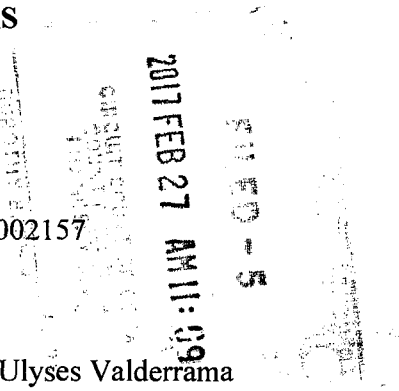
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION



BOARD OF EDUCATION OF THE CITY OF CHICAGO; et al.,	)	
Plaintiffs,	)	Case No. 2017-CH-002157
v.	)	Calendar: 3
BRUCE RAUNER, Governor of Illinois; et al.,	)	Honorable Franklin Ulyses Valderrama
Defendants.	)	

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

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Plaintiffs Board of Education of the City of Chicago ("CPS") on behalf of itself and its students; Marlon Gosa on behalf of his children A.G., C.G., and J.G.; Lisa Russell on behalf of her children F.R. and L.R.; Wanda Taylor on behalf of her child K.S.; Vanessa Valentin on behalf of her children E.R. and J.V.; and Judy Vazquez on behalf of her children K.V., J.V., and J.V. ("Plaintiffs"), by their attorneys, respectfully move this Court for a preliminary injunction to prevent Defendants from continuing to fund two separate but massively unequal systems of education: one for CPS, whose African American, Hispanic, and other children of color comprise approximately 90% of CPS's students; and a separate system for the predominantly white school districts in the rest of the State. This fiscal year alone, the State's discriminatory funding has shortchanged CPS and its students by approximately $500 million.

In support of this motion, Plaintiffs state as follows:

INTRODUCTION

When the United States Supreme Court decided *Brown v. Board of Education*, the Nation's schools had two separate systems of public education – one for white America and one for black America. The Court's 1896 decision in *Plessy v. Ferguson* had declared it was constitutionally permissible to separate white children from black children so long as all children were treated the same. And in *Brown* itself, the lower court had made a factual finding that the separate systems were equal. In his argument to the Supreme Court, Thurgood Marshall – then counsel for the NAACP – did not shy from the issue of race that he was asking the Court to confront, telling the Court it "can't take race out of this case." Tr. of Arg. at 21, *Briggs v. Elliott*, at No. 101 (U.S. Dec. 8, 1953). Accepting Marshall's challenge, the Supreme Court explained, "[w]e must consider public education in the light of its full development and its present place in American life throughout the Nation." 347 U.S. 483, 492-93 (1954). The Supreme Court acknowledged racial

injustice in public education, repudiated its own ruling in *Plessy*, and held: "[I]n the field of public education[,] the doctrine of 'separate but equal' has no place." *Id.* at 495.

Now, in our time – 63 years after *Brown* – Plaintiffs ask this Court "to consider public education in light of its full development and its present place in American life" here, in Illinois. Illinois has created two separate and demonstrably unequal systems for funding public education: one for Chicago, whose students are 90% non-white; and one for the rest of Illinois, which is predominantly white. That funding scheme disproportionately burdens African American and Hispanic children by denying them equal access to a quality education.

And that injustice is about to become far more severe. Although CPS has made many gains in recent years in improving student outcomes and school quality, budget cuts for the current 2016-2017 school year, made necessary by the State's discriminatory funding scheme, no longer can be kept away from the classroom. Governor Rauner's recent veto of additional funding for CPS will require draconian cuts in core educational services.

It is shameful that Illinois ranks 50th among the 50 states in the share it provides of overall education funding. But whatever amount the State chooses to spend on public education – even if woefully inadequate – the law requires that the State not allocate education spending in a manner that has a disparate impact on account of race, color, or national origin. Once the State funds education, at whatever total amount the State chooses, the State cannot distribute those funds in a manner that has a disparate impact on children because of their race, color, or national origin. Plaintiffs ask that this Court enforce the Illinois Civil Rights Act of 2003 (the "Illinois Civil Rights Act" or the "Act") (740 ILCS 23, *et seq.*), by ordering that the statutory systems and their implementation, taken as a whole, not have a disparate impact on CPS's predominantly African American and Hispanic students.

