

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

Elisabeth Greer, individually and as)
next friend of H.G. and N.G., minors;)
Courtney Everette, individually and as)
next friend of W.E. and K.E., minors;)
Denetta Jones, individually and as)
next friend of A.H. and J.H., minors;)
Anika Matthews, individually and as)
next friend of P.F., a minor;)
Concerned Parents of NTA; and)
Chicago United for Equity;)

Plaintiffs,)

vs.)

BOARD OF EDUCATION OF THE)
CITY OF CHICAGO, a/k/a Chicago)
Public Schools, Janice Jackson,)
Chief Executive Officer.)

Defendants.)

No. 2018 CH _____

COMPLAINT

INTRODUCTORY STATEMENT

1. The National Teachers Academy Elementary School (“NTA”), a neighborhood elementary school serving mostly African-American and low-income students, was considered a failing school a few short years ago. Through the collective organizing and sheer dedication of NTA’s community—its principals, staff, and families—NTA progressed from CPS’s lowest academic rating, Level 3, to its highest, Level 1+, offering first-rate instruction, an array of athletic and extracurricular opportunities, and a comprehensive network of social and health supports.

2. Defendants (collectively, “CPS”) have nonetheless voted to close NTA by phasing it out and reassigning its attendance boundary, using discriminatory criteria and disregarding mandatory requirements for school actions. Plaintiffs, who include NTA’s Local School Council (“LSC”) chairperson, NTA students, and parents of NTA students, challenge this discriminatory, unlawful, arbitrary action.

3. Before NTA, CPS had never sought to close a Level 1+ school or an efficiently utilized school. Phasing out NTA would not have been permitted under any of CPS’s previous guidelines for school actions, dating back to 2011.

4. CPS is taking this unprecedented action not for any education-related purpose with respect to NTA; CPS instead is bowing to pressure from wealthy interests in the South Loop, who have long targeted NTA’s building as a convenient, desirable location for a new high school. While a new high school in the South Loop may be convenient and desirable, CPS may not accomplish this goal by using discriminatory criteria, disproportionately burdening African-American schoolchildren and flouting important provisions in the law, as it has in this case.

5. Phasing out NTA would displace and destroy a vibrant and successful school community and needlessly disrupt the educational experience of NTA students. According to research, school closings cause educational harm to displaced students. Many of NTA’s current students know this harm firsthand from other CPS school closings. To counteract the harm, state law mandates that displaced students be assigned to a higher-performing receiving school. But since NTA is one of the highest-rated elementary schools in CPS, it is not possible for NTA students to be assigned to a higher-performing receiving school. CPS unlawfully deemed South Loop Elementary School (“SLES”), where NTA students will be transferred, to be “higher performing” only by using low-value, racially biased criteria.

6. African-American students will disproportionately bear the burden of CPS's decision to dismantle NTA. This disparate impact on African-American students is hardly new—it follows a consistent trend through years of CPS school-closing decisions. In the past, seemingly race-neutral criteria, applied in the context of institutional inequity and historical segregation, commonly resulted in racially disparate outcomes, with the same already disadvantaged communities repeatedly absorbing the significant costs of the system's "tough choices." CPS's decision in this case once again requires African-American children, whose community fought hard to achieve the highest educational standards for their school, to bear the brunt of yet another profoundly destabilizing disruption.

7. CPS's decision also violated mandatory procedural safeguards in the School Code, reducing them to post-hoc formalities to rationalize the predetermined outcome of reclaiming NTA's real estate. The General Assembly created these safeguards to provide school communities with real protection from exactly the kind of invidious decision CPS made in this case, and to give communities an effective voice in that process. 105 ILCS § 5/34-18.43(a)(5). CPS has yet to identify any fault of NTA—academic, enrollment, or otherwise—that justifies CPS's decision to sacrifice the NTA community's hard-fought, resounding academic success. CPS reached its decision only by disregarding both the letter and the spirit of state law.

8. CPS's decision to phase out NTA violates the Illinois Civil Rights Act of 2003 ("ICRA"), 740 ILCS § 23/5 *et seq.*, and the mandatory requirements of the Illinois School Code ("School Code"), 105 ILCS § 5/34-200 *et seq.*, for executing a school phase-out and boundary change. It must be reversed.

VENUE

9. Venue is proper in this court pursuant to 735 ILCS § 5/2-101 because the transactions from which the Plaintiffs' causes of action took place in Cook County, Illinois.

PARTIES

Plaintiff Elisabeth Greer

10. Elisabeth Greer is the chairperson of NTA's LSC and the mother of two African-American NTA students: H.G., who is in second grade, and N.G., who will be starting kindergarten at NTA in the fall of 2018.

11. Ms. Greer and her children live in Chicago, Illinois.

12. H.G. has attended NTA for three years.

13. H.G. receives medical and dental care through NTA's health clinic.

14. Ms. Greer relies on the low-cost childcare services provided at NTA during the school year.

15. H.G. will be participating in summer camp through the Park District, located at NTA, this year.

Plaintiff Courtney Everett

16. Plaintiff Courtney Everett is the mother of two African-American NTA students; W.E. is in second grade, and K.E. is in kindergarten.

17. W.E. has attended NTA for three years, and K.E. has attended NTA for one year.

18. W.E. is enrolled in NTA's regional gifted center ("RGC").

19. Ms. Everett has used the low-cost childcare services provided at NTA.

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Plaintiff Denetta Jones

20. Plaintiff Denetta Jones is the mother of two African-American NTA students: A.H. who is in fifth grade, and J.H., who is in third grade.

21. Ms. Jones and her children live in the Hilliard Homes, a Chicago Housing Authority (“CHA”) property located within NTA’s attendance boundaries.

22. A.H. and J.H. are eligible for free or reduced lunch under the National School Lunch Program.

23. A.H. and J.H. have attended NTA for approximately three years.

24. Before enrolling at NTA, A.H. and J.H. attended Goodlow Elementary, a CPS neighborhood elementary school.

25. In 2013, CPS closed Goodlow, one of 49 schools CPS closed that year, displacing A.H., J.H., and their classmates.

26. A.H. and J.H. attended their designated receiving school, Earle Elementary.

27. A.H. struggled academically following this transfer, and Earle teachers informed Ms. Jones that A.H. would not be promoted to the next grade. A.H. became very frustrated and started “shutting down” at school—meaning, she would refuse to engage, participate, or even speak or make eye contact with teachers or other people.

28. Ms. Jones became very concerned that Earle was not an appropriate educational environment for her daughters, and therefore transferred A.H. and J.H. to NTA in the spring of 2015.

29. NTA staff promptly recognized that A.H. needed an individualized education program (“IEP”), completed her initial evaluations for special education services under the Individuals with Disabilities Education Act (“IDEA”), and created her initial IEP. With

appropriate educational support, A.H. has made strong academic progress and has been on the honor roll.

30. A.H. and J.H. have received health services from NTA's Health Clinic.

31. A.H. participates in NTA's Junior Coach program, an extracurricular activity that teaches older students to play various sports and then, in turn, to coach younger students.

Plaintiff Anika Matthews-Feldman

32. Plaintiff Anika Matthews-Feldman is the mother of P.F., an African-American first-grade student at NTA.

33. Ms. Matthews-Feldman and P.F. live in Chicago, Illinois.

34. P.F. has attended NTA for two years, and she is enrolled in NTA's RGC.

35. Ms. Matthews-Feldman regularly relies on the low-cost childcare services provided at NTA.

36. P.F. also participates in the Park District's swimming program at NTA and is a member of the swim team.

Plaintiff Concerned Parents of NTA

37. Concerned Parents of NTA is an unincorporated organization whose purpose is to preserve NTA as an elementary school, representing the interests of all NTA parents.

38. Approximately 30 members, all parents and grandparents of NTA students, comprise the organization, which works on behalf of NTA parents and students.

39. Ms. Greer and Ms. Matthews, both members of Concerned Parents of NTA, have leadership roles within the organization.

40. Concerned Parents of NTA would cease to exist if NTA were phased out.

41. Concerned Parents of NTA has spent vast amounts of its members' time and energy attempting to prevent the proposed phase-out of NTA. Had CPS not persisted in pursuing this phase-out, the members comprising Concerned Parents of NTA would have spent these resources furthering the interests of the NTA community in enhancing students' educational opportunities.

42. The claims Concerned Parents of NTA bring in this Complaint, and the relief it seeks on behalf of its members, relate to CPS's decision to phase out NTA and reassign its attendance boundary, which will affect all NTA students. Resolution of the claims and provision of the relief sought do not require participation of all the individual members of Concerned Parents of NTA.

Plaintiff Chicago United for Equity

43. Chicago United for Equity ("CUE") is an organization working to connect Chicagoans and equip them with tools to promote racial equity. CUE seeks to promote civic activism to build better government structures, policies, and practices for racial equity.

