closures, consolidations, and phase-outs through January of 2025, codified under 105 ILCS 5/34-18.69, bars CPS from non-renewing school charters pursuant to its express authority under 105 ILCS 5/27A-9(c). In ultimate pursuit of having its charters renewed, Urban Prep seeks a declaration that CPS' non-renewal actions constitute a closure as a matter of law, as well as in effect. The Court first finds that § 34-18.69 applies to charter schools. Furthermore, the plain language of the statute itself, along with the definitions of "school closing" found in 105 ILCS 5/34-200, inform this Court's conclusion that CPS' non-renewal decisions and subsequent actions constitute unauthorized school closures. The Court's detailed decision follows.

I. Background

Urban Prep is a nonprofit charter operator focused on high school, college and post-college development of Black boys and young men. Until recently, Urban Prep has operated three all-male charter schools in Illinois. This case concerns two of the schools run by Plaintiff: Urban Prep-Englewood and Urban Prep-Bronzeville.[1] CPS has acted as the authorizing agent for Urban Prep-Englewood since 2005, and Urban Prep-Bronzeville since late 2009. Between those dates and June 30, 2023, CPS authorized Urban Prep to operate those schools pursuant to a series of negotiated charter agreements.[2] For the

[1] Urban Prep has operated a third campus, Urban Prep West/Downtown, since 2010. However, in 2018, CPS revoked the charter. Urban Prep successfully appealed the decision to the State Charter School Commission who then became the authorizing agent pursuant to 105 ILCS 5/27A-9(f). ISBE took over as authorizer of the campus in 2020 following the enactment of Public Act 101-0543 which abolished the Commission and transferred its duties and powers to ISBE. *Id.* In November of 2022, ISBE voted to revoke the charter for Urban Prep West/Downtown effective as of the end of the 2022-2023 school year. *Id.*

[2] For Urban Prep-Bronzeville, the charter agreements were renewed for between three and five years. The initial agreement ran from November 2009 through June 2015. Subsequent agreements ran from July 2015 through June 2020; and July 2020 through June 2023. Englewood's renewals will be detailed below.

period that CPS continued to authorize the operation of these schools, the Illinois State Board of Education ("ISBE") approved and certified each of the Agreements in compliance with the Charter Article of the Illinois School Code. See § 27A-6.

In recent years, Urban Prep's relationship with CPS has strained. As early as November of 2016, CPS had concerns with how Urban Prep was managing the finances of its schools. CPS' continued concern with Urban Prep's compliance is further evidenced by the one-year charter renewal agreements between 2021 and 2023. Whereas the Charter School Article contemplates renewals of up to ten years (§ 27A-9(a), CPS limited the renewals of Urban Prep-Englewood's charter to one-year terms. In the words of Dr. Alfonso Carmona, CPS' Chief Portfolio Officer, in his September 26, 2022 letter to Urban Prep, "the CPS Board no longer trusts that the [Urban Prep] Board will act in the best interests of its students or the public." Def's Exhibit 2.

Dr. Carmona's letter came during a breakdown in negotiations between the parties. For the 2022-2023 school year, the parties could not reach an agreement by June 30, 2022, and Urban Prep continued to informally operate Englewood under the 2021-2022 charter until the execution of a new agreement on November 1, 2022. This delay was in part due to Urban Prep's resistance in agreeing to a set of thirteen conditions outlined by CPS in February 2022, primarily setting forth fiscal compliance measures. See Def's Exhibit 1 (CPS Renewal Recommendation, February 2022). In his September 26, 2022 letter, Dr. Carmona indicated that Urban Prep would have to comply with a list of an additional twelve conditions, all by October 21, 2022, or the schools would not be renewed. See *id.*[3] On October 26, and before the 2022-2023 charter was even executed, CPS had already recommended the non-renewal of Urban Prep's charters effective June 30, 2023.

CPS made its non-renewal decisions in accordance with the procedures described by the Charter School Article of the Illinois School Code, the section governing terms and renewals of school charters. § 105 ILCS 27A-9. Specifically, CPS acted pursuant to subsections 27A-9(c)(1) ("material violation of . . . conditions, standards or procedures set forth in the charter"); 27A-9(c)(3) ("[f]ailure to meet generally accepted standards of fiscal management."); and 27A-9(c)(4) ("[v]iolat[ion] [of] any provision of law from which the charter school was not exempted").

In its decisions, CPS began by outlining its findings with concerns about financial and sexual misconduct. CPS also found that Urban Prep failed to employ a sufficient number of licensed teachers as required by 105 ILCS 5/27A-10(c-5). See Def's Exhibits 4-5 (where the statute requires 75% teacher licensure, Englewood had 33% licensed; Bronzeville had 38% licensed). Another finding was that Urban Prep's financial issues caused a lapse in the provision of special education services in March of 2020 resulting in a violation of the Individuals with Disabilities in Education Act and Illinois School Code. *Id.* CPS also noted Urban Prep's failure to submit proof of compliance with either the February or October conditions. *Id.*

[3] The list includes conditions barring a prior Executive/Board Member from school events, contact with children, and employment on the Legacy Board; dismissing Urban Prep members who were aware of ghost payrolling misconduct; and requiring that Urban Prep amend its bylaws to submit its Board representative nominations to CPS for independent review.

The nonrenewal of each charter was set to take effect at the end of the 2022-2023 school year. Urban Prep's charter Agreements with CPS expired June 30, 2023.

Urban Prep appealed CPS' decisions to ISBE in accordance with § 27A-9(e). An Independent Hearing Officer ("IHO") was appointed to review CPS' non-renewal decisions with input from both Urban Prep and CPS as well as members of the community in a public hearing. In consideration of the charter agreements and the evidence presented, the IHO recommended denial of Urban Prep's Appeal on the basis that the campuses were not in compliance with the School Code or their respective charter agreement and further that it was in the best interests of the students to uphold the non-renewal decision.[4] On April 19, 2023, ISBE voted to deny the appeals based on Urban Prep's noncompliance with the School Code and the respective charter agreements.

II. Procedural Posture

A. The Three Cases

This case comes before this Court on a complex procedural posture. In the first of three cases filed in the Cook County Chancery Division, Urban Prep asks the Court to declare that CPS' decision to non-renew the charters is void because it violates § 34-18.69. It seeks to enjoin what it characterizes as an unauthorized "closure" of the Englewood and Bronzeville schools. This case was assigned to Calendar 15 and is the subject of the Court's opinion.

Urban Prep subsequently filed two cases seeking administrative review of ISBE's decisions denying Urban Prep's appeals: in 2023 CH 04959, assigned to Calendar 3, Urban Prep sought administrative review of the non-renewal of the Bronzeville charter; in 2023 CH 04961, assigned to Calendar 7, Urban Prep sought administrative review of the non-renewal of the Englewood charter. A motion to consolidate all three cases was denied, but the administrative review cases were transferred to the undersigned as related to the original declaratory judgment action.