The State's discriminatory funding – which works a massive injustice – is the civil rights issue of our time. Plaintiffs ask this Court to place its full weight against this illegal conduct and enjoin the State from distributing public funds in a manner that discriminates against Plaintiffs.

BACKGROUND[1]

A. Two Systems of Education Funding in Illinois.

The State maintains two distinct funding mechanisms for public education: one that applies only to CPS – whose students are 90% non-white – and one for the rest of the State. Although, in theory, those two funding systems could equitably fund education throughout Illinois, in reality they do not come close to doing so. As *Brown* correctly concluded, separate never really is equal.

CPS enrolls approximately 20% of the students who attend public schools throughout Illinois. Yet CPS receives just 15% of the State's education funding. From Fiscal Year 2011 to the current school year, Fiscal Year 2017, State funding for CPS has declined by $67 million – while State funding for all other districts increased by $2.3 billion.[2] Thus, in Fiscal Year 2017, CPS will receive about 15% of the State's education funding, despite having nearly 20% of the students. In effect, on a per-student basis, CPS will receive just 78 cents for every dollar that the State spends on students in the rest of the State. (Bennett Aff. ¶ 5.)

B. Disparate Pension Funding Obligations.

In addition, CPS – unlike every other school district in the State – must divert a significant and growing portion of its limited budget to funding its teacher pension system, the Chicago

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1 Plaintiffs incorporate in full the detailed allegations set forth in the Verified Complaint in this action, filed February 14, 2017. Plaintiffs also submit affidavits of Dr. Janice Jackson, Chief Education Officer for CPS, and Jennie Huang Bennett, Chief Financial Officer for CPS, attached as Exhibits A and B to this Motion and Memorandum. Plaintiffs also request an evidentiary hearing to provide additional facts.

2 In this Motion and Memorandum, Fiscal Year 2017 refers to the fiscal year beginning July 1, 2016 and ending June 30, 2017. The same naming convention is used for the other fiscal years.

Teachers' Pension Fund ("CTPF"). CPS bears the ultimate responsibility for ensuring that CTPF is adequately funded. 40 ILCS 5/17-129. By contrast, for every other school district in Illinois, the State assumes the burden of ensuring adequate pension funding. 40 ILCS 5/16-158(a).

The unequal obligation imposed on CPS has drastic and worsening consequences. For Fiscal Year 2016, CPS contributed $676 million to CTPF – approximately 12% of CPS's operating budget. In Fiscal Year 2017, CPS must contribute $721 million to CTPF. By Fiscal Year 2020, that figure will reach $811 million. (Bennett Aff. ¶ 9.)

No other school district is required to make pension contributions remotely comparable to those that State law demands of CPS. For Fiscal Year 2017, CPS anticipates that it will spend $1,891 per student on CTPF pensions, while the State will have contributed only $32 per student to CTPF. CPS estimates that other school districts are spending only $86 per student on Illinois Teachers' Retirement System ("TRS") pensions, while the State is spending $2,437 per student. Unlike any other school district in the State, CPS must divert scarce resources from education to pensions. (*Id.* ¶ 11.)

C. Educational Successes at Chicago's Public Schools.

Despite those challenges, CPS and its students have made tremendous educational gains in recent years. In 2016, U.S. News and World Report heralded seven CPS high schools among the top 10 schools in Illinois. According to the National Assessment of Educational Progress – the nation's academic report card – Chicago's improvements were among the strongest in the nation. CPS's most recent average ACT score reached a record high of 18.4 for graduating seniors. In addition, graduation rates have increased. Those hard-fought gains did not come easily. But all of those gains are in jeopardy. (Jackson Aff. ¶ 8.)