44. CUE formed in 2017 in response to national and local reporting of modern-day school segregation. CUE launched community dialogues about housing and education policies between parents and schools, including NTA and SLES.

45. CPS's plan to close NTA frustrates CUE's efforts to advance strategies for equitable school integration policies and practices. Following the announcement of the proposed phase-out of NTA, CUE diverted its resources to support hundreds of residents' oral and written testimonies to CPS, collect over 1200 signatures in opposition to the proposal, and commission a community-led Racial Equity Analysis that culminated in two equity reports submitted to CPS on behalf of community members.

46. Had CPS not persisted in pursuing the phase-out and boundary change of NTA, CUE would have spent its resources furthering its goal of equitable school integration throughout Chicago.

Defendants

47. Defendant Chicago Board of Education (“BOE”), also known as Chicago Public Schools (“CPS”), is constituted within Illinois for administrative control and direction of public schools in the City of Chicago.

48. Defendant Janice Jackson, Chief Executive Officer (“CEO”) and superintendent of CPS, is sued in her official capacity as CEO of CPS.

STATEMENT OF FACTS

A. Background of NTA

49. NTA is a neighborhood elementary school within CPS, currently serving 722 students enrolled in pre-kindergarten through eighth grade. NTA is located at 55 West Cermak, Chicago, Illinois, and stands at the site of the former Harold Ickes Homes (“Ickes Homes”), a CHA public housing development.

50. NTA’s Regional Gifted Center (“RGC”) accepts students from outside of NTA’s attendance boundary. NTA’s RGC students are fully integrated with neighborhood students for all activities outside of academic instruction.

51. Overall, about 78% of NTA students are African-American, and about 76% come from low-income households.

52. Of students enrolled in the neighborhood program, about 93% are African-American, and 90% come from low-income households.

53. NTA opened in 2002 and became the neighborhood school for students living in the Ickes Homes. Between 2002 and 2007, CPS shifted management of NTA between three different operators because NTA students were struggling with low achievement and behavior challenges.

54. In 2006, CPS hired Amy Rome as principal. Principal Rome, a dynamic and able leader, worked tirelessly to engage NTA parents and the Ickes community, which together started taking school improvement into their own hands. That school year, NTA students began to show growth in academic achievement.

55. By school year 2011–2012, NTA had climbed to a Level 1 performance rating, the highest possible at that time.

56. However, in spring 2012, CPS closed Price Elementary, which was failing academically, and selected NTA to absorb the Price students. NTA welcomed Price students in fall 2012. Following this transition, NTA fell from a Level 1 rating to a Level 3 rating, the lowest possible rating, based on performance data from the 2012–2013 school year.

57. Schools that absorb students from closed and academically failing schools frequently suffer setbacks in their performance rankings for a number of reasons, including the disruption inherent in the transition process.

58. In the fall of 2013, Isaac Castelar became principal of NTA. Principal Castelar and the NTA community once again took it upon themselves to get involved and elevate NTA back to its full potential. Collectively, NTA students, teachers, parents, administrators, and community members created “The NTA Way,” a set of four core values—Courage, Commitment, Awareness, and Integrity—that drive the holistic education of NTA students.

59. By the fall of 2017, NTA had climbed to a performance rating of Level 1+ based on CPS's revised five-tiered School Quality Rating Policy ("SQRP"). Level 1+ is the new highest possible SQRP rating.

B. CPS School Ratings Under Its School Quality Rating Policy and Utilization Policy

60. SQRP is CPS's official policy for evaluating school performance. "The purpose of the SQRP is to: (1) communicate to parents and community members about the academic success of individual schools and the district as a whole; (2) recognize high achieving and high growth schools and identifying best practices; (3) provide a framework for goal-setting for schools; (4) identify schools in need of targeted or intensive supports; and (5) guide the [BOE]'s decision-making processes around school actions and turnarounds." CPS, "School Policy Rating Policy," (2018), *available at* <http://cps.edu/Performance/Pages/PerformancePolicy.aspx>.

61. SQRP has five different rating levels: 1+ (highest), 1, 2+, 2, and 3 (lowest).

62. According to CPS, a Level 1+ rating means "this is a nationally competitive school with the opportunity to share best practices with others." CPS, "School Quality Rating Policy (SQRP) Overview" (2018) ("SQRP Overview") at 2, *available at* http://cps.edu/Performance/Documents/SQRP_Overview.pdf.

63. For elementary schools, SQRP is calculated from several indicators that are weighted according to the chart below.

Elementary Schools

Metric	Weight
Student Growth on NWEA MAP	25%
Student Attendance	20%
Growth of Priority Groups on NWEA MAP	10%
Percentage of Students Making National Average Growth on NWEA	10%
5Essentials Survey	10%
Student Attainment on NWEA MAP (Grades 3-8)	10%
Student Attainment on NWEA MAP (Grade 2)	5%
ELL Language Development Growth on ACCESS	5%
Data Quality	5%

64. Under this formula, growth measures (which gauge a student's improvement during the school year) are heavily valued, counting at least three times as much as attainment measures (which compare the grade level performance of students nationally).

65. Assigning greater weight to student growth instead of attainment on standardized assessments avoids disadvantaging African-American students, who tend to start the school year at lower attainment levels. Research has shown that African-American students score lower than Caucasian students on standardized academic assessments, creating a persistent achievement gap in virtually all schools across the nation.

66. In addition to rating schools academically, CPS classifies schools according to the efficiency and adequacy of their facilities usage. CPS's Utilization Standards include three classifications of building efficiency levels: underutilized, efficient, and over-crowded.

67. NTA has "efficient" utilization based on CPS's 2017–2018 Space Utilization Standards ("Utilization Standards").

68. NTA's quality is enhanced by other features, as well, such as its community health center ("NTA Health Center"); recreational activities, including swimming lessons, provided through a partnership with the Chicago Park District program; low-cost child care; and free participation in nine different athletic teams for NTA students.

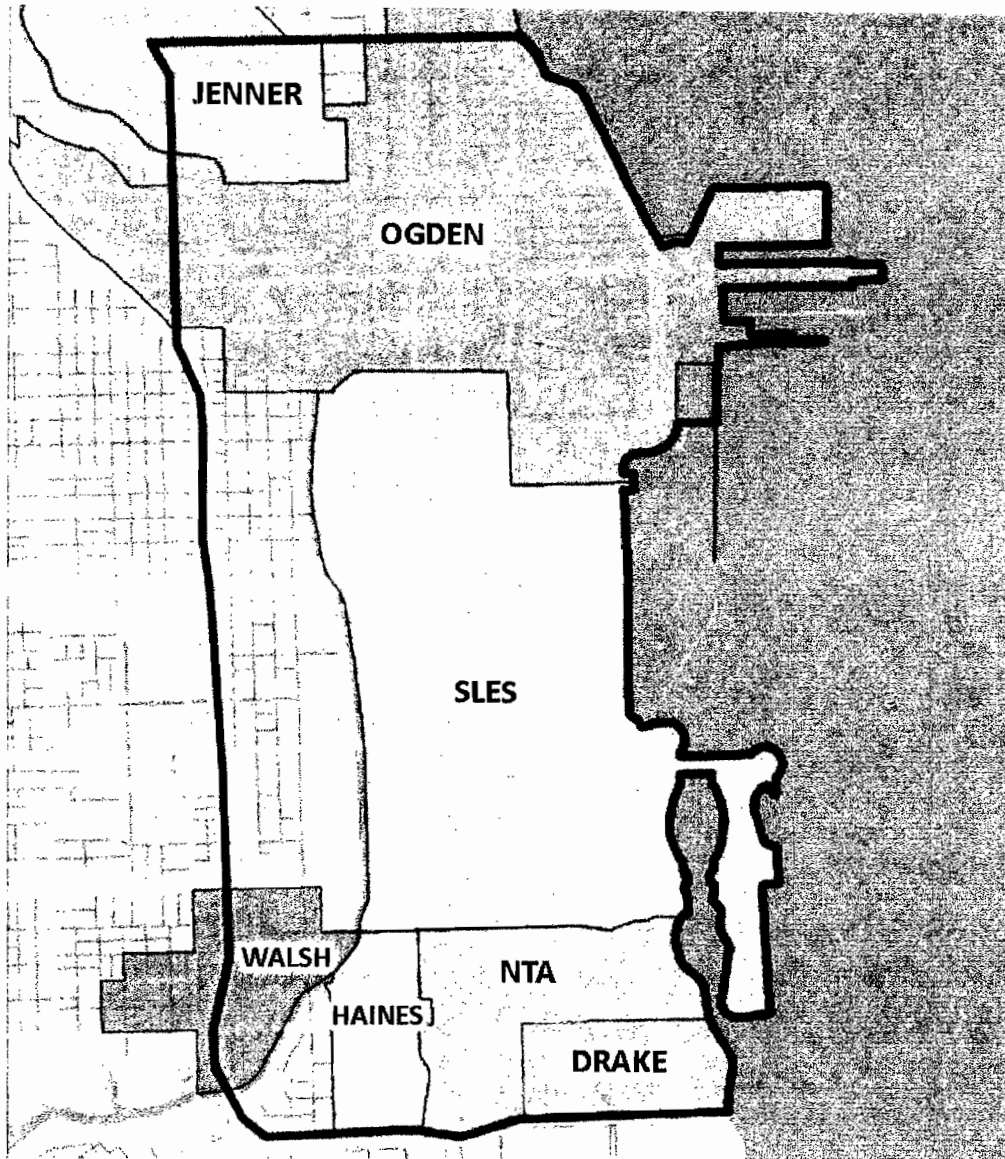
69. In the past, CPS has closed schools that had the lowest performance ratings (primarily classified as Level 3 or "on probation" under the previous performance policy), or that were under-enrolled—usually both.