B. Urban Prep's Motion for A Temporary Restraining Order

In the Declaratory Judgment action, Urban Prep sought a temporary restraining order to stay enforcement of CPS' non-renewal decision. As initially brought, Urban Prep requested an injunction until 2025. Given that this would have constituted the ultimate relief on the merits, Urban Prep amended its request to a stay until a hearing on the merits of the collateral attack. On June 14, 2023, this Court denied Urban Prep's motion

[4] Notably, the IHO heard and rejected Urban Prep's moratorium argument at this stage. The IHO concluded that the moratorium did not apply to charter schools since charter schools are generally exempt from provisions of the School Code, and § 34-18.69 is not within the enumerated provisions which charter schools are *not* exempt from in § 27A-5(g). Additionally, the IHO also concluded that, subject to the definition of "closings, consolidations, [and] phase-out's" under another section of the School Code, § 34-200, the non-renewal action would not result in a closure – "the assignment and transfer of **all** students" from the school." (emphasis in original). ISBE, however, did not expressly adopt that determination, but instead voted to deny Urban Prep's appeals on the basis of its noncompliance with the School Code and the respective charter agreements.

for a temporary restraining order on the basis that it brought the claim pursuant to an improper collateral attack posture. On June 23, 2023, the First District reversed and vacated the June 14, 2023 Order, granting Urban Prep's Motion for Temporary Restraining Order. In its succinct order, the First District stated: "the October 26, 2022 decision of the CPS Board of Education non-renewing and effectively closing the Urban Prep Academies' charter schools [is] stayed until this lawsuit is fully adjudicated."

C. The Present Motion

In anticipation of the soon-arriving 2023-2024 school year, CPS sought to expedite the Court's hearing of the merits of the Declaratory Judgment claim by skipping over the preliminary injunction stage, and requesting a hearing on Urban Prep's request for a permanent injunction. Thus, the parties appeared before the Court on July 19, 2023 for an evidentiary hearing on Plaintiff's Motion for a Permanent Injunction. The Motion was fully briefed and the Court heard testimony from Dr. Alfonso Carmona and Troy Boyd and entertained arguments from the parties before continuing the matter to this date for ruling.

III. This Court Has Jurisdiction

As an initial matter, the Court must address its jurisdiction to hear this collateral attack. The Appellate Court ruled on the merits of Urban Prep's TRO, and therefore, it must have concluded this Court has jurisdiction. Specifically, it must have concluded that Urban Prep raises a proper collateral attack with its declaratory judgment action against CPS. Therefore, the law-of-the case doctrine applies with respect to jurisdiction. See *Hiatt v. Ill. Tool Works*, 2018 IL App (2d) 170554, ¶ 32 (law-of-the-case doctrine encompasses a court's explicit decisions and those issues decided by necessary implication). Since the Appellate Court decision did not explicitly address the argument, the relevant law, or its reasoning, the Court does so here to address the parties' arguments.

Generally, parties aggrieved by the action of an administrative agency cannot seek review in the courts without first pursuing all administrative remedies available to them. *Casteneda v. Illinois Human Rights Comm'n.*, 132 Ill. 2d 304, 308 (1989). The doctrine of exhaustion of administrative remedies includes administrative review in the circuit court. *County of Knox ex rel. Masterson v. Highlands, LLC*, 188 Ill. 2d 546, 551 (1999). Where the Administrative Review Law is applicable and provides a remedy, a circuit court may not redress a party's grievance through any other type of action. *Id.* at 551-52.

Among the recognized exceptions to the doctrine of exhaustion of administrative remedies, relevant here, is "where the agency's jurisdiction is attacked because it is not authorized by statute." *Id.* at 552; *Landfill Inc. v. Pollution Control Board*, 74 Ill. 2d 541, 551 (1978) (exhaustion not required where a party attacks an agency's assertion of jurisdiction "on its face and in its entirety on the ground that it is not authorized by statute."). Any power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created. *Lake County State's Attorney v. Illinois Human Rights Comm'n*, 200 Ill. App. 3d 151, 156 (2d Dist. 1990). As stated in *County of Knox ex rel. Masterson v. Highlands*:

> An administrative agency only has the authorization given to it by the legislature through the statutes. Consequently, to the extent an agency acts outside its statutory authority, it acts without jurisdiction. [Citation omitted].

188 Ill. 2d 546, 553 (1999) (citing *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n,* 136 Ill. 2d 192, 243 (1989)).

Thus, in administrative law, the term 'jurisdiction' includes an agency's scope of authority under the statutes. *Id.* Where the very authority of an administrative body is in question, a question of law, not fact, is presented, and the determination of the scope of its power and authority is a judicial function and is not a question to be finally determined by the administrative agency itself. *Office of Lake County State's Attorney,* 200 Ill. App. 3d at 156.

At this juncture, Urban Prep contends that CPS lacked statutory authority to non-renew the charters of Urban Prep-Englewood and Urban Prep-Bronzeville because the moratorium set forth in 105 ILCS 5/34-18.69 stripped CPS of that power. In essence, Plaintiff contends that CPS acted without statutory authority when it non-renewed the charters. This is a proper collateral attack.

IV. Declaratory Judgment

When adjudicating a party's entitlement to a permanent injunction, the party must first succeed on the merits of its claim. *Town of Cicero v. Metro. Water Reclamation Dist.,* 2012 IL App (1st) 112164, ¶ 46. This necessarily means that there must be a recognized cause of action underlying the request for injunctive relief and that the party seeking such relief must first prevail on the merits of that underlying cause of action. *Id.*

Addressing the merits of Count I of Urban Prep's complaint, the Court concludes Urban Prep is entitled to a declaration that CPS' October 26, 2022 decision to non-renew the charters of Urban Prep-Englewood and Urban Prep-Bronzeville are void and invalid.

A. Standing

As an initial matter, CPS argues Urban Prep lacks "standing to pursue its requested relief." CPS cites to *Cedarhurst of Bethalto Real Est., LLC v. Vill. of Bethalto* for the premise that Urban Prep must assert an actual controversy that is distinct, palpable, fairly traceable to the Board's action and substantially likely to be prevented or redressed by the grant of the requested relief. 2018 IL App (5th) 170309, ¶ 18. However, the *Cedarhurst* court cites to *Greer v. Illinois House. Dev. Auth.*, where the Illinois Supreme Court clarifies standing in a declaratory judgment action requires "an actual controversy between adverse parties, with the party requesting the declaration possessing some personal claim, status or right which is capable of being affected by the grant of such relief." 122 Ill.2d 462, 493 (1988); see also *Cahokia Unit Sch. Dist. No. 187 v. Pritzker,* 2021 IL 126212, ¶ 36 ("The standing requirement in a declaratory judgment action is established by demonstrating that an 'actual controversy' exists between adverse parties and that the plaintiff is interested in the controversy."). Thus, CPS'

argument contesting standing with respect to the relief sought by Urban Prep does not implicate standing in the declaratory judgment context.[5]

CPS' issue appears to be less an issue with Urban Prep's standing to bring a declaratory judgment claim, and more about the form/structure of the injunctive relief sought. Instead of standing to bring a declaratory judgment claim, CPS' issue appears to be with the form of the injunctive relief sought by Urban Prep if the Court finds for Urban Prep on the merits. Its argument is, in essence, even if the Court declares the non-renewal decisions void, Urban Prep's requested injunctive relief will not succeed in giving it charters to operate the schools. CPS points out that ISBE must certify the renewal of a charter for Urban Prep to operate and (1) this is unlikely to happen; and (2) ISBE is not a party to this suit and thus, no injunctive relief may be entered against it to require ISBE certify the renewal as required under § 105 ILCS 5/27A-6(e). While it is true the Court has no jurisdiction over ISBE such that injunctive relief could attach, CPS has offered no support for its contention that speculation about the actions of non-parties should prevent a party from even seeking injunctive relief.

B. The Elements of Declaratory Judgment are Met

The essential elements of a declaratory judgment action are: (1) a plaintiff having a legal, tangible interest; (2) a defendant having an opposing interest; and (3) the existence of an actual controversy between the parties concerning such interests. *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003); *Record-A-Hit, Inc. v. National Fire Insurance Co.*, 377 Ill. App. 3d 642, 645 (1st Dist. 2007). "The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, including the determination . . . of the construction of any statute." *Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212, ¶ 35 (citing 735 ILCS 5/2-701(a)). Thus, a determination as to whether § 34-18.69 applies to charter schools and whether non-renewal of a charter implicates the moratorium are issues properly raised in a declaratory judgment action.