D. Impact of Governor Rauner's Recent Veto of Pension Funding.

As a first step toward ending the State's discriminatory funding of teacher pension obligations, on June 30, 2016, the Illinois House amended Senate Bill 2822 to include an additional State contribution of $215 million to assist CPS to meet its required Fiscal Year 2017 teacher pension payment of $721 million. Even that ***$215 million*** pension funding for CPS would stand in stark contrast to the State's projected Fiscal Year 2017 payment to TRS of ***$4.0 billion***. Amended Senate Bill 2822 passed both houses of the General Assembly. (Bennett Aff. ¶¶ 15, 18.)

But on December 1, 2016, Governor Rauner vetoed the bill. Governor Rauner stated that he had agreed to support the bill only if the General Assembly agreed to his other demands on legislation having nothing to do with CPS. As a result, CPS's children – 90% children of color – are at risk of forever losing their one chance in life to receive a quality education. Prior to the veto, CPS already had taken drastic measures to meet its budget obligations and educate its students. At the end of Fiscal Year 2013, CPS had a positive general operating fund balance of $949 million. By the end of Fiscal Year 2016, CPS had depleted all of that reserve and ended with a negative general operating fund balance of $127 million. In other words, CPS's general operating fund balance has declined by $1.1 billion in just three years. Over that same time period, CPS made required pension payments totaling $1.9 billion. In that same three years, the State's discriminatory funding has shortchanged CPS by $1.1 billion. (*Id.* ¶¶ 14, 18.)

To address the cash flow crisis, CPS has relied upon a combination of new tax revenues, maximized to the extent allowable under state law, and massive borrowings through the capital markets. In Fiscal Year 2016, CPS borrowed $1.1 billion to fund its operating budget. In Fiscal Year 2017, CPS planned to rely upon a combination of new tax revenue from the State, new tax revenue from the City of Chicago, and additional massive borrowings in the capital markets. CPS planned for those additional operating funds to permit CPS to meet its cash flow requirements and

to balance its budget. Even before Governor Rauner vetoed the bill providing an additional $215 million funding contribution to CPS, CPS was working on aggressive cost-cutting measures to reduce Fiscal Year 2017 spending by approximately $300 million, and CPS was working on additional borrowings in the capital markets to support cash flow. All of this was critical to CPS's ability to meet its cash flow requirements, including the payment CPS must make to CTPF by June 30, 2017 to meet a pension funding obligation of $721 million. Governor Rauner's veto has created a gap CPS cannot fill through additional borrowings. (*Id.* ¶ 15.)

The State's discriminatory funding has forced CPS to slash the amounts that CPS can devote to educating students. For Fiscal Year 2016, CPS adopted a balanced budget assuming that the State would provide a $480 million increase toward equitable funding of CPS's pension obligation, consistent with the Legislature's stated "goal and intention," 40 ILCS 5/17-127(b). When the State made no such contribution, CPS imposed midyear reductions that cut spending by $173 million annually: a $120 million cut to the school-based budgets from which principals fund their schools; a $45 million cut by eliminating 433 administrative and central office positions; and three furlough days to save approximately $30 million. (*Id.* ¶ 17.)

Those cuts, however, pale in comparison to the current budget crisis. CPS began the fiscal year with a $300 million operating deficit. Through cuts, efficiencies, and an increase in City taxes, CPS managed to pass a balanced annual budget, as State law requires. 105 ILCS 5/34-43. The balanced budget also is essential to allow CPS access to the capital markets to continue to borrow massive amounts of money to fund CPS's cash flow. (*Id.* ¶¶ 15, 18.)

The Fiscal Year 2017 budget included $215 million from the State in the form of pension relief, based on Senate Bill 2822 passing both chambers of the General Assembly with overwhelming bipartisan support. However, on December 1, 2016, Governor Rauner's veto threw

CPS into another mid-year financial crisis. Now, to close the $215 million gap, CPS must make additional cuts to balance its budget. (*Id.* ¶¶ 18-19.)