70. CPS has never proposed to close or phase out a Level 1+, efficiently utilized school.

C. Prior School Actions and Boundary Changes Within the Near South Community

71. Currently, several neighborhood elementary schools serve what CPS calls the "Near South" Community. NTA's attendance boundary abuts the southern boundary of SLES, the eastern boundary of Haines Elementary ("Haines"), and the northern and western boundaries of Drake Elementary ("Drake"), as shown on the map below.

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72. This area has experienced a variety of school actions and boundary changes in the past, the majority of which disproportionately burdened African-American students.

73. In 2005, CPS contracted SLES's attendance boundary from Cermak (22nd Street) to 18th Street, effectively excluding students who lived in two nearby CHA projects, the Long Grove Apartments and the Hilliard Homes, from SLES's attendance zone. Those students were reassigned to NTA.

74. In 2009, CPS considered moving SLES students in sixth, seventh, and eighth grades into a portion of NTA's building to relieve overcrowding at SLES. Under this plan, SLES would have been co-located into NTA's building, but the SLES and NTA student populations would have remained separate throughout the school day.

75. SLES parents expressed concerns about their students having to transition into an unknown school environment.

76. NTA parents expressed concerns about SLES and NTA students being segregated within NTA's facility, and the derogatory message that this would send to those NTA students.

77. During 2009 and 2010, CHA shuttered and ultimately demolished the Ickes Homes, displacing many NTA families. CHA has approved plans for the redevelopment of the Ickes Homes ("Ickes Redevelopment") within the 11.3-acre parcel of land directly adjacent to NTA.

78. In January 2010, CPS decided not to co-locate SLES and NTA.

79. In 2012, CPS closed Price Elementary, and designated NTA to absorb the Price students. Over 99% of Price's students were African-American, almost all from low-income households.

80. In 2013, CPS closed 49 schools across Chicago, including Williams Elementary School, Williams Middle School, and Pershing West Elementary School in the Near South Community. Approximately 98% of Williams Elementary students, 99% of Williams Middle students, and 92% of Pershing West students were African-American.

81. NTA was not a designated receiving school in 2013, but accepted many students displaced from the closing of these and other CPS elementary schools—including Plaintiffs A.H. and J.H.

82. SLES currently serves 796 students in kindergarten through eighth grade. SLES's main building is located at 1212 South Plymouth, and its branch building for kindergarten and first grade classes is located at 1915 South Federal Street. Approximately 46% of SLES students are African-American, and only 34% of SLES students come from low-income households.

83. CPS has classified SLES as "overcrowded" for several years. CPS started the process of procuring land to relieve overcrowding at SLES before July 2016. A new building for SLES is currently under construction at 1601 South Dearborn Street.

84. CHA's Ickes Redevelopment will include between 887 and 972 residential units, 30% of which will be CHA housing. Construction on Phase I of CHA's Ickes Redevelopment, which will include 196 new residential units, is scheduled to begin in 2018, and upon information and belief, will further increase the demand for elementary school seats in the Near South Community beyond the capacity of SLES.

D. CPS's Proposal for NTA

85. In spring 2017, CPS unveiled its plan for yet another school action in the Near South Community, which would once again disproportionately burden African-American students.

86. In May 2017, CPS announced its school action proposal ("Proposal") related to NTA. CPS's Proposal was to reassign a portion of NTA's attendance boundary to neighboring SLES, starting in school year 2019–2020, and to use NTA's building for a new neighborhood high school. Under the Proposal, SLES's attendance boundary would be extended four blocks south from 18th Street to Cermak Street, so that all current NTA students residing north of Cermak Street would be sent to SLES.

87. Students living south of Cermak, including students moving into CHA's Ickes Redevelopment, would be excluded from SLES's expanded boundaries.

88. CPS estimated that it would cost between \$5 and \$10 million in capital funds to change NTA's building into a high school facility.

89. CPS's Proposal failed to provide the public with any information regarding the boundaries for the new neighborhood high school or the school assignment for NTA students living south of Cermak Street.

90. CPS hosted three community meetings during the summer of 2017 to discuss the Proposal. NTA students, parents, and LSC members attended these community meetings and voiced their objections to NTA being closed.

91. During the third community meeting, on July 10, 2017, CPS representatives announced that, starting in the 2019–2020 school year, NTA students in pre-kindergarten through third grade would be relocated to SLES, NTA would stop enrolling students in pre-kindergarten through third grade, and NTA students in fourth through eighth grade could continue at NTA or transfer to SLES. During the fall of 2019, the new high school would start enrolling ninth grade students at NTA's building. After school year 2019–2020, the new high school would continue to phase in higher grades, and NTA would continue to phase out elementary grades. By school year 2024–2025, NTA would be completely closed as an elementary school, and the new high school would serve ninth through twelfth grades.

92. CPS initially projected that after the phase-out was complete, SLES would be able to enroll an estimated 1,800 elementary students across its three school buildings.

93. CPS later adjusted this projection and reported that SLES would have an ideal capacity of 1,590 students, and a maximum of 1,749 students, across its three buildings. Based

on 20th day enrollment figures for school year 2017–2018, SLES’s ideal projected enrollment (1,590 students) would make it the largest elementary school in CPS, and if SLES reached the maximum of 1,749 students—which, by CPS’s calculation, would still be “efficient”—it would be the tenth largest school in the entire school district, including all high schools.

E. CPS’s Pursuit of the Proposal as a “School Action” Under the School Code

1. The draft guidelines

94. To effectuate any “school action,” which includes both phase-outs and reassignment boundary changes, the School Code required the CEO to publish guidelines by October 1, 2017. 105 ILCS § 5/34-230(a). The guidelines must include objective “criteria” by which to determine whether the school action should be taken.

95. On September 29, 2017, CEO Forrest Claypool¹ published CPS’s Draft Guidelines for School Actions (“Draft Guidelines”). A true and accurate copy of the Draft Guidelines is attached hereto as Exhibit A.

96. These Draft Guidelines provided that a reassignment boundary change could be proposed only if “the school(s) principal, parents, or *community members* have requested that a reassignment boundary change proposal be considered via the process to request proposals . . . and the resulting space utilization after the reassignment boundary change will not exceed any affected schools’ enrollment efficiency range as defined by CPS’s Space Utilization Standards.” (Exh. A, § II.C (emphasis added).)

97. The Draft Guidelines provided that a school phase-out could be proposed only if “the school(s) principal, parents, or *community members* have requested that a phase-out be

¹ Forrest Claypool was acting CEO of CPS until December 8, 2017.

considered via the process to request proposal outlined in the definitions section.” (Exh. A, Draft Guidelines, § II.C (emphasis added).)

98. The Draft Guidelines stated that the school transition plan for any proposed school action would include “options to enroll in higher performing schools,” as the School Code requires. (Exh. A, Draft Guidelines, § IV.)

99. The Draft Guidelines defined “[h]igher performing school” as

- (1) receiving a higher level on SQRP for the 2016-2017 school year, or
- (2) if the 2016-2017 school year level on the SQRP is equal, higher performing means performing higher on the majority of the following metrics:

- a. For elementary schools—for the 2016-2017 school year, multi-year added results in reading, multi-year value added results in math, NWEA attainment percentile for readings grades 3-8, NWEA attainment percentile for reading grade 2, NWEA attainment percentile for math grades 3-8 and NWEA attainment percentile for math grade 2.

(Exh. A, Draft Guidelines, § V.)

100. The Draft Guidelines were subject to a public comment period of 21 days, ending on October 20, 2017.

101. Plaintiffs Concerned Parents of NTA and CUE each submitted comments to the Draft Guidelines. Both groups specifically criticized the Draft Guidelines’ lack of objective criteria for school phase-outs, the failure to define “community members” eligible to request a school action proposal, and the racial bias inherent in using academic attainment (rather than growth) metrics for defining a “higher performing” school. Both groups argued that if two schools have equal SQRP levels, as NTA and SLES did, then CPS should not displace students from either school to attend the other.