Urban Prep has a legal, tangible interest in the charters for Englewood and Bronzeville. Urban Prep has an interest in contesting the non-renewal of the charters, arguing the statute should be construed to establish that CPS' decision was made in violation of the moratorium. Urban Prep seeks a renewal of the charters. CPS has an opposing interest in ensuring that charter schools are held accountable for violations of their chartering agreements as well as for violations of the law, using the procedures set forth in § 5/27A-9 to non-renew the charters.

Finally, to establish an actual controversy, the case must present a concrete dispute admitting of an immediate and definitive determination of the parties rights, the resolution of which will aid in the termination of the controversy or some part thereof. *Cahokia Unit Sch. Dist. No.* 187, ¶ 36. The "actual controversy" requirement ensures that courts will not "pass judgment on mere abstract propositions of law, render

[5] The declaratory judgment statute addresses the relief sought in such a claim, requiring that a court refuse to enter a declaratory judgment "if it appears that the judgment... would not terminate the controversy or some part thereof..." 735 ILCS 5/2-701. The declaration sought by Urban Prep does terminate some part of the controversy—whether non-renewal of charters violates the moratorium.

an advisory opinion, or give legal advice as to future events." *Id.* The dispute is clear: Urban Prep contends that the moratorium strips CPS of authority to non-renew its charters as non-renewal constitutes a school closure (or the effect is closure) and CPS contends that the moratorium does not apply to charter schools, that non-renewal does not equate to school closure, and that it has not closed any schools. The resolution of this controversy requires the construction of § 34-18.69.

C. A Declaration in Urban Prep's Favor is Warranted

Having established there is an actual controversy between the parties as to whether CPS' non-renewal of Urban Prep's charters was prohibited by § 34-18.69, the Court must determine whether the legislature intended the moratorium to apply to charter schools, and if so, whether non-renewal of a charter constitutes a "school closure" or "consolidation." The Court answers both questions in the affirmative.

The cardinal principle and primary objective in construing a statute is to ascertain and give effect to the intention of the legislature. *Roberts v. Alexandria Transportation, Inc.*, 2021 IL 126249, ¶ 29. The best indicator of legislative intent is the statutory language itself, given its plain and ordinary meaning. *In re Hernandez*, 2020 IL 124661, ¶ 18. Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395 (2003). Only if the statutory language is ambiguous may we look to other sources to ascertain the legislature's intent. *Id.*

1. The Plain Language of § 34-18.69 Indicates Legislative Intent to Apply it to Charters

As a preliminary issue, the Court must first find that the moratorium applies to charter schools – that § 34-18.69 prevents CPS from closing charters as it does for any district managed school. This Court finds that the legislature intended § 34-18.69 to apply to charter schools with equal force.

Section 34-18.69 provides:

> The Board shall not approve any school closings, consolidations, or phase-outs until the Board of Education is seated on January 15, 2025.

105 ILCS 5/34-18.69. The statute facially limits the scope of CPS' authority to exercise certain powers statutorily prescribed to it until 2025. See, e.g., 105 ILCS 5/34-18(24); 105 ILCS 5/34-8.3(d)(6).

The language of the moratorium is indicative of its application to charter schools. Although both district managed and charter schools are established and regulated within the School Code drafted by the legislature, § 34-18.69 does not limit the application of the moratorium to one or the other. Instead, the statute refers to "*any* school closings, consolidations or phase-outs." *Id.* (emphasis added). The Court presumes the legislature is aware of the existence of charter schools and the distinction between charter schools and district managed schools such that if it intended the moratorium to apply only to the latter it would have said so.

2. Interaction with § 27A-5(g)

CPS takes the position that the § 34-18.69 does not apply to charter schools since that subsection is not expressly listed under § 27A-5(g) as applicable to charter schools. § 27A-5(g) sets forth a general exemption for charter schools:

> A charter school shall comply with all provisions of [the Charter School Article] the Illinois Educational Labor Relations Act [115 ILCS 5/1 et seq.], all federal and State laws and rules applicable to public schools that pertain to special education and the instruction of English learners, and its charter. A charter school is exempt from all other State laws and regulations in this Code governing public schools and local school board policies; however, a charter school is not exempt from the following . . . .

§ 27A-5(g).

That provision is followed by twenty-nine subsections that, by virtue of the double-negative, apply to charter schools. See generally *id.* These provisions fall into three categories: (1) provisions requiring public schools or school districts to act which become requirements on charter schools to act; (2) provisions empowering or authorizing CPS to act or to create policy which become requirements on the charter school board to act; and (3) Acts of general application.

a. Direct Action Requirements

The first category is also the most straightforward. This category entails the enumerated provisions under § 27A-5(g) that refer to separate statutory sections directing public schools or the school district to act. For example, § 27A-5(g)(12) [referencing § 34-18.53][6] incorporates responsibilities for schools to provide reasonable accommodations for breastfeeding pupils. The implication is that charter schools must provide reasonable accommodations as well. Similarly, § 27A-5(g)(6) [referencing 325 ILCS 5/1 et seq.] requires schools to take steps to maintain and protect student records.[7] It follows that charter schools must also take steps to maintain and protect student records. Section 27A-5(g)(9) [referencing 105 ILCS 5/27-23.7] requires schools, including charters, to "create, maintain, and implement a policy on bullying" in accordance with the State Board's template.[8] Charter schools must also have a policy on bullying in

[6] "(a) Each public school shall provide reasonable accommodations to a lactating pupil on a school campus to express breast milk, breastfeed an infant child, or address other needs related to breast-feeding." The section goes on to define reasonable accommodations. § 34-18.53.

[7] "(a) Each school shall designate an official records custodian who is responsible for the maintenance, care and security of all school student records, whether or not such records are in his personal custody or control; (b) The official records custodian shall take all reasonable measures to prevent unauthorized access to or dissemination of school student records." 105 ILCS 10/4 (Illinois School Student Records Act). The Act elsewhere provides that "[a] parent's or student's . . . request to inspect and copy records, or to allow a specifically designated representative to inspect and copy records, must be granted within a reasonable time, and in no case later than 10 business days. 105 ILCS 10/5.

[8] "Each school district, charter school, and non-public, non-sectarian elementary or secondary school shall create, maintain, and implement a policy on bullying, which policy must be filed with the State Board of

accordance with the template. Certain provisions bear on staff compliance with statutory requirements, such as § 27A-5(g)(23) [referencing § 34-18.8] which requires that certain school staff receive adequate HIV prevention training.[9] Charter school staff must receive the same training. Each of these sections applies duties to charter schools and require active compliance on the part of the charter school and its staff.

b. Board Authority to Create Procedure

The second category entails the enumerated provisions that mandate or authorize CPS' creation of policy. Provisions in this category enable CPS to create a policy or procedures with respect to identified subject matter.

These provisions, as incorporated under § 27A(g), set forth guidance for equivalent actions taken by the charter school board. Section 27A-5(g)(29) [referencing § 34-21.6] speaks solely about CPS' duty to waive fees assessed by the district on students who qualify for federal assistance programs such as free school lunch.[10] The provision further provides CPS the authority to develop and implement procedures for implementing the section. *Id.* The clear implication is that charter schools must waive their assessed fees in accordance with the policies and similarly authorizes them to develop the necessary procedure for doing so.