On February 22, 2017, CPS amended its Fiscal Year 2017 budget to begin to address the $215 million gap. As set forth more fully in Plaintiffs' Verified Complaint and in the Affidavit of Dr. Janice Jackson, CPS's Chief Education Officer, those budget cuts produce real and irreparable harm to CPS's students. The February 22 budget cuts also directly affect the budgets for schools. As principals struggle to make do with less, they face horrible choices about what parts of their students' educations to sacrifice. A principal can attempt to save some courses and programs, but principals cannot save all of them. Principals also may have to cut personnel, cuts that are especially disruptive during the school year. CPS also has cut one Teacher Institute Day, two School Improvement Days, and one professional development day. Because of their importance, the Illinois State Board of Education includes both Teacher Institute Days and School Improvement Days in calculating "Student Attendance Days," even though students are not physically present. (Jackson Aff. ¶ 10.)

Those measures address only a portion of the most recent $215 million gap. Unless CPS can obtain its fair share of State funding, additional cuts must follow. And those cuts will be even more painful. As a practical matter, CPS has few options left. Long ago, CPS ran out of good options. The next round of cuts almost certainly will require CPS to cut more days from the school year. If CPS ends the school year on June 1 – instead of June 20 – CPS could save approximately $91 million. If CPS cancels summer school for grade-school and middle-school students, CPS could save an addition $5 million. Even more cuts will be necessary to plug all of the $215 million hole caused by Governor Rauner's veto. CPS must balance its annual budget to comply with State law and to allow CPS continued access to the capital markets. But those cuts come at a terrible

cost to CPS's students. Without additional budget cuts, CPS cannot meet its statutory obligations to have a balanced budget and to make its required payment to CTPF – ***$721 million*** – by June 30. (Bennett Aff. ¶¶ 20-21.)

ARGUMENT

This Court's immediate intervention is necessary to prevent severe and imminent harms to the students of color who attend Chicago's public schools. A preliminary injunction "is granted prior to a trial on the merits for the purpose of preventing a threatened wrong and to preserve the status quo." *In re Marriage of Jawad*, 326 Ill. App. 3d 141, 154 (2d Dist. 2001). "To succeed on a motion for a preliminary injunction, the moving party must plead and prove . . . a clear right or interest in need of protection, irreparable harm if the injunction is not granted, the lack of an adequate remedy at law, and the likelihood of success on the merits." *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 169 (1st Dist. 2002). Plaintiffs meet each requirement for a preliminary injunction.

A. Plaintiffs Have a Clear Right Not to Be Subjected to Discriminatory Systems of Funding for Public Education.

Plaintiffs are not asking this Court to do anything beyond what legislators have intended for this Court to do: stop a unit of government from implementing discriminatory policies. The Illinois Civil Rights Act prohibits any "unit of State, county or local government in Illinois" from "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).

The General Assembly passed the Illinois Civil Rights Act to provide a state law remedy following a U.S. Supreme Court ruling denying relief that had been available under federal law. *Ill. Native Am. Bar Ass'n v. Univ. of Ill.*, 368 Ill. App. 3d 321, 327 (1st Dist. 2006) (the Act "created a new venue in which plaintiffs could pursue in the State courts discrimination actions that had

been available to them in the federal courts."). In 2001, the U.S. Supreme Court held that Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, did not create a private right of action to seek redress for disparate impact. *Alexander v. Sandoval*, 532 U.S. 275 (2001). John Fritchey, lead sponsor of the Illinois Civil Rights Act in the House of Representatives described it as being drafted "in response to [*Sandoval*] which has limited the ability of individuals to bring disparate impact claims via Title VI of the Federal Code." 93d Ill. Gen. Assem., House Proceedings, April 3, 2003, at 146 (statements of Representative Fritchey). Representative Fritchey further explained that the Act was proposed in order to "give [individuals] an avenue at the state level to say there is a government policy in place [and] it has an impact albeit unintentional of disparately impacting minorities." *Id.* at 151.

As made clear in the statute's drafting and legislative history, the Illinois Civil Rights Act does not require Plaintiffs to allege or prove intentional discrimination. Rather, Plaintiffs can satisfy the statute's requirements by alleging and proving that government practices have a disparate impact on persons of color. *See Central Austin Neighborhood Ass'n v. City of Chicago*, 2013 IL App (1st) 123041, ¶ 10 (recognizing claim of disparate impact on the basis of race adequately alleges a violation of the Illinois Civil Rights Act); *Coalition for Safe Chicago Cmtys. v. Vill. of Riverdale*, No. 15 CH 10390, 2016 WL 1077293, at *4 (Ill. Cir. Ct. Feb. 25, 2016) (Valderrama, J.) (plaintiff pleads claim under the Act by alleging disparate impact upon protected classes). Thus, children of color have a clear right under the Act not to be subjected to educational funding that has a disparate impact on them.