2. The final guidelines

102. On November 22, 2017, CEO Claypool published CPS's Final Guidelines for School Actions ("Final Guidelines") for school year 2017–2018. A true and accurate copy of the Final Guidelines is attached hereto as Exhibit B.

103. CPS made no changes to the Criteria or Definitions for school actions in the Final Guidelines. (*Compare* Exh. A *with* Exh. B.)

3. The school action announcements for 2017-2018

104. On December 1, 2017, CEO Claypool announced the proposed school actions for school year 2017-2018, including CPS's Proposal for NTA, which was characterized as a "proposed re-assignment boundary change" for NTA. CPS issued letters regarding its Proposal to NTA parents, staff, and LSC members. True and accurate copies of CPS's letter to NTA parents ("NTA Parent Letter") and letter to NTA Staff and LSC ("NTA Staff Letter") are attached hereto as Exhibits C and D.

105. Both the NTA Parent Letter and the Staff Letter stated that CPS was proposing (1) to expand SLES's boundaries to include NTA's entire attendance boundary and (2) to use NTA's building for a new high school. (*See* Exh. C, D.)

106. The NTA Parent Letter stated that students living within NTA's boundary would be "phased into the [SLES] boundary over time" and that elementary grades would be "phas[ed] out" of NTA starting in the fall of 2019. (Exh. C, p. 2.)

107. In the NTA Parent Letter and NTA Staff Letter, CEO Claypool stated that the proposed reassignment of NTA's boundary complied with the School Code because (1) it was "requested by parents or community members via the process to request proposals;" (2) the resulting utilization of SLES and NTA would not exceed utilization capacity of either school;

and (3) SLES was a higher performing school than NTA, “as defined by the Guidelines.” (Exh. C, p. 2; Exh. D, p. 2.)

108. None of the documents that CPS issued on December 1, 2017 specifically identified who had requested a school action for NTA, when the request was made, or what type of school action had been requested.

4. The transition plan

109. The School Code requires CPS to create a transition plan for any school action and to “identify and commit specific resources” for implementation of that transition plan. 105 ILCS § 5/34-225(b).

110. The School Code requires that transition plan to include the option to enroll in a higher performing school. *Id.*, § 5/34-225(c)(2).

111. On December 1, 2017, CEO Claypool published the draft transition plan for CPS’s Proposal (“Transition Plan”). A true and accurate copy of the Transition Plan is attached hereto as Exhibit E.

112. CPS’s Transition Plan promises \$3.5 million to support the school transitions required by its Proposal.

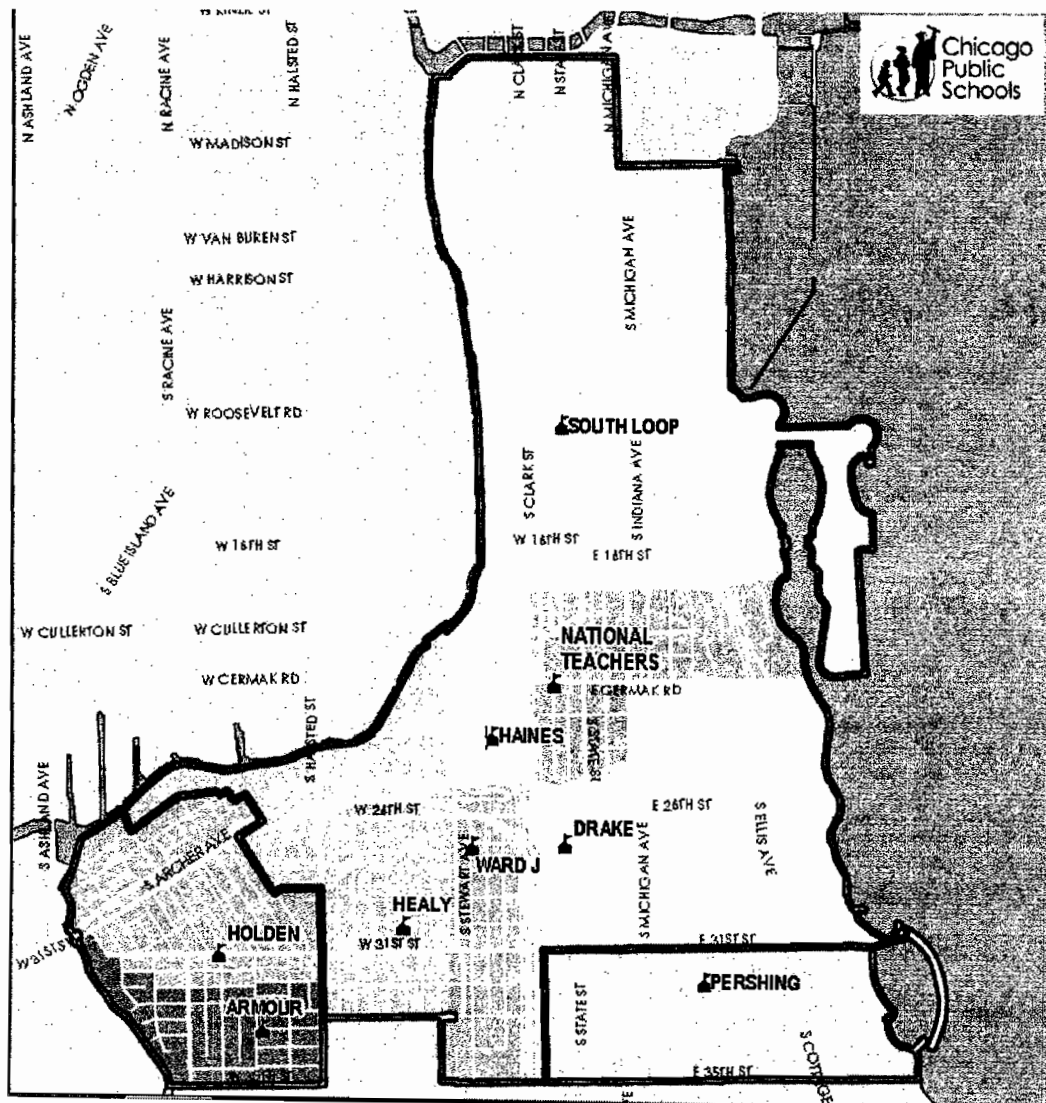
113. The Transition Plan commits the following resources: stipends for the creation of a joint “Culture and Climate” team; funding for joint activities between NTA and SLES students and parents; funding for professional development for students, parents, and community members; a shuttle bus for NTA students going to SLES; and employing a Principal Transition Coordinator (“PTC”) and a school-based transition coordinator for school years 2018–2019 and 2019–2020. (*See* Exh. E, p. 4–6.)

114. The Transition Plan states that CPS will “explore options to provide affordable after school program options at SLES.” (Exh. E, p. 5.)

115. The Transition Plan also states that CPS would commission its own racial equity analysis “to ensure that students and families from all backgrounds would be treated equitably in the transition and the years to come.” (Exh. E, p. 5.)

116. On January 8, 2018, CPS announced the “draft, preliminary” enrollment boundaries (outlined in blue below) for the proposed neighborhood high school located in NTA’s building.

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117. The new high school's boundaries included the entire attendance areas of the following elementary schools: Drake, Haines, Healy, NTA, SLES, and Ward. In geographical terms, the approximate boundaries of the new high school would be the Chicago River on the north and west, Lake Michigan to the east, and 31st Street to the south.

5. The public meetings and public hearing

118. Following its school action announcement, the School Code required that CPS convene two public hearings or meetings near NTA and SLES and hold at least one public hearing at its centrally located office. *See* 105 ILCS § 5/34-230(e).

119. On January 9, 2018, CPS convened the first public meeting to address its Proposal. Of the 41 people who stood up and testified, 35 opposed CPS's Proposal. Only three people—none of whom have children attending SLES or NTA—supported the Proposal.

120. In fact, not a single SLES or NTA parent testified in support of CPS's Proposal at the first public meeting.

121. On January 16, 2018, CPS convened the second public meeting to address its Proposal. Fifty-one people testified. Of those 51 people, 39 testified against the Proposal, while only three testified in favor of it. (Nine people made comments that neither clearly supported nor opposed the Proposal.)

122. Not a single current SLES or NTA parent testified in support of CPS's Proposal at the second public meeting.

123. Plaintiff Elizabeth Greer, NTA's LSC chairperson, testified at the second public meeting and asked CPS personnel to identify who requested the school action and what was requested. Ms. Greer received no response to her question during or after the public meeting.

124. On January 19, 2018, CPS announced its revised Utilization Standards and updated utilization statistics for schools districtwide. Based on CPS's Utilization Standards, NTA was classified as "efficient," and SLES was classified as "over-crowded."

125. On January 29, 2018, CPS convened the public hearing at its central office, as required by the School Code. CPS selected retired Judge Francis J. Dolan to preside over this hearing as the Hearing Officer.