The same is apparent in § 27A-5(g)(2), specifically its reference to § 34-19.[11] Section 34-19, *inter alia*, requires CPS to establish the rules for maintaining a uniform system for discipline of pupils. Specifically, § 34-19 further provides that CPS may "expel, suspend or, subject to [statutory] limitations . . . [or] otherwise discipline any pupil found guilty of gross disobedience, misconduct, or other violation of the by-laws, rules, and regulations . . . ." *Id.* The only way to read the provision to give it any effect is to analogize the structure of the requirements imposed on CPS to charter schools. In other words, the application of § 34-19 to charter schools obligates a charter school to set forth a uniform disciplinary policy within the bounds of the statute.

c. Other Acts

There are a collection of separate Acts that are also enumerated under § 27A-5(g) including the Governmental Employees Tort Immunity Act [745 ILCS 10/1-101 et seq.] and the General Not For Profit Corporation Act [805 ILCS 105/108.75] (specifically the portion regarding indemnification). Whereas these provisions do not bear on the day-to-day educational duties of charters, they do implicate the school's potential legal

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Education. The policy on bullying shall be based on the State Board of Education's template for a model bullying prevention policy." 105 ILCS 5/27-23.7(d).

[9] "[S]chool personnel who work with students shall be trained to have a basic knowledge of matters relating to human immunodeficiency virus (HIV) . . . The Board of Education shall supervise such training." § 27A-5(g)(23).

[10] "(a) The board shall waive all fees assessed by the district on children whose parents are unable to afford them, including . . . children living in households that meet the free lunch or breakfast eligibility guidelines . . . The board shall develop written policies and procedures implementing this Section . . . ."

[11] Although § 34-19 covers subject matter beyond discipline, § 27A-5(g)(2) includes it in a string of references to other provisions dealing with disciplinary policy, and specifically states the provisions are included "regarding discipline of students."

liability and would implicitly bear on the schools employment and legal decision-making. Whereas the inclusion of these Acts may appear to be an outlier, it does not break the general rule observed across the enumerated provisions—these Acts still bear on the obligations of charter schools.

In conclusion, the provisions enumerated in § 27A-5(g) impose active duties and obligations upon charter schools even where the ambit of the enumerated provision sets forth the duties and obligations of CPS. Each actively bears on the ongoing operations and procedures of charter schools.

Section 34-18.69, on the other hand, exclusively limits CPS' authority; it does not impose any duties upon any school nor does it require CPS to act. Instead, it requires inaction. It further does not relate to the CPS Board's obligation to develop policy that would prospectively require the compliance of charter schools. There is therefore no way to construe § 34-18.69 as requiring any action by charter schools. Section 34-18.69 is a limitation on CPS' authority until 2025, plain and simple.

As a limitation on CPS' authority, and only CPS' authority, the placement of § 34-18.69 is sensible. Section § 34-18.69 only affects the general authority of CPS and does not bear on the operation or duties of charter schools; it is materially unlike the provisions enumerated in § 27A-5(g). With respect to § 34-18.69, the plain text of the statute does not suggest or anticipate an exception for charter schools, and this Court declines to read an exception into it after a review of the entirety of the relevant provisions.

3. Non-Renewal of a Charter Constitutes a School Closure

Next the Court must determine whether non-renewal of a charter constitutes a school closing or consolidation pursuant to § 34-18.69. To do so, the Court must again look to the statute to determine the intention of the legislature.

a. Use of Definitions in Another Section of the Statute Inform Legislative Intent

While § 34-18.69 refers to "school closings" and consolidations," the statute does not include any definitions of these terms. However, § 34-200 of the School Code defines these particular terms. 105 ILCS 5/34-200. Although the legislature prefaced the definitions within § 34-200 by noting they were "[f]or the purpose of Sections 34-200 through 34-235 of this Article," the definitions provide insight as to what the legislature intended when referring to "school closings" and "consolidations" in other sections of the statute, including the moratorium. Thus, the Court need not resort to dictionary definitions. Cf. *Watson v. Legacy Healthcare Fin. Servs., LLC,* 2021 IL App (1st) 210279, ¶ 36 (When a statute does not define its own terms, the court may use a dictionary to ascertain the plan and ordinary meaning of those terms.).

First, there is no explicit statement within § 34-200 that the definitions therein were limited to the sections identified or were otherwise barred from use outside of those sections. For example, the language is not styled "solely for the purposes of this section." Thus, the Court reads "for the purpose of" as requiring the use of those definitions for that section, without limitation to the use within other sections.

Second, the relevant definitions in § 34-200 reference substantially the same terms as those found in the moratorium—"school closing" or "school closure," "school consolidation" and "phase-out." Compare 105 ILCS 5/34-200 with 105 ILCS 5/34-18.69 ("school closings, consolidations, or phase-outs."). The Court may presume that the legislature, when drafting the language of the moratorium, was aware of the construction and use of the terms "school closing" and "school consolidation" in § 34-200. *Girard v. White*, 356 Ill. App. 3d 11, 20 (1st Dist. 2005) ("[O]ne may presume that the legislature, when drafting the language of a statutory section, was aware of the construction and use of a term in another section of the statute.").

Finally, there is supportive precedent that is on point. In *Jahn v. Woodstock*, a police officer on disability brought a declaratory judgment action requesting that the city be required to pay 50% of his insurance premiums in addition to 50% of his salary. 99 Ill. App. 3d 206, 207 (2d Dist. 1981). The relevant section of the Illinois Pension Code provided that the disability pension provided 50% of the officer's salary, but did not define "salary."[12] *Id.* at 209. Concluding that it is fundamental in construing the legislative intent of a statute that the court construe the statute in its entirety, the *Jahn* court looked to another provision of the pension code which defined "salary." *Id.* at 209. That provision, addressing the financing of the pension, provided:

> "For the purposes of this section, the word 'salary' means the annual salary . . . but does not include any other cash benefit over and above the salary . . . ."

Ill. Rev. Stat. 1979, ch. 108 1/2, para. 3-125(2). The *Jahn* court noted "[w]hile this definition indicates that it is for the purpose of this 'section' rather than the 'act', we are of the opinion that it signifies a legislative intent of what scope 'salary' was to have in section 3-114.2 as well." *Jahn*, 99 Ill. App. 3d at 209; *Girard*, 356 Ill. App. 3d at 20 (legislative intent can be ascertained from the use of the term in other sections of the same or other Illinois statutes).

As in *Jahn*, the definitions of "school closure" and "school consolidation" within § 34-200 are prefaced with the phrase "for the purpose of" § 34-200–34-325 of that Article in the School Code. That prefatory language does not prohibit the Court from concluding the definitions in § 34-200 signify the legislative intent regarding the use of those terms within § 34-18.69 of the School Code. Here, there is no indication of the legislature's intent to depart from these definitions in drafting the moratorium statute. Thus, the Court concludes the definitions of "school closing" and "school consolidation" within §

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[12] At the time of the *Jahn* decision, the non-duty disability pension for officers was set forth as follows:

> "Any policeman who becomes disabled as a result of any cause other than the performance of an act of duty, and who is found to be physically or mentally disabled so as to render necessary his suspension or retirement from service in the police department, shall be granted a disability pension of 50% of the salary attached to his rank on the police force at the date of suspension of duty or retirement."

Ill. Rev. Stat. 1979, ch. 108 ½, par. 3-114.2 *amended by* P.A. 91-939 (current version at 40 ILCS 5/3-114.2).