In violation of the Illinois Civil Rights Act's protections, the State system for funding education has a disparate impact on Plaintiffs. Thirty-eight percent (38%) of CPS students are African American, and 47% of CPS students are Hispanic. In contrast, of all other Illinois students

attending public schools, only 12% are African American and 21% are Hispanic. Plaintiffs Marlon Gosa's children A.G., C.G., and J.G.; Lisa Russell's children F.R. and L.R.; Wanda Taylor's child K.S.; Vanessa Valentin's children E.R. and J.V.; and Judy Vazquez's children K.V., J.V., and J.V. – each of whom identifies as African American or Hispanic – are among the hundreds of thousands of victims of the State's discriminatory funding.

The predominantly African American and Hispanic students at CPS, including the individual Plaintiffs, currently receive on average just 78 cents from the State for every dollar that the predominantly white students in the rest of Illinois receive. Moreover, unlike any other school district in the State, CPS is required by State law to divert a growing share of its educational budget to fund teacher pension obligations – to the detriment of CPS's predominantly African American and Hispanic students. The State's disparate treatment violates the Illinois Civil Rights Act by disproportionately burdening CPS's predominantly minority students – including the individual Plaintiffs – and sustaining barriers to equal opportunity that cannot be explained away or ignored.

B. The State's Discriminatory Practices Will Irreparably Injure Plaintiffs, and That Injury Cannot Be Remedied by Damages.

The State's discriminatory practices with respect to education funding are causing real and irreparable harm to Plaintiffs, with no adequate remedy at law. Illinois courts have recognized that policies with the effect of denying students equal access to education or educational activities cause irreparable injuries that cannot be remedied by damages. *See, e.g., Kalbfleisch ex rel. Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 396 Ill. App. 3d 1105, 1116 (5th Dist. 2009) (disabled student suffered irreparable harm from policy prohibiting student from attending school with his service animal); *Makindu v. Ill. High Sch. Ass'n*, 2015 IL App (2d) 141201, ¶ 44 (rule that would prevent high school student from participating in sports could not be remedied by damages).

1. In Fiscal Year 2016, CPS Imposed Significant Budget Cuts But Largely Kept Those Cuts Away From the Classroom.

Chronic underfunding by the State, combined with ballooning pension contribution obligations, has created a budget crisis at CPS. State law requires CPS to adopt a balanced budget each year. 105 ILCS 5/34-43. State law also required CPS to contribute $676 million to CTPF by June 30, 2016. To meet CPS's statutory obligations to balance its budget and contribute $676 million to CTPF, CPS included $480 million in new State revenue, which was at least part of the General Assembly's stated "goal and intention." 40 ILCS 5/17-127(b). CPS eliminated approximately 1,400 positions and relied on unsustainable borrowing, incurring an additional $200 million in debt to afford short-term relief and avoid direct cuts to classrooms.

When the State failed to make its contribution, CPS was forced to impose midyear reductions in an effort to re-balance the budget. Those cuts included eliminating an additional 433 administrative and central office positions. Those cuts also reduced School-Based Budgeting funds – the funds available to principals to operate their schools – by $120 million. CPS also imposed three furlough days in March 2016 to save approximately $30 million on a one-time basis.

2. In Fiscal Year 2017, CPS Has Made Painful Cuts Affecting the Classroom.

Although the Fiscal Year 2016 budget cuts described above were painful, they pale in comparison to this year's cuts. As detailed above, the budget cuts now affect the classroom. Unlike the predominantly white children from other school districts, who receive disproportionally greater funding from the State, CPS's students – 90% children of color – feel the effects of the State's discriminatory funding for public education. There is no second chance to receive a quality education. This is a classic injury that cannot be remedied by money damages.