126. Counsel for CPS presented CPS's Proposal and supporting exhibits, which included documents CPS identified as the requests for proposal (collectively "Requests") CPS claimed as the basis of its Proposal.

127. This was the first time that CPS identified any "request[s] for proposal" as a purported basis for its Proposal.

128. Counsel for CPS offered four exhibits as the claimed Requests: (1) a public statement from Alderman Pat Dowell, titled "Ald. Dowell Supports CPS Proposal for New Elementary, High School to Serve Chicago's Near South Side," and dated July 17, 2017; (2) letters from the Near South Planning Board to CEO Claypool, dated August 25, 2017 and January 22, 2018; (3) a petition from residents of the Dearborn Homes, dated July 26, 2017; and (4) letters from members of the Pui Tak Center, dated June 14, 2017.

129. Alderman Dowell's statement discussed overcrowding at SLES and a general need for a new high school in the Near South Community, but did not propose phasing out NTA or changing its attendance boundaries.

130. The Near South Planning Board is a "not-for-profit community based organization serving businesses, property owners, developers, and institutions." *See* <http://loopchicago.com/go/near-south-planning-board>. Its letters referred to a general need for a

new neighborhood high school in the Near South Community, but did not propose phasing out NTA or changing its attendance boundaries.

131. The petition attributed to the residents of the Dearborn Homes asked that NTA be changed into a high school that Drake students could attend.

132. Lastly, the letters from members of the Pui Tak Center simply stated, “I am writing to support using the NTA building to be a high school for students living in the Chinatown and Bridgeport communities.”

133. All of these communications referred to CPS’s *already existing* Proposal, which it had initiated in May 2017.

134. Approximately 87 people testified at the public hearing, 59 of whom opposed CPS’s Proposal, while 16 supported it. (Eight people did not clearly support or oppose the plan.) None of the people expressing support for the Proposal identified themselves as students, parents, or LSC members from SLES or NTA.

135. Herald “Chip” Johnson, the Chief Officer for CPS’s Office of Family and Community Engagement in Education, testified for CPS that SLES was a higher performing school than NTA based on the Guidelines. Mr. Johnson acknowledged that

NTA and [SLES] both received a Level 1+ rating based on their performance during the 2016–2017 school year. However, in accordance with the CEO’s [G]uidelines, when schools are designated the same rating, the higher performing school is determined based on a variety of metrics, including multi-year value-added outcomes and standardized test score attainments. While CPS does not calculate district-wide multi-year value-added results anymore, it does, however, compile standardized test score attainments in accordance with the [G]uidelines.

[SLES] meets the definition of higher performing school because, according to the most recently available data, it performed higher on the majority of the metrics.

CPS, “Public Hearing To Consider The Proposed Reassignment Boundary Change Of National Teachers Academy” (January 29, 2018) at 26-27, available at <https://schoolinfo.cps.edu/SchoolActions/Download.aspx?fid=6399>.

136. Niketa Brar, Executive Director of Plaintiff CUE, testified against CPS’s Proposal during the public hearing. CUE had conducted a race equity impact assessment (“CUE’S REIA”) of CPS’s Proposal, which Ms. Brar presented.

137. She testified that CUE’s REIA was completed over a three-month period, with participation from over 300 community members.

138. Ms. Brar testified that CUE REIA participants found that CPS’s Proposal would disproportionately burden low-income and African-American students.

139. Ms. Brar also testified that REIA participants developed six different proposals that would create a new high school, without the disproportionate adverse impact on African-American students.

140. CUE had also prepared two reports, which Ms. Brar submitted for the Hearing Officer’s consideration. The first was produced by an Equity Committee (“Equity Committee Report”). The second was produced through a series of town hall meetings (“Community Report”).

141. CUE’s Equity Committee Report urged CPS to reconsider its Proposal and instead invest in nearby Dunbar, which would provide the Near South Community with a high-quality, neighborhood high school, without closing NTA and without burdening a primarily African-American community.

142. CUE’s Community Report synthesized the comments and feedback of approximately 300 community members who participated in CUE’s town hall series.

143. CUE's Community Report highlighted a number of community concerns, such as that shutting down a high performing school with a majority African-American and low-income student population would continue the pattern of school closures and destabilization in communities of color; that the process lacked transparency; and that construction would disrupt student learning for years at NTA.

144. CUE's Community Report identified five alternative proposals and recommended that CPS not proceed with its Proposal until it conducted a transparent study on its racial and socio-economic impacts and analyzed alternative proposals that accommodate the needs of the community in an equitable way.

145. The Hearing Officer held the record open for additional submissions on January 30, 2018.

146. By close of business on January 30, 2018, CPS and the Hearing Officer received an additional 1,178 letters submitted by email or by hand-delivery—of these, 1,110 letters expressed opposition to CPS's Proposal, and only 68 (less than 6%) expressed support.

147. Concerned Parents of NTA and CUE submitted a joint written statement in opposition to CPS's Proposal on January 30, 2018.

148. In their hearing submission, Concerned Parents of NTA and CUE outlined CPS's violations of the School Code and urged the Hearing Officer to recommend that the BOE not approve this Proposal.

149. Concerned Parents of NTA and CUE stated that CPS violated the School Code by failing to include any criteria for phase-outs, by failing to provide adequate notice for its Proposal, by failing to comply with its own Guidelines, by failing to assign NTA students to a higher-performing school, by failing to create an adequate transition plan for its Proposal, and by

excluding the NTA community—the community most affected by the CPS’s Proposal—from the decision-making process for the Proposal.

150. Concerned Parents of NTA and CUE also explained how CPS’s Proposal would destroy the academically successful and highly supportive NTA community, unnecessarily disrupt the educational experiences of NTA students, and eliminate resources for the Near South Community.

151. Further, Concerned Parents of NTA and CUE noted that CPS did not have to close NTA in order to open a new high school and that CPS’s Proposal failed to reasonably account for continuing population growth within the Near South Community.

6. The Hearing Officer’s report

152. On February 7, 2018, the Hearing Officer submitted his final report to CPS. The Hearing Officer found that CEO Jackson had complied with the requirements of the School Code and the CEO’s Guidelines.

153. The Hearing Officer’s report determined that CPS had properly executed a “reassignment boundary change,” a distinct category in the School Code with requirements that differ from those applicable to a “phase-out.”

154. The Hearing Officer’s report did not issue any findings or recommendations regarding Defendant CPS’s decision to phase out NTA.

155. The Hearing Officer determined that reassigning NTA’s boundary was in the “best interest” of “the Board, students, and community” because “[i]t is in the best interest of the Board, students, and the community CPS serves to identify facilities that are not being utilized at their full capacity and to improve the use of those facilities.”

156. It was undisputed that CPS classified NTA as efficiently utilized under its Utilization Standards.

157. CPS had never claimed NTA was utilized at less than “full capacity” or that utilization otherwise justified the Proposal. NTA’s facilities utilization had no bearing on the Proposal.

158. Further, neither the School Code nor the Guidelines provide that proposed school actions be determined based on the hearing officer’s view of the “best interest” of various stakeholders.

7. CPS’s Equity Report

159. On or about February 26, 2018, CPS published a report titled: “Chicago Public Schools Equity Report: Taking stock of proposed school boundary changes: Issues and opportunities to achieve equity” (“CPS Equity Report”).

160. CPS had commissioned a private research firm in Maryland called Westat to complete this report in December 2017. To complete the report, Westat conducted several focus groups, including a total of 24 SLES parents and 32 NTA parents; interviewed seven unidentified individuals, including three school and district leaders and one elected official; reviewed records; and analyzed CPS enrollment data.

161. Because the CPS Equity Report was not issued until February 26, 2018, *after* the meetings and hearing regarding the Proposal, the Hearing Officer could not have considered any of its contents in rendering his decision, and it had no bearing on that decision.

162. Among the findings, the CPS Equity Report noted that (1) the two schools serve very distinct populations, differing significantly on all demographic characteristics; (2) the two schools have very distinct cultures, each with a different focus; (3) participants from the NTA

community directly tie their successful school environment to student wellness, with a focus on the “whole child” and a culturally relevant curriculum; (4) both NTA and SLES are categorized as having “above average” growth by CPS; and (5) while SLES students scored higher on math and reading in the spring of 2017, there are no statistically significant differences when year to year growth is examined.

163. The CPS Equity Report also summarized the challenges and concerns associated with CPS’s Proposal and made recommendations for executing it in an equitable way. Notably, the CPS Equity Report found that “[t]he greatest challenge is ensuring that NTA students continue to receive the equitable services, culturally responsive teaching, and social-emotional support that NTA staff successfully provide” and that “South Loop participants acknowledged that the burden of this proposal would be shouldered largely by the NTA community, with NTA students being the ones transitioned rather than South Loop students.”