34-200 establish the legislative intent with respect to the terms "school closings, consolidations" used within the moratorium.

b. Non-Renewal of a Charter Constitutes a "School Closing" by Definition

Section 34-200 defines "School closing" or "school closure" as "the closing of a school, the effect of which is the assignment and transfer of all students enrolled at that school to one or more designated receiving schools. 105 ILCS 5/34-200. Dr. Alfonso Carmona testified that following the non-renewal of the Urban Prep charters, CPS has disenrolled students from Urban Prep-Englewood and Urban Prep-Bronzeville and transferred them into the new school named Bronzeville Englewood High School (a new district managed school), unless they independently chose to attend a different district managed school.[13] Therefore, the effect of the non-renewal of the two Urban Prep school charters is the assignment and transfer of all the students enrolled at Urban Prep-Englewood and Urban Prep-Bronzeville to the newly constituted high school. Since § 34-18.69 does not define "receiving school" the court looks to the dictionary to ascertain the plain and ordinary meaning of the term. See *Watson, supra.* Merriam Webster defines "receiving "as "to come into possession of; acquire."[14] *Receiving*, MERRIAM WEBSTER, www.merriam-webster.com/dictionary/receive (last visited July 22, 2023). By its plain language a school identified by CPS to accept the students disenrolled from the school that lost its charter would constitute a receiving school.[15]

CPS argues the Urban Prep-Englewood and Urban Prep-Bronzeville schools are not closing for purposes of the moratorium because CPS is only changing the management within the schools. Indeed, the students will continue to attend school at the same campuses Urban Prep used to occupy. While this position holds much appeal given that the plan is for these campuses to continue to provide education to students within the same infrastructure, the interpretation is at odds with the legislature's definition of "school closing" within the School Code which is triggered here, along with the moratorium referencing those same terms. CPS is changing management, but it is also transferring all the students of the Urban Prep schools to the receiving school (Bronzeville Englewood High School), except for those who affirmatively choose another

[13] CPS claims this is a unique situation in that they are not closing the charter school but instead transferring students to the new school housed on its campuses. However, the transfer of students from the non-renewed charter school is required regardless of whether it is a traditional or unique circumstance. See 27A-9(c) ("[e]xcept for extenuating circumstances outlined in this Section, if a local school board revokes or does not renew a charter, it must ensure that all students currently enrolled in the charter school are placed in schools that are higher performing than the charter school, as defined in the State's federal Every Student Succeeds Act Accountability Plan."

[14] Merriam-Webster defines "receiving" as "to be a recipient" and "recipient" is defined as "one that receives." *Receiving*, MERRIAM WEBSTER, www.merriam-webster.com/dictionary/receive (last visited July 22, 2023). Thus, the Court cites to the definition of "receive."

[15] The result of CPS' actions also fits the definition of a consolidation pursuant to § 34-200. "School consolidation" is defined as "the consolidation of 2 or more schools by closing one or more schools and reassigning the students to another school. The two Urban Prep schools are indeed being transformed into one school—Bronzeville Englewood High School, and this is being accomplished by closing the two schools and reassigning the students to the single high school. The definition does not require that a building be left vacant after consolidation.

CPS school. Indeed, in district managed schools where CPS has more oversight, it can change management without disenrolling the students and transferring them to receiving schools (i.e., closing the schools). But that is not the case with charter schools.

There is no indication within § 34-18.69 or § 34-200 that "school closing" or "consolidation" only occurs when a former school building is shuttered. There is no indication in the plain language of the statute or the dictionary definitions that a receiving school must be already existing and housed in a separate building. If the intent of the legislature in enacting the moratorium was to prevent the shuttering of a school building, requiring students to leave their communities in order to attend a school in a different location, that intent is not clear from the plain text of the moratorium provision or the § 34-200 definitions.

CPS argues that there is no "net change" in the number of schools. This is technically incorrect—there will be one less school; the two Urban Prep schools will be transformed into one school with two campuses. Under CPS' plan, students will still be educated at the two campuses, but there is one less school.

c. Policy and Absurdity

Taking another tact, CPS argues that it does not have the authority to "close" charter schools, but instead, is limited to non-renewing or revoking the charter of a charter school. See 105 ILCS 5/27A-9. This argument is shortsighted. The effect of non-renewal of a charter is closure. Non-renewal strips the charter school of its charter and it can no longer provide education to students. Section 27A of the Charter School Act includes a section entitled "Closure of charter school; unspent public funds; procedures for the disposition of property and assets" which sets forth what must happen upon the *closing* of a charter school authorized by a local school board. 5/27A-10.10(a). As made clear by the title, it sets forth what happens with unspent public funds and the disposition of the charter school's other property and assets, with CPS's involvement. *Id.* Thus, § 27A-9 sets forth the mechanism to take away a school's charter and 27A-10.10 addresses the resulting closure of the charter school.[16] When CPS non-renews or revokes a charter, either the doors of the charter school are shuttered, or the students are dis-enrolled from the charter school and enrolled in another charter school or district managed school. See § 27A-9(c). Thus, § 27A explicitly addresses the closure of charter schools and CPS manages the closure.

A court construing the language of a statute should "assume that the legislature did not intend to produce an absurd or unjust result," *State Farm Fire & Casualty Co v. Yapejian,* 152 Ill. 2d 533, 541 (1992), and should avoid a construction leading to an absurd result, if possible, *City of East St. Louis v. Union Electric Co.,* 37 Ill. 2d 537, 542 (1967). It could be argued that the Court's construction of the statute could lead to an absurd and unjust result. The moratorium barring non-renewal of charter schools prevents CPS from using one of the few tools in its possession to exercise its already limited oversight. This construction means that CPS cannot take away a charter from a school even if that school has demonstrated non-compliance with its charter and is not acting in the best

[16] While non-renewal does not immediately result in closure, it sets in motion the ultimate closure of a charter school.

interests of the students until January 2025, to the possible detriment of students.[17] See § 27A-9.

Here, the import of this Court's decision is indeed harsh, but not unintended by the legislature. While a particular construction of a statute may seem harsh, "the reasonableness of the statute must be judged in light of the circumstances confronting the legislature and the end which it sought to accomplish." *Anderson v. Wagner*, 79 Ill. 2d 295, 312 (1979). The legislature enacted the moratorium specifically to prevent the closure of "any school" until the "Board of Education is seated on January 15, 2025." § 34-18.69. The "Board of Education" to be seated will be democratically elected, as opposed to being appointed as in the past. To accomplish this, the legislature enacted a moratorium abrogating CPS' statutory authority to close "any schools." Such a blanket prohibition is a harsh response to the issue at hand, indicating the legislature felt the circumstances required it. Moreover, the Court presumes the legislature was aware of the existence of charter schools and was informed about the statutory framework that created CPS' limited oversight. Despite this knowledge, it did not explicitly make any exceptions to the moratorium for charter schools (or conversely limit the moratorium to district managed schools), nor did it infer an exception in the plain language of the statute.[18] Concerns about the effect of the moratorium on CPS' ability to oversee charter schools and remove charters from schools that are not complying with their charters or acting within the best interests of the students are best addressed by the legislature.

V. Permanent Injunction

In their two-count complaint, Urban Prep seeks a judgment declaring CPS' non-renewal decision void and invalid, and as relief, it seeks a permanent injunction prohibiting the enforcement of the non-renewal decisions. Urban Prep seeks further relief requiring CPS to negotiate renewal agreements with Urban Prep for a term running through at least June 30, 2025.[19]

A permanent injunction concludes rights between the parties and therefore alters the *status quo* for an indeterminable period of time. *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214 (2000). The elements required for issuance of a permanent injunction are (1) a clear and ascertainable right in need of protection, (2) irreparable harm if injunctive relief is not granted, and (3) no adequate remedy at law. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762 (1st Dist. 2009), appeal denied, 236 Ill. 2d 507 (2010); *Sparks v. Gray*, 334 Ill. App. 3d 390 (5th Dist. 2002); *Hasco, Inc. v. Roche*, 299 Ill. App. 3d 118 (1st Dist. 1998). As noted above, when adjudicating the plaintiff's entitlement to a permanent injunction,

[17] The Court makes no determination as to the merits of CPS' findings supporting its decision to non-renew herein. The administrative review proceedings pursuant to ISBE's final decisions on the non-renewal of Urban Prep's charters remain pending.