C. Plaintiffs Are Likely to Succeed on the Merits.

To demonstrate likelihood of success on the merits, Plaintiffs only must "raise a fair question regarding the existence of a claimed right and a fair question that [they] will be entitled to the relief prayed for if the proof sustains the allegations." *Kalbfleisch*, 396 Ill. App. 3d at 1114.

Plaintiffs easily meet that standard here. Under the Illinois Civil Rights Act, once a plaintiff has shown that the burdens of the government's policy fall disproportionately on members of particular racial groups, the State must advance a weighty justification for its policy. For example, in *Central Austin*, plaintiffs alleged that the city's method for administering 911 calls had the effect of subjecting residents living in predominantly African American and Hispanic neighborhoods to longer wait times for responses. 2013 IL App (1st) 123041, ¶ 10. The court explained that if plaintiffs were able to prove their allegations, the burden would then shift to the city to "demonstrate that its policy or practice had [a] 'manifest relationship' to a legitimate, non-discriminatory policy objective and was necessary to the obtainment of that objective." *Id.* (additional quotation marks omitted).

Plaintiffs are prepared to meet their burden. If the State disputes the total it spends to fund other school districts, the amount it funds to CPS, the amount it spends to fund TRS pensions, the amount it contributes to fund CTPF pensions, or the composition of the students who attend CPS, Plaintiffs ask the Court to hear evidence at the earliest possible date and to find the facts on each of those points. Untethered from political rhetoric and anchored in the rules of evidence, CPS is prepared to demonstrate those key facts to establish its prima facie case under the Illinois Civil Rights Act.

Defendants cannot advance a weighty justification for Illinois's separate and discriminatory systems of funding for education. *See Central Austin*, 2013 IL App (1st) 123041, ¶ 10. Whatever amount the State chooses to spend on education, the Illinois Civil Rights Act

prohibits the State from allocating those funds in a discriminatory manner. Political agendas cannot justify discriminatory funding. Nor can Defendants show that they have no other alternatives to avoid such severe disparate impacts on account of race, color, or national origin.

D. The Harm Suffered by Plaintiffs Far Outweighs Any Harm to the State if an Injunction Issues.

A preliminary injunction should issue where the harm to the plaintiffs in the absence of such relief is likely to outweigh the harm to the defendants if the relief is granted. *Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App. 3d 374, 378 (4th Dist. 2010). Here, there can be no doubt that the harms to Plaintiffs outweigh any harm the State may claim as a result of a preliminary injunction. As detailed above, absent the Court's intervention, CPS already has made cuts that affect the classroom, and CPS will have no choice but to make even more painful cuts. Those cuts, forced upon CPS by the State's discriminatory funding, deprive children of a quality education – harms that have long-run consequences, harms that are clear-cut and profound.

There is no remotely comparable interest to be found on the other side of the balance. Any harm the State might suffer would be no more onerous than requiring the State to distribute funding for public education in a manner that does not discriminate against Plaintiffs.

Plaintiffs ask the Court to enjoin the State from distributing public education dollars in a manner that discriminates against the African American and Hispanic children who, together with other children of color, comprise approximately 90% of the students served by CPS, including the Plaintiffs who have brought this case. Plaintiffs are not asking this Court to order the State to spend more on public education – even though the need to do so is compelling. Plaintiffs are not asking this Court to direct the legislature to allocate additional dollars for CPS or to order Governor Rauner to sign into law the legislation he vetoed. This Illinois Civil Rights Act lawsuit asks the Court to perform the precise role that the statute has assigned to the judiciary: to hear claims

against any unit of state government based upon disparate impact on the grounds of race, color, or national origin. Again, to be clear, this is not a request for any kind of so-called judicial activism. This lawsuit is based upon the express private right of action for victims of discrimination to complain in court that a unit of government has engaged in unlawful discrimination.