8. CPS’s decision

164. On February 28, 2018, the BOE convened its monthly meeting, and CPS representatives presented the Proposal for final approval. Twenty-two people stood up and spoke against CPS’s proposals to phase out any schools, including NTA, or specifically in support of keeping NTA open as an elementary school. Four spoke in support of the Proposal—none of whom were NTA parents or students.

165. On February 28, 2018, five of the six BOE members voted to approve CPS’s Proposal for NTA, the remaining member abstaining.

166. The following morning, March 1, 2018, CPS representatives informed NTA staff that they would have to reapply for their jobs for school year 2019–2020.

F. Disparate Impact on African-American Students

167. CPS's Proposal includes the creation of a new neighborhood high school with guaranteed enrollment for students from six elementary schools—NTA, SLES, Haines, Healy, Drake, and Ward. The combined attendance for all six elementary schools is approximately 4,550 students.

168. Only 31% of the 4,550 students who will allegedly benefit from this new high school are African-American.

169. However, 78% of the students who will be displaced or otherwise adversely impacted by the NTA phase-out to effectuate the Proposal are African-American.

170. The pattern of displacing African-American students through school actions has been a consistent trend district-wide and within the Near South Community.

171. In 2013, CPS's school actions impacted nearly 12,000 students—88% of whom were African-American.

172. Over 99% of the students displaced by the last school action that directly involved NTA—the closure of Price—were African-American.

173. The last three school actions within the Near South Community displaced students from three schools with over 90% African-American students.

174. This year, CPS publicly acknowledged the “historical wrong” of CPS's past discriminatory actions towards African-American students in the Near South Community, stating, “Years ago, when [SLES] was built, boundaries were drawn that excluded and separated low-income black children from their peers.” (Exh. E, p. 1.)

175. Reports from CUE's Equity Committee and community participants found that CPS's Proposal would have a disparate and inequitable impact on African-American students.

G. Adverse Effect on NTA Students

176. The School Code requires the BOE to “make reasonable and demonstrated efforts to ensure that: affected students receive a comparable level of social support services provided by [CPS] that were available at the previous school.” 105 ILCS § 5/34-225(d)(1).

177. CUE’s REIA and the CPS Equity Report both found that NTA students will be disproportionately burdened by CPS’s Proposal, as compared to students at SLES and other CPS students in the Near South Community.

178. NTA is a close-knit school community, which successfully provides holistic academic and social-emotional support for its students. CUE’s Equity Committee specifically analyzed the loss of community for NTA students and explained, “should this community be displaced to another setting, current NTA students would not only have to acclimate to a larger school with an entirely different student body, but also adjust to new teachers and curriculum that are not focused or resourced to meet the unique learning needs of the specific student population.”

179. CUE’s Equity Committee noted that there was no evidence that the current success and academic progress of NTA students would continue if this Proposal is implemented. It acknowledged the possible loss of the services and supports that had caused NTA students to thrive, which it characterized as the Proposal’s “greatest challenge.”

180. The NTA Health Center is a federally qualified health center that serves a “medically underserved population.” *See* 42 U.S.C. § 254b. Since introducing its Proposal in May 2017, CPS has offered no assurance that these health services will continue for NTA students and the Near South Community.

181. SLES does not offer health services.

182. Similarly, CPS's Transition Plan provides no indication or assurance that the free extracurricular activities currently benefitting students at NTA will continue post-transition.

183. The Transition Plan provides no indication that the current Park District programming will be maintained after the Proposal is implemented.

184. In fact, upon information and belief, CPS plans to remove the Park District program from NTA's building.

185. SLES does not have a partnership with the Chicago Park District.

186. SLES does not offer low-cost child care options before or after school, charging students participating in after-school programs hundreds of dollars per month to do so, and offering no before-school programs.

187. SLES has approximately half the number of athletic teams that NTA has, SLES's teams are only open for students in fifth grade through eighth grade, and only one of SLES's teams offers free participation.

188. CPS's student-based approach to school funding relies on the number of students enrolled on the 20th day of school to determine a school's annual budget. CPS's Proposal will reduce NTA's student enrollment by four grades in school year 2019–2020 and by an additional grade for each of the following four years. Therefore, if the Proposal is implemented, NTA students will endure five years of significant budget cuts during the phase-out. CPS's Transition Plan fails even to acknowledge these cuts, let alone provide measures to mitigate the inevitable damage to programming.

189. The CPS Equity Report notes that "Both NTA and [SLES] participants were concerned about the loss of familiar leaders if the transition takes place. With each school having a very clearly distinct philosophy of education, parents worried that their children would lose the

very leadership philosophies that made their individual schools successful.” SLES parents also “expressed concern that the transition had the potential to seriously disrupt student learning,” even with SLES students not transitioning schools.

190. School closings have a negative impact on student math and reading achievement during the year of a school closing announcement, even before the closing is executed, according to research.

191. School closings have a long-term negative impact on the math achievement of students displaced from closing schools, according to recent research. *See* Molly F. Gordon *et al.*, “School Closings in Chicago: Staff and Student Experiences and Academic Outcomes” (“UChicago Study”) (May 2018), at 36, *available at* <https://consortium.uchicago.edu/sites/default/files/publications/School%20Closings%20in%20Chicago-May2018-Consortium.pdf>.

192. School closings have a short-term negative impact on the reading achievement of students displaced from closing schools and of students attending the receiving schools, according to recent research. *See id.*

193. Research has also shown that school closings have a negative social-emotional impact on students from closing schools and negatively impact the school culture of receiving schools. *See id.*

194. “Schools are social organizations in which staff, students, and families interact with one another regularly, forming a network of relationships. Strong relationships characterized by high levels of trust and collaboration are essential elements of well-functioning schools. . . . When schools are closed and merged into another school, it can alter the delicate social dynamics and cultures of school communities. . . . [F]amilies, teachers, students, and staff

in schools form strong bonds and networks with one another. Because of these connections, schools foster social cohesion and serve as stabilizing forces in a community. When schools shut down, it can have a destabilizing effect because connections can be severed leaving those affected experiencing grief and loss.” *Id.* at 33, 36.

195. Multiple studies confirm that, for a student to benefit academically from a school closing, the student must be assigned to a receiving school that is substantially higher performing than the closing school.

196. NTA students will not have the opportunity to attend a higher performing school, and certainly not one that is “substantially higher performing,” because they are already attending a Level 1+ school.

197. If their school is phased out, NTA students will not only suffer the loss of their high-performing, supportive school community, their Health Center, and their access to free Park District programming and enriching extracurricular activities. They will also bear the burden of annual school budget cuts, with inevitable deterioration of school programming and disruption of their educational experience, and the wide range of harms that attend that disruption.

H. The Near South Community and Existing Schools

198. CPS asserted that it decided to phase out NTA and reassign its attendance boundary because it believes the Near South Community needs a new neighborhood high school.

199. CPS describes the Near South Community as including portions of the following neighborhoods: South Loop, Bronzeville, Armour Square, Chinatown, and Bridgeport. These neighborhoods have recently experienced significant population growth, which CPS predicts will continue.

200. Phillips High School (“Phillips”) currently serves the Near South Community as its neighborhood high school. Based on CPS’s Utilization Standards, Phillips’s ideal capacity is 1,980 students, and it is currently underutilized.

201. Tilden High School (“Tilden”) is a neighborhood high school that serves the following neighborhoods: Bridgeport, Armour Square, Chinatown, Canaryville, Wentworth Gardens, and the Back of the Yards. Tilden’s attendance boundary abuts Phillips’s western attendance boundary. Based on CPS’s Utilization Standards, Tilden’s ideal capacity is 2,028 students, and it is currently underutilized.

202. Dunbar Vocational Career Academy (“Dunbar”) is a citywide high school, which has no attendance boundary, and is located at 3000 South King Drive—within Phillips’s attendance boundary. Based on CPS’s Utilization Standards, Dunbar’s ideal capacity is 1,872 students, and it is currently underutilized.

203. William Jones College Preparatory High School (“Jones”) is a selective enrollment high school, which has no attendance boundary, and is located at 700 South State Street—also within Phillips’s attendance boundary.

204. Based on CPS’s Utilization Standards, Jones’s ideal capacity is 1,860 students, and it is currently efficiently utilized.

205. In 2011, CPS approved plans to renovate Jones’s existing school building and to construct a new building to expand Jones’s enrollment. This project, which cost approximately \$115 million, nearly doubled Jones’s enrollment capacity.

206. In February 2016, after the former Drake building sat vacant for three years, CPS sold it for \$1.5 million.

207. Upon information and belief, the former Pershing East building remains vacant, and on the market for sale.

208. Despite its existing resources and facilities, CPS has decided to eliminate NTA, one of its highest performing elementary schools, and to dismantle the invaluable supports that NTA provides its students and the community, solely to use its building for a new high school.