[18] To the extent the legislature placed the moratorium within Section 34 of the School Code presuming that would indicate its intent that it apply only to district managed schools, that would be an abrupt departure from its prior drafting of Sections 34 and 27A. See Section IV.B.2, *supra*.

[19] Although the moratorium ends on January 15, 2025, the date the democratically elected Board is seated, Urban Prep asks for a charter through the end of the 2024-2025 school year. Presumably it wishes to maintain continuity for its students so that they would not be required to transfer schools in the middle of a school year.

the trial court necessarily will decide the fourth factor of whether the plaintiff will succeed on the merits. *Butler v. USA Volleyball*, 285 Ill. App. 3d 578, 582 (1st Dist. 1996). Since the merits have been addressed above, see Section IV, *supra*, the Court will focus on the remaining factors.

Additionally, if the plaintiff establishes a *prima facie* case, the court may also consider whether the balance of the harms favors the grant or denial of injunctive relief. *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶ 12; *Lumbermen's Mutual Casualty Co. v. Sykes*, 384 Ill. App. 3d 207, 230 (1st Dist. 2008). In other words, in balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party. *Rodrigue Ceda Makindu v. Ill. High Sch. Ass'n.*, 2015 IL App (2d) 141201, ¶ 47.

A. Clear and Ascertainable Right

"To show a clear and ascertainable right, [plaintiff] must raise a fair question that it has a substantive interest recognized by statute or common law." *Delta Med. Sys. v. Mid-America Med. Sys.*, 331 Ill. App. 3d 777, 789-90 (1st Dist. 2002) (citing *Kilhafner v. Harshbarger*, 245 Ill. App. 3d 227, 229 (3rd Dist. 1993)).

In this case, Urban Prep's ascertainable right derives not merely from a generalized interest in seeing that CPS acts within the bounds of the authority, but is more firmly found within the structure of the Charter School Article. While the Article nowhere explicitly grants the chartering entity a freestanding right or interest in the operation of a charter, the statutory scheme provides multiple stages of recourse when CPS decides to non-renew or revoke a charter. See generally 105 ILCS 5/27A-9. Thus, the statute itself indicates a protectible interest for chartering entities.

First and foremost, for CPS to non-renew, it must "clearly demonstrate[]" that the charter:

> (1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.
> (2) Failed to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter.
> (3) Failed to meet generally accepted standards of fiscal management.
> (4) Violated any provision of law from which the charter school was not exempted.
> [or (5) otherwise failed to comply with the requirements of this law].

§ 27A-9(c).

This helps distinguish this case from *Kilhafner*. In *Kilhafner*, where the Second District determined that the plaintiff lacked an ascertainable right in her continued employment since "at-will employment" does not give rise to statutory or common law rights of action for discharge. 245 Ill. App. 3d at 229. Since either party in an at-will employment relationship may terminate without cause at any time, there are no protections baked-in to provide a cause of action for an 'aggrieved' plaintiff. See *id.* In

comparison, the non-renewal statute specifies what bases CPS must identify, by "clear[] demonstrat[ion]" no less, to deprive a chartering entity of its charter. The statutory scheme is suggestive of a protectible interest for chartering entities.

This is further solidified by the process by which a chartering entity may administratively and judicially appeal adverse actions. To begin, if CPS non-renews a charter, ISBE may then review and reverse that decision if it determines that the charter is in compliance with the Article, or if reversal is in the best interests of the students. § 27A-9(e). Moreover, the chartering entity's procedural rights are further protected in this process by the required appointment of a hearing officer for the appeal. *Id.*

If ISBE declines to reverse CPS' decision, the chartering entity, having exhausted its administrative remedies, may then seek judicial review in the circuit court pursuant to the Administrative Review Law. *Id.* Urban Prep has done exactly this and its two administrative review actions are pending before this Court. Given that Urban Prep's collateral attack action is permissibly brought outside of the administrative review process, and given that the legal question in this collateral attack bears directly on the validity of the order depriving Urban Prep of its charter, it is apparent to the Court that Urban Prep has a clearly ascertainable right to the relief sought in this action.

B. Inadequacy of Legal Remedies

Injunctive relief is "an extraordinary remedy which may be granted when the plaintiff establishes that his remedy at law is inadequate . . . ." *Sadat v. American Motors Corp.*, 104 Ill. 2d 105, 115 (1984). "For there to be an adequate remedy at law which will deprive equity of its power to grant injunctive relief, the remedy 'must be clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.'" *Bio-Medical Laboratories, Inc. v. Trainor*, 68 Ill. 2d 540, 549 (1977) (quoting *K.F.K. Corp. v. American Continental Homes, Inc.*, 31 Ill. App. 3d 1017, 1021 (1975)).

Injunctive relief is proper here since Urban Prep lacks an adequate alternative legal or statutory remedy. Urban Prep seeks a declaration and injunction preventing CPS from enforcing an unlawful decision, all in ultimate pursuit of the reinstatement or renewal of its charter. Urban Prep does not seek monetary damages, nor would such relief conceivably be an adequate – clear, complete, or practical – remedy for its injury.

To CPS' argument that Urban Prep has an adequate legal remedy through administrative review, as this Court determined above, this suit is a permissible collateral attack which is excepted from the requirements of exhaustion. See Section III, *supra*; see also *Landfill Inc. v. Pollution Control Board*, 74 Ill. 2d 541, 551 (1978). Although Urban Prep may conceivably receive relief from its administrative review actions, that does not bar it from pursuing equitable relief in the present action. As discussed with respect to the collateral attack posture, exhaustion of administrative remedies is not required where the plaintiff attacks an agency's jurisdiction "on its face and in its entirety on the ground that it is not authorized by statute." *Id.* at 550-51 (1978).

C. Irreparable Harm

For similar reasons, Urban Prep will experience irreparable harm absent an injunction. CPS' non-renewal decisions will plainly prevent Urban Prep from operating the Bronzeville and Englewood campuses. Urban Prep is injured to the extent that a prospectively unlawful decision by the Board prevents it from fulfilling its mission as an education nonprofit. Urban Prep is also continuously injured by the uncertainty generated from CPS' non-renewal decision – such uncertainty undoubtedly bears on staff retention and student enrollment. Contrary to CPS' assertion, the Court does not find Urban Prep's contentions on this issue to be speculative or uncertain to occur. *See Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & W. Ry*, 195 Ill. 2d 356, 371 (1999).

D. Balance of the Equities

In deciding whether to grant the equitable relief requested, the Court must determine the effect of such relief on both parties, as well as how an injunction would affect the public interest:

> "In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction." *Schweickart v. Powers*, 245 Ill. App. 3d 281, 291 (1993). In balancing the equities, the court should also consider the effect of the injunction on the public. *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446, 493 (2nd Dist. 2009).

Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4, 396 Ill. App. 3 1105, 1119 (5th Dist. 2009).

During oral argument at the hearing, Urban Prep insisted that the Court not concern itself with the equities since it cannot sanction CPS' violation of the law based on the equities. In briefing, Urban Prep analogizes to *County of Kendall v. Rosenwinkel*, a decision following a general rule that the government party need not demonstrate the balance of equities in a suit to enjoin a statutory violation. 353 Ill. App. 3d 529, 539 (2nd Dist. 2004) (restating "presumption that public harm occurs when a statute is violated"); see also, *Midland Enters. v. City of Elmhurst*, 226 Ill. App. 3d 494, 504 (1992) (applying rule on one issue, while finding laches barred enforcement of separate statutory violation).