The injunctive relief Plaintiffs request here is narrower than the relief other courts have ordered. As this Court no doubt is aware, both state and federal courts have required units of government to preserve the status quo by supplying funding in excess of the amounts that have been appropriated. In *Seyller v. Cty. of Kane*, 408 Ill. App. 3d 982, 992-93 (2d Dist. 2011), for example, the Circuit Court ordered – and the Appellate Court affirmed – a preliminary injunction that compelled a court clerk to divert special revenues to prevent the closing of the clerk's office. In the court's view, the preliminary injunction "preserved the status quo by preventing the Clerk's office from closing." *Id.* at 993. In other cases, plaintiffs have successfully sought preliminary relief requiring the State to provide funding exceeding that which had been appropriated. *See, e.g.*, *AFSCME v. State of Ill.*, 2015 IL App (5th) 150277-U (unpublished opinion, trial court decision not reported) (affirming grant of TRO requiring the State to pay its workers despite lack of budget appropriations); *Ill. Hosp. Ass'n v. Ill. Dep't of Pub. Aid*, 576 F. Supp. 360, 372 (N.D. Ill. 1983) (granting preliminary injunction requiring the Illinois Department of Public Aid to pay higher Medicaid reimbursement rates to hospitals despite State budget cuts).

Unlike the plaintiffs in *Seyller*, Plaintiffs are not asking this Court to require the State to allocate more money to public education. Instead, Plaintiffs ask only that Defendants be required to allocate public education funding in a non-discriminatory matter. Consequently, injunctive relief is all the more appropriate here, and the relief sought is well within this Court's authority.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an order enjoining Defendants from distributing State funds for public education to any person or entity within the State until the State provides funds to CPS in a manner and amount that does not discriminate against Plaintiffs.

Respectfully submitted,

PLAINTIFFS BOARD OF EDUCATION OF THE CITY OF CHICAGO; MARLON GOSA ON BEHALF OF A.G., C.G., and J.G.; LISA RUSSELL ON BEHALF OF F.R. and L.R.; WANDA TAYLOR ON BEHALF OF K.S.; VANESSA VALENTIN ON BEHALF OF E.R. and J.V.; and JUDY VAZQUEZ ON BEHALF OF K.V., J.V., and J.V.

By: Randall E Mehrberg
One of the Attorneys for Plaintiffs

EXHIBIT A

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

BOARD OF EDUCATION OF THE CITY OF CHICAGO; et al.,	)	
Plaintiffs,	)	Case No. 2017-CH-002157
v.	)	Calendar: 3
BRUCE RAUNER, Governor of Illinois; et al.,	)	Honorable Franklin Ulyses Valderrama
Defendants.	)	

AFFIDAVIT OF JANICE K. JACKSON, EdD.

I, Dr. Janice K. Jackson, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), certify as true and correct and state as follows:

1. My name is Dr. Janice K. Jackson. I am the Chief Education Officer of Chicago Public Schools ("CPS"). I am the most senior education officer for CPS and have served in that role since July 2015. I develop and lead the overall mission and vision for approximately 650 CPS schools. A significant portion of my responsibilities as Chief Education Officer involves working with principals and educators to overcome the challenges of educating our large and diverse student population. I know the difficult choices CPS principals must make in order to allocate ever scarcer resources while continuing to support and teach our students.

2. Prior to my current role as Chief Education Officer, I was Chief of Schools, Network 9 – one of the CPS's 13 school zones – which includes 26 schools and serves 14,000 students. In that capacity, I provided principals with supervision and guidance to ensure high quality instruction was delivered in all schools. Our efforts resulted in increased student achievement and reductions in the achievement gap between Network 9 students and their counterparts nationally.

3. Between 2008 and 2014, I served as Principal of George Westinghouse College Prep High School ("Westinghouse"). I transformed Westinghouse from a vocational high school to a model four-year selective enrollment college preparatory school with four distinct career pathways. Westinghouse's success has been recognized nationally, due in part to a thriving world language program and its robust school-wide writing program that has led to demonstrable gains in student writing proficiency.

4. Between 2004 and 2008, I served as Principal of Al Raby School for Community and Environment High School ("Al Raby"). Al Raby's student population is 90% low-income and 99% African American; 21% of students have Individual Education Programs. During my tenure, Al Raby became a high functioning non-selective enrollment school with an 85% graduation rate (compared to 47% in neighboring schools). Ninety percent (90%) of Al Raby's graduates entered college.