COUNT I: Violations of Illinois Civil Rights Act (740 ILCS § 23/1 *et seq.*)

209. Paragraphs 1–208 above are incorporated as if set forth fully herein.

210. The Illinois Civil Rights Act (“ICRA”) prohibits any “unit of State, county, or local government” from (1) “utiliz[ing] criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin,” and (2) “exclud[ing] a person from participation in, deny[ing] a person the benefits of, or subject[ing] a person to discrimination under any program or activity on the grounds of that person’s race, color, national origin, or gender.” 740 ILCS § 23/5(a)(1) and (2).

211. The School Code requires that the school transition plan for any proposed school action “shall include . . . options to enroll in *higher performing* schools.” 105 ILCS § 5/34-225(c)(2) (emphasis added).

212. In purporting to determine that SLES was a “higher performing” school than NTA, and therefore that its Proposal was permissible under the School Code, CPS used criteria and methods of administration that had the effect of subjecting African-American students to discrimination based on their race.

213. NTA has the highest performance rating, Level 1+, and is efficiently utilized. Under the Proposal, NTA students will have the option of enrolling at SLES, which has the same ratings. SLES is not a higher-performing school.

214. CPS's own reports found that there was "no statistical difference" between NTA and SLES when looking at the schools' performance through its standard metrics.

215. Even though SLES was therefore plainly not "higher performing," CPS adopted particular criteria, stating those criteria would apply when the schools had the same rating.

216. These additional criteria, purporting to distinguish between equally rated schools, constitute criteria that have the effect of discriminating against African-American students, like the students comprising NTA. In particular, the criteria that CPS applied relied solely on "attainment" rather than "growth" metrics, resulting in race discrimination.

217. CPS's own literature consistently acknowledges growth metrics as the better indicator of "how much [students] are learning, and therefore how effective the school is at providing instruction." SQRP Overview at 2.

218. CPS therefore generally uses growth metrics—not attainment—as the highest-valued metric.

219. Growth accounts for three times as much as attainment in CPS's SQRP calculation of both the elementary schools and the high schools.

220. Growth accounts for 50% of SQRP for option schools—and attainment metrics from test scores are not even calculated for such schools.

221. Across the various SQRP calculations, attainment is never valued more than 15% of the total indicators calculated for any of the schools. Even attendance metrics are valued more than attainment—20% for elementary schools.

222. A study by researchers at Stanford University provided impressive findings that "Chicago's growth rate is higher than 96 percent of ALL school districts in the United States;

[among] the 100 largest school districts in the country, Chicago has the highest growth rate between third and eighth grade.”

223. The then-CEO of CPS, Forrest Claypool, celebrated these findings, which he said showed that “Chicago’s students are making unprecedented academic gains across all racial and socioeconomic subgroups, and they are more likely to succeed than ever before.” City of Chicago, Office of the Mayor, “New Analysis by Leading Education Expert: CPS Students Are Learning and Growing Faster Than 96% of Students in the United States” (Nov. 2017), *available at*

https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2017/november/CPSGains.html.

224. CPS characterizes attainment, by contrast, as “a good indicator of how ready students are for their next step (high school, college, careers).” SQRP Overview at 2. This readiness can be, and often is, attributed to countless factors independent of school quality—such as outside enrichment opportunities unavailable to low-resourced students.

225. Despite these past practices and CPS’s own internal measures of high performance, CPS applied attainment as the *sole* criterion by which to reach the conclusion that despite their equal rankings, NTA students would be attending a higher-performing school if they attended SLES.

226. The school code does not permit CPS to use additional measures to determine that one of two schools rated equally under CPS’s SQRP, such as NTA and SLES, is “higher performing.” But even if that were permissible, CPS could have used different performance criteria to further compare NTA with SLES, such as growth and attendance. Had it done so, SLES would not have been considered “higher performing.” CPS deliberately passed over

meaningful and superior metrics in favor of attainment, a low-valued and racially biased metric, to deem SLES higher-performing and justify its pre-conceived plan to close NTA and turn it into a high school.

227. Using attainment metrics over growth puts schools like NTA, serving mostly African-American populations, at an extreme disadvantage as compared to schools with similar racial demographics to SLES, and will consistently result in majority African-American schools being disproportionately rated as lower-performing.

228. CPS's use of the attainment metric as the sole criterion resulted in unlawful discrimination.

229. Plaintiffs have already experienced harm from this proposed closure, and if NTA is allowed to close based on this discriminatory criterion, their resulting injuries will continue and be irreparable.

230. Plaintiffs' injuries range from direct academic harm, occurring even before the phase-out begins to be executed, to the larger negative impact on a community that has already suffered historical harm flowing from CPS's past actions.

231. This Proposal has already initiated the dismantling of the education services and school culture that have supported African-American students in achieving the highest academic accomplishments in the district.

232. Additionally, further action will cut off African-American families from healthcare and other ancillary services that holistically support their needs and create the nurturing academic community that fosters their current success.

233. Community members generated at least six different proposals in two separate reports that were specifically designed to be less discriminatory than the Proposal and meet the

need for high-quality, neighborhood high school enrollment options in the near South Loop communities.

234. Despite the many alternatives presented and available, CPS has unreasonably chosen to move forward with its discriminatory actions and failed to meaningfully consider non-discriminatory alternatives.

235. Under ICRA, the court has the authority to “grant as relief any permanent or preliminary negative or mandatory injunction, temporary restraining order, or other order.” 740 ILCS § 23/5.

WHEREFORE, Plaintiffs pray that this Court:

- a. Enter a preliminary and permanent injunction against CPS, ordering it to reverse its decision to phase out NTA and reassign its attendance boundary;
- b. Declare that CPS’s decision to phase out NTA and reassign its attendance boundary violated ICRA.
- c. Award all available monetary damages to Plaintiffs;
- d. Award Plaintiffs reasonable costs and attorneys’ fees; and
- e. Grant such other relief as this Court deems just and proper.

**COUNT II: Violation of Illinois School Code (105 ILCS § 5/34-230)
Insufficient Guidelines—No Objective Criteria**

236. Paragraphs 1–208 above are incorporated as if set forth fully herein.

237. CPS is an administrative agency created by statute, and has no general or common law powers. Its powers are limited to those granted by the General Assembly and any action it takes must be specifically authorized by statute.

238. CPS acted outside of its authority when issuing the Guidelines by failing to comply with the requirements of the School Code. 105 ILCS § 5/34-230(a).

239. The School Code sets forth standards and procedures for “school actions” with which CPS must comply in order to propose and approve a school action. 105 ILCS § 5-34-230(h).

240. A “school action” is defined as “any school closing; school consolidation, co-location, boundary change that requires reassignment of students, unless the reassignment is to a new school with an attendance area boundary and is made to relieve overcrowding; or phase-out.” 105 ILCS § 5/34-200.

241. A “phase-out” is defined as “the gradual cessation of enrollment in certain grades each school year until a school closes or is consolidated with another school.” 105 ILCS § 5/34-200.

242. Before proposing any school action, the CEO of CPS must create and publish guidelines for school actions. 105 ILCS § 5/34-230(a).

243. The guidelines “shall outline the academic and non-academic criteria for a school action.” 105 ILCS § 5/34-230(a). The General Assembly enacted this provision as part of its express recognition that the use of “clear system-wide criteria” would minimize the negative impact of a school facility decision” on affected communities. *See* 105 ILCS § 5/34-18.43(a)(5).

244. Any proposed school action must be “consistent with the guidelines.” *See* 105 ILCS § 5/34-230(b).

245. The BOE may not approve a proposed school action if the CEO did not follow the mandates set forth in the School Code. 105 ILCS § 5/34-230(h).

246. While CPS has repeatedly characterized its Proposal as only involving a “reassignment boundary change,” the logistics of this Proposal include two school actions—a phase-out *and* a reassignment boundary change. (*See*, Exh. C, p. 1, 2; Exh. D.)

247. CPS's actions will result in the gradual cessation of enrollment in certain elementary grades at NTA each school year, starting in fall 2019, until NTA closes as an elementary school in summer 2024.

248. The gradual cessation of enrollment in certain elementary grades at NTA each school year, starting in fall 2019, until NTA closes as an elementary school in summer 2024 falls squarely within the statutory definition of a phase-out. *See* 105 ILCS § 5/34-200.

249. CPS must comply with School Code and Guideline requirements for a phase-out in order to execute this school action.

250. CPS's Guidelines fail to include any academic or non-academic criteria for phase-outs during school year 2017–2018.

251. Instead, the Guidelines state that a phase-out can only be proposed if a school principal, parents, or community members “requested that a phase-out be considered via the process to request proposals.” (Exh. B., § II.C.)

252. A request does not constitute “system-wide criteria” as required by the School Code. *See* 105 ILCS § 5/34-18.43(a)(5); 5/34-230(a).

253. A criterion has been defined as a “standard, rule, or test on which a judgment or decision can be based or compared; a reference point against which other things can be evaluated; a characterizing mark or trait.” Black’s Law Dictionary (10th ed. 2014).