The general rule does not lend support to Urban Prep's position since the rule is limited solely to cases where a government agency or actor seeks injunctive relief. See, e.g., *County of Kendall*, 353 Ill. App. 3d at 539 (County sought injunction of zoning violation after plaintiffs began construction of grain bin despite denial of variance). And per the Illinois Supreme Court, "This principle of law is animated by the rationale that because statutes authorizing injunctive relief often do so on behalf of a public official . . . as the enforcer of a regulatory scheme, 'the violation . . . implies an injury to the general public." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 277-78. Per *People ex rel. Sherman*, the State party must show both a violation of a statute and "that the statute

relied upon specifically allows injunctive relief. *Id.*[20] There is no such provision allowing for injunctive relief in § 34-18.69.

Furthermore, Urban Prep is conflating the two forms of relief they seek in this action. They seek a declaratory judgment asking the Court to declare that CPS' action violated the law and is thus void (with a corollary injunction preventing enforcement of the illegal action), where no equities are considered. They seek additional equitable relief in the form of injunctions fashioned by the Court extending the 2022-2023 charter agreements, either in the interim or possibly through 2025; requiring the parties to negotiate a new contract; or some alternative between the two. Whereas for the declaratory judgment claim addressing a statutory violation, the rights of the parties are disposed of by a legal determination and the equities are not considered, the equities clearly bear on the propriety of the additional forms of injunctive relief requested.

When granting an injunction, the Court considers the impact of the *injunction* on the parties, see, e.g., *Schweickart v. Powers*, 256 Ill. App. 3d 281, 291 (1993), not as Urban Prep characterized it, the equities of upholding or voiding the unauthorized act. Thus the Court below considers the equities that bear on the alternative forms of injunctive relief requested by Urban Prep.

1. Urban Prep's Equities

Urban Prep, as well as members of the public community – parents, students, alumni, community members, teachers and staff – have a strong interest in the school continuing to operate.

At the hearing, Urban Prep presented substantive evidence of the academic success of their model, particularly for black student populations. CPS stated on the record that Urban Prep's academic performance was not a consideration in its decision to non-renew. Quite the opposite, Urban Prep has presented examples of CPS praising the charter's academic effectiveness.

Moreover, a large part of the appeal of Urban Prep is its rich network of dedicated staff and alumni who support the placement and success of young black men into college programs. Urban Prep is characterized by its commitment to uplifting its young black male attendees through a variety of unique traditions. This Court received testimony

[20] Although not raised by the Parties, the Court also analyzed cases proscribing review of the equities where injunction was sought to enforce a private right. See, e.g., *Barrett v. Lawrence*, 110 Ill. App. 3d 587, 593 (finding that no balance of equities need be conducted where "existence of a private right and violation thereof are clear." In *Barrett*, the private right at issue, namely the establishment of an interest-bearing escrow account by the defendant, was an affirmative right held by the plaintiff under the Illinois Condominium Act. See *id.* at 589-90, 593. Although *Barrett* suggests there are circumstances wherein equities are not weighed for violation of a statute concerning a private right, those circumstances are not present here.

The instant case is cleanly distinguishable from *Barrett* since there is no affirmative right, either set forth in statute or recognized in common law, to Urban Prep's requested relief. Urban Prep has a protectible interest in their charter, but not an affirmative right to a court-ordered charter. Whereas the plaintiff in *Barrett* could point to the statutory provision granting him the explicit right to the injunctive relief he sought, there is no analogous provision for Urban Prep in the School Code. Section 34-18.69 does not provide an affirmative right to a charter agreement even if its limitation on CPS' authority prevents its charter from being taken away.

from Troy Boyd, COO of Urban Prep, attesting to the value of these traditions – it's graduation celebration, "signing day"; its curriculum emphasizing culture, history, and identity ("CHI"); its emphasis on daily check-ins and the integration of college-readiness into its support structures; and the intangible but undeniable significance of the school to its students and community members.

Closure of these unique campuses would be a significant loss to the Bronzeville and Englewood communities as well as the particular school communities.

2. Harms to CPS

At the same time, the Court takes seriously the severity of the findings in the record presented to the Court by CPS. Ordering an injunction that allows Urban Prep to continue operating the two charter schools would prevent CPS from exercising important oversight to ensure compliance with the law and the charters and to ensure students are not harmed. The findings of CPS included: unfavorable cash infusions taken out by Urban Prep facilitated by the pledging of greater amounts of income derived from public funding; defaults on payments to vendors; ongoing litigation for failure to pay into the teacher's pension; at least partial failure to comply with CPS guidance with respect to the Title IX and Title VII investigations; Urban Prep's lack of transparency on several of these issues; failure to comply with the February or October 2022 conditions prerequisite to charter renewal; cessation of special education services for a period due to non-payment; and failure to maintain a legally compliant percentage of licensed teachers.[21] Urban Prep has failed to materially dispute most, if not all, of the bases raised in CPS' non-renewal decision.[22]

Of particular concern is Urban Prep's failure to dissociate itself from Prior Executive/Board Member A who was investigated pursuant to Title IX for allegedly grooming a student with whom he had sexual contact, later hiring that student as an adult to work for Urban Prep, then continuing to keep the student on the payroll to provide health care benefits for years after he ceased working. See Def's Exhibit 2 (Carmona Letter). Contrary to CPS' instructions, Urban Prep manipulated how parents received notice of the investigation of Prior Executive/Board Member A[23] all the while failing follow CPS' directions to prohibit Prior Executive/Board Member A from contact with students. Prior Executive/Board Member A was apparently appointed to the Urban

[21] More detail: CPS also listed its determinations that (1) Urban Prep failed to employ a sufficient number of licensed teachers as required by 105 ILCS 5/27A-10(c-5). See Def's Exhibits 4-5 (where the statute requires 75% teacher licensure, Englewood had 33% licensed; Bronzeville had 38% licensed); and (2) Urban Prep's financial issues caused a lapse in special education vendors in March of 2020 resulting in a violation of the Individuals with Disabilities in Education Act and Illinois School Code. *Id.*

[22] The Court's commentary here is limited only to what was presented in the admitted evidence and testimony at the permanent injunction hearing.

[23] Urban Prep made changes to the template notice provided by CPS to send to parents, specifically to hide the fact that the allegations involved a senior staff member and to clarify the incident(s) giving rise to the investigation occurred years before. These changes were purportedly made due to a concern that the notice would scare parents unnecessarily. However, even if the incident(s) occurred years before, the natural concern of parents would logically be that this may not be a one-time occurrence, but instead, the perpetrator was continuing to groom other students. Thus, the attempt to convey that there was not a *current* concern for the welfare and safety of students is deeply concerning to the Court.

Prep Foundation ("Legacy Board") where he currently sits. Urban Prep's continued relationship with Prior Executive/Board Member A bears on the safety of its student population, though Urban Prep's actions reflect attempts to evade responsibility and accountability. It is not lost on the Court that Boyd's testimony did not attest to *any* affirmative step taken by Urban Prep's leadership to adhere to CPS' guidance; rather, he fell back on Prior Executive/Board Member A's voluntary leave and ultimate resignation following his unsuccessful appeal as an apparent explanation for why action by Urban Prep's leadership was not necessary. Similarly, the record suggests knowing inaction at the time with respect to the Student A's relationship with Prior Executive/Board Member A and the related ghost payrolling.