5. In 1999, I began my CPS career as a Social Studies teacher at South Shore High School. I planned, developed and taught lessons in Social Studies to high school students. In addition, I coached debate for two years and led the team to the Chicago City Championship in the Junior Varsity, "AAA" division our first year in the league.

6. In 2010, I earned a Doctor of Education in Policy Studies and Educational Leadership from the University of Illinois at Chicago. My dissertation is titled "School Leadership that Develops Teachers' Instructional Capacity." In 2002, I earned a Master of Educational Leadership in Leadership and Administration from the University of Illinois at Chicago. In 2001 and 1999 respectively, I earned a Master of Arts in History and a Bachelor of Arts in Secondary Education from Chicago State University.

7. CPS serves an incredibly diverse group of students, with wide-ranging needs. We have a total population of approximately 381,000 students. Thirty-eight percent (38%) of CPS students are African American, 47% are Hispanic, and 6% are other students of color (for a total of approximately 90% children of color). Only 10% are white. In contrast, of the Illinois children attending public schools other than CPS, 58% are white, 12% are African American, 21% are Hispanic, and 9% are other students of color. This means that 42% of the State's African American public school children, 34% of the State's Hispanic public school children, but only 4% of the State's white public school children attend CPS – even though CPS has nearly 20% of all public school children across the State. Therefore, among public school students in Illinois, an African American child is approximately 11 times more likely than a white child to attend CPS, and a Hispanic child is approximately 9 times more likely than a white child to attend CPS.

8. The budget crisis at CPS is particularly painful because of the major successes CPS and its students have achieved in recent years – progress that is now at risk of being undone. Despite the gross inequality in State funding, CPS has made impressive education gains. In 2016, U.S. News and World Report heralded seven CPS high schools among the top 10 schools in Illinois. According to the National Assessment of Educational Progress ("NAEP") – the nation's academic report card – CPS students were in the top three nationally for gains in both 8th grade math and 4th grade reading on the national benchmark assessment. According to NAEP, Chicago's improvements were among the strongest in the nation. CPS's most recent average ACT score reached a record high of 18.4 for graduating seniors.

9. Although CPS has made many gains in recent years in improving student outcomes and school quality, budget cuts for the current 2016-2017 school year, made necessary by the State's discriminatory funding scheme, no longer can be kept away from the classroom. CPS's

Fiscal Year 2017 funding, based on the Governor's recent veto of additional funding for CPS, required draconian cuts in core educational services.

10. On February 22, 2017, CPS amended its Fiscal Year 2017 budget to begin to address the $215 million gap by imposing additional cuts that affect the classroom. CPS's calendar included four Teacher Institute Days and three School Improvement Days. Those days provide critical time for principals and teachers to accomplish professional tasks. The February 22 amended budget cut one Teacher Institute Day, two School Improvement Days, and one professional development day. Because of their importance, the Illinois State Board of Education includes both Teacher Institute Days and School Improvement Days in calculating "Student Attendance Days," even though students are not physically present.

11. The February 22 amended budget also cut funds to school budgets, requiring principals to make horrible choices about what parts of their students' educations to sacrifice. A principal can attempt to save some courses and programs, but principals cannot save all of them. Principals may have to cut personnel, cuts that are especially disruptive during the school year. To provide some context for the kinds of choices principals must make, consider the following examples:

- ***Reduced course offerings.*** Sixty-two percent (62%) of CPS students enroll in college within 12 months of graduating and need access to courses that will prepare them for the rigor of college work. Students who intend to work need vocational courses, such as wood shop and automobile mechanics, to help make them employable. College preparation courses and vocational courses are likely to be cut. A principal can attempt to save some of those courses, but saving all of them will require even deeper cuts in other critical areas.

- ***Lack of access to education technology.*** Technology is increasingly important to be employable. Yet for many CPS students, there are no computers or tablets in the home. More than 80% of CPS students come from low-income families. Budget cuts threaten CPS's ability to provide its students access to the technology they should have to prepare them for college and 21st century jobs.
- ***Fewer resources for separate English learner classrooms.*** CPS has over 65,000 students, or 17% of student enrollment, for whom English is not spoken in the home ("English learners" or "