254. To comply with the basic meaning of “criteria” and with their statutory purpose, criteria in school action guidelines must comprise objective standards—as they have in years past—that are used to evaluate one school and compare it to another.

255. Promulgation of the Guidelines constitutes a quasi-legislative agency action.

256. A quasi-legislative action can be reviewed in a declaratory judgment action to determine whether that action is unlawful.

257. An agency action can be set aside if the agency exercises its discretion in an unlawful or arbitrary and capricious manner.

258. “Agency action is arbitrary and capricious if the agency (1) relies on factors that the legislature did not intend for the agency to consider, (2) entirely fails to consider an important aspect of the problem, or (3) offers an explanation for its decision which runs counter to the evidence before the agency or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *E. St. Louis Sch. Dist. No. 189 Bd. of Educ. v. E. St. Louis Sch. Dist. No. 189 Financial Oversight Panel*, 349 Ill. App. 3d 445, 454 (5th Dist. 2004).

259. CPS’s Guidelines constitute arbitrary and capricious agency action. The General Assembly specifically intended for CPS to consider “clear system-wide criteria” when making school action decisions. 105 ILCS § 5/34-18.43(5).

260. CPS’s Guidelines failed to include any academic or non-academic criteria, as required by the School Code, and instead rely solely upon receipt of a “request for proposal” that a school be subjected to a phase-out. The Guidelines provide no objective standards by which to determine whether the proposal should be adopted.

261. CPS’s decision to phase out NTA, in the absence of any Guideline criteria for selecting a school for phase-out, violated the mandatory requirements of the School Code and also constitutes arbitrary and capricious agency action—exceeding the authority vested in CPS by law. *See* 105 ILCS § 5/34-230(a)-(b), (h).

262. Plaintiffs are therefore entitled to a declaratory judgment and order enjoining NTA's phase-out.

WHEREFORE, Plaintiffs pray that this Court:

- a. Enter a preliminary and permanent injunction against CPS, ordering it to reverse the decision to phase out NTA and reassign its attendance boundary;
- b. Declare that CPS's Guidelines fail to comply with the School Code and are arbitrary and capricious; and
- c. Grant such other relief as this Court deems just and proper.

**COUNT III: Violations of Illinois School Code (105 ILCS § 5/34-230)
Failure to Comply with Guidelines—No Community Request**

263. Paragraphs 1–208 above are incorporated as if set forth fully herein.

264. CPS acted outside of its authority by failing to comply with the Guidelines when deciding to phase out NTA and reassign its boundaries.

265. The School Code expressly prohibits CPS from approving a proposed school action where it has failed to follow the law or the Guidelines. 105 ILCS § 5/34-230(h).

266. The Guidelines condition proposal of a phase-out and/or reassignment boundary change upon receipt of a request that a phase-out or reassignment boundary change be considered. (Exh. B, § II.C.) CPS's Guidelines require that a school's principal, parents, or community members submit this request through one of four different methods. (Exh. B, § II.C.)

267. All of the communications CPS presented at the public hearing in its attempt to meet the requirement of a "request" for the change were dated and submitted *after* May 2017. The earliest of the purported requests was submitted in mid-June 2017. The purported requests cannot possibly have formed the basis of CPS's Proposal because they were submitted after CPS

had already announced its Proposal. Each purported request refers to CPS's Proposal as already existing and considers it to be *CPS's* Proposal.

268. Moreover, none of the authors or the rationales of the purported requests were connected to NTA. Without a request from NTA's principal, parents, or community, CPS failed to comply with the Guidelines by proposing a school action for NTA.

269. In addition, none of the requests actually asks that that CPS phase out NTA or move its boundary. At the most, these communications recognize the need for an additional neighborhood high school and endorse CPS's Proposal to open a new high school. Statements regarding the need for a new neighborhood high school do not amount to a request that NTA be subjected to a school action of any kind, either a boundary change or phase-out. Without a request for a phase-out of NTA or reassignment of its boundary, CPS failed to comply with the Guidelines by proposing and approving these actions.

270. CPS's failures to follow its own Guidelines in approving NTA's phase-out and reassignment boundary change constitutes arbitrary and capricious agency action as a matter of law, exceeding the authority vested in CPS by law.

271. Plaintiffs are therefore entitled to an order declaring CPS's action in approving NTA's phase-out and reassignment boundary change void as exceeding CPS's authority, and enjoining the phase-out and boundary change.

272. In the alternative, Plaintiffs are entitled to a *writ of certiorari* to reverse CPS's decision because it failed to proceed according to the School Code.

WHEREFORE, Plaintiffs pray that this Court:

- a. Enter a preliminary and permanent injunction against the Defendants, ordering them to reverse their decision to phase out NTA and reassign its attendance boundary;
- b. Declare that CPS's decision to phase out NTA and reassign its attendance boundary violated its own Guidelines and the School Code and is arbitrary and capricious;
- c. In the alternative, issue a writ of *certiorari* and reverse CPS's decision to phase out NTA and reassign its attendance boundary.
- d. Grant such other relief as this Court deems just and proper.

**COUNT IV: Violations of Illinois School Code (105 ILCS § 5/34-225)
Failure to Provide NTA Students with Higher-Performing School**

273. Paragraphs 1–208 above are incorporated as if set forth fully herein.

274. The transition plan for any school action “shall include . . . options to enroll in higher performing schools.” 105 ILCS § 5/34-225(c)(2).

275. CPS failed to provide NTA students with the opportunity to attend a higher performing school.

276. NTA and SLES both have a Level 1+ SQRP rating. Based on CPS's own performance policy, NTA and SLES are performing at equally high levels, and it is impossible for NTA students to attend a higher performing school.

277. CPS's failure to provide NTA students with the opportunity to attend a higher performing school violates the clear requirements of the School Code and also constitutes arbitrary and capricious agency action—exceeding the authority vested in CPS by law. *See* 105 ILCS § 5/34-225.

278. Plaintiffs are therefore entitled to a declaratory judgment and order enjoining NTA's phase-out and reassignment of its boundary.

279. In the alternative, Plaintiffs are entitled to a writ of *certiorari* to reverse CPS's decision because it failed to comply with the School Code.

WHEREFORE, Plaintiffs pray that this Court:

- a. Enter a preliminary and permanent injunction against the Defendants, ordering them to reverse their decision to phase out NTA and move its attendance boundary;
- b. Declare that CPS's decision to phase out NTA and reassign its attendance boundary violated the School Code and is arbitrary and capricious;
- c. In the alternative, issue a writ of *certiorari* and reverse CPS's decision to phase out NTA and reassign its attendance boundary;
- d. Grant such other relief as this Court deems just and proper.

**COUNT V: Violations of Illinois School Code (105 ILCS § 5/34-225)
Inadequate Transition Plan**

280. Paragraphs 1–208 above are incorporated as if set forth fully herein.

281. If the BOE approves a school action, CPS must prepare a transition plan to support the academic, social, and emotional needs of impacted students. 105 ILCS § 5/34-225(b)-(c).

282. “When implementing a school action, the Board must make reasonable and demonstrated efforts to ensure that: affected students receive a comparable level of social support services provided by [CPS] that were available at the previous school” 105 ILCS § 5/34-225(d)(1).

283. Further, CPS must “identify and commit specific resources for implementation of the school transition plan for a minimum of the full first academic year after the [BOE] approves the action.” 105 ILCS § 5/34-225(b).

284. CPS’s actions will force NTA to undergo a five-year phase-out and, by extension, five years of transition.

285. Despite a prolonged transition and the foreseeable loss of numerous supports (e.g., NTA Health Center, Park District programming, etc.), CPS has identified minimal supports and at best, only committed to providing a small portion of those supports for longer than two years.

286. CPS’s Transition Plan fails to comply with many of the requirements set forth in the School Code. 105 ILCS § 5/34-225.

287. CPS’s failure to create an adequate transition plan violates the School Code and also constitutes arbitrary and capricious agency action, exceeding the authority vested in Defendants by law. *See* 105 ILCS § 5/34-225.

288. Plaintiffs are therefore entitled to a declaratory judgment and order enjoining NTA’s phase-out and reassignment of its boundary.

289. In the alternative, Plaintiffs are entitled to a writ of *certiorari* to reverse CPS’s decision because it failed to comply with the School Code.

WHEREFORE, Plaintiffs pray that this Court:

- a. Enter a preliminary and permanent injunction against the Defendants, ordering them to reverse their decision to phase-out NTA and move its attendance boundary;

- b. Declare that CPS's Transition Plan failed to comply with the School Code and was arbitrary and capricious;
- c. In the alternative, issue a writ of *certiorari* and reverse CPS's decision to phase out NTA and reassign its attendance boundary; and
- d. Grant such other relief as this Court deems just and proper.

Dated: June 19, 2018

Respectfully submitted,

/s/ Ashley Fretthold
One of Plaintiffs' Attorneys

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