3. Public Interest

While the equities and harms set forth above are stark, the stakes in this matter go beyond those described above—the Court must also consider the public health and safety impact of imposing or not imposing an injunction. See *Village of Bensenville*, 389 Ill. App. 3d at 493. Here, that impact concerns the health and welfare of the Urban Prep students and community members. The people who will most immediately feel the impact of the Court's decision are the students. Without an injunction, the Court questions whether CPS and Urban Prep will reach an agreement prior to the start of the 2023-2024 school year to ensure the education of Urban Prep's prospective enrollees begins timely, potentially leaving these students in the lurch. Without an injunction, the Court's decision will effectively close the two high schools. There will be no school to go to: Urban Prep cannot operate the schools without charters and CPS cannot open the new school as previously planned. The students will have to find another alternative. The Court recognizes the impact of sending students to schools outside their local neighborhoods or to neighborhoods which are completely unknown to them, including the logistical and safety concerns that such a disruption would cause. The lack of operating high schools in the Bronzeville and Englewood communities (even if for a limited period) will cause damage to the health of the local communities by breaking the bonds formed, destroying a place of gathering, and leaving the formerly vibrant buildings shuttered. Finally, the disruption caused by the failure to open the schools at the start of the the 2023-2024 school year may result in the loss of some students who never return to high school which will impact their ability to attend college if they so choose, or otherwise will impact their future success in life. The Court gives the protection of the health and safety of the students the highest priority as it evaluates the alternative injunctions.

In sum, the CPS' findings that were unrebutted give the Court significant misgivings about the equities of granting a permanent injunction in Urban Prep's favor, particularly if that permanent injunction would entirely insulate Urban Prep's charter from effective oversight until 2025. However, the public interest equities overwhelmingly land in favor of an injunction and carry the day here. As noted above, the Court cannot in good conscience deny injunctive relief which would leave the students in a state of uncertainty as the school year quickly approaches. Moreover, an injunction can be

fashioned in order to ensure that, to the extent possible, that CPS retains oversight by way of the renewal process.

VI. Injunctive Relief Awarded

Urban Prep has sought injunctive relief, and based on the above analysis, the Court will enter an injunction. The question is, what will that relief look like?

Inherent in the Court's decision to void the October 2022 non-renewal decisions is the conclusion that CPS is barred from non-renewing the Urban Prep charters until the moratorium lifts. A consequence of the Court's decision is that CPS must renew Urban Prep's charter—since CPS cannot non-renew the charters; it is axiomatic that it must renew. Simply doing nothing until January 2025 is not an option. Not only will this run afoul of the moratorium since the lack of a charter will effectively close the schools, but it will harm the students as discussed above.

Indeed, the Court's primary focus in fashioning an injunction here is to ensure that there are schools in the Englewood and Bronzeville communities that will welcome students when the 2023-2024 school year begins. With this framework in mind, the Court has solicited information from the parties as to the practical application of the potential relief available. As are many other features of this case, the possible pathways are fraught with procedural and policy implications.

Urban Prep suggests the Court allow it to operate the Englewood and Bronzeville schools under the prior 2022-2023 charter contract (in effect at the time of the voided non-renewal decision) until the end of the 2024-2025 school year. While there is precedent in the record for extending a prior charter contract beyond its expiration so the parties can negotiate a new charter, that is not what Urban Prep proposes here. Urban Prep seeks to operate under charters (that it did not fully comply with when they were in effect) for two full years without any official renewal by CPS and subsequent approval of the renewal by ISBE. Notably, Urban Prep's most recent charters to operate its Englewood Campus have all been limited to one-year contracts, so extending the prior contract for two additional years, without negotiation or changes made, would be a bridge too far. In addition, the purpose of the prior extension in 2022 was to continue operations until the parties reached an agreement on a new charter contract, which was delayed by Urban Prep's apparent resistance to requirements set forth by CPS. Here, unlike the established precedent, there would be no negotiation for a renewal while the parties operate under the previous charter.

The better course is to require CPS to allow Urban Prep to operate under the 2022-2023 charter while the parties negotiate a renewal, which renewal must occur by the end of the first semester of the 2023-2024 school year. See *People ex rel. Raoul v. Lincoln, Ltd.*, 2021 IL App (1st) 190317-U, ¶ 26 (Circuit court may find, in its discretion that another type of injunctive remedy is more appropriate.). The Court rejects Urban Prep's request to require CPS to agree to a renewal that extends past the termination of the moratorium to the end of the school year in June 2025. The Court agrees with Urban Prep that it is in the best interests of the students to have any renewals cover the entirety of a school year but the Court cannot require CPS to extend any renewal period past the termination of the moratorium, on January 15, 2025. After that date, CPS will resume its

authority under § 27A-9 to revoke or non-renew charters. Revocation of a charter need not wait until the charter agreement expires. Barring CPS from revoking a charter after expiration of the moratorium, should it conclude it is necessary pursuant to the factors set forth in § 27A-9, would abrogate CPS' statutory authority.

This injunctive relief allows Urban Prep to ensure the schools can begin educating students at the Englewood and Bronzeville campuses at the start of the 2023-2024 school year and it allows CPS to ensure that its concerns are addressed and its expectations are clear for the remainder of the moratorium period. Whether the parties ultimately agree to renew the 2022-2023 charter as it is or negotiate a new charter is up to the discretion of the parties. Whether the contract is for one year or longer is also up to the discretion of the parties, although if the initial renewal is for one year, then another renewal must occur to ensure compliance with § 34-18.69 (although the second renewal in this scenario would not need to continue past the termination of § 34-18.69, as stated above). Regardless, the initial renewal subject to this injunction must occur by the end of the upcoming semester. Typically a court cannot force parties to enter into a contract but here the law requires renewal which is accomplished through a contract.

The Court's deadline for the parties to reach an agreement on a renewal of the charters is not arbitrary. The Court anticipates that both parties will be immediately occupied with the extensive work needed to open the two schools by the first day of the 2023-2024 school year. And, this work may not end when the doors open in late August. The need for an initial focus on opening the schools is balanced with the need to have a "renewed" charter in place as soon as possible. But, the Court recognizes that contract negotiations take time and time is not on our side. Taking all these factors into consideration, the Court concludes that a renewal must occur by the end of the first semester of the 2023-2024 school year.

The relief provided herein provides an equitable remedy consistent with the facts and the law, taking into consideration the goal of providing a consistent educational experience to the students in the Bronzeville and Englewood communities while ensuring the charter schools are held accountable to CPS as is required by the Charter School Statute. Ultimately, this injunctive relief supports the strong public interest in ensuring the health and welfare of the entire school community, but most importantly the students. See *id.* ¶ 26 (Circuit court should weigh the evidence and exercise its discretion in fashioning an equitable remedy consistent with the facts and the law.).

VII. ORDERS

Urban Prep's Motion for Permanent Injunction is GRANTED. This Court finds that:

(1) Urban Prep's Declaratory Judgment action is a permissible collateral attack, and therefore, the Court has jurisdiction.
(2) Urban Prep has succeeded on the merits of its Declaratory Judgment Action; CPS' non-renewal decisions violated § 34-18.69 and are void.

(3) Urban Prep has established the remaining factors required for a permanent injunction—ascertainable right in need of protection, irreparable harm, and inadequate legal remedy.
(4) The balance of equities favors the overwhelming public interest in the health and safety of the students and supports the issuance of an injunction.
(5) A permanent injunction is entered on today's date requiring CPS to allow Urban Prep-Englewood and Urban Prep-Bronzeville to operate under the 2022-2023 charters until the parties agree on a renewal contract.
(6) CPS must renew the charters for Urban Prep-Englewood and Urban Prep-Bronzeville for at least the 2023-2024 school year by the end of the first semester of the 2023-2024 school year.
(7) CPS must abide by the moratorium and thus may not close, consolidate, or phase-out Urban Prep-Englewood and Urban Prep-Bronzeville until after the moratorium expires on January 15, 2015.

Judge Anna M. Loftus
JUL 23 2023
Circuit Court-2102

ENTERED:

/s/ Anna M. Loftus

Judge Anna M. Loftus, No. 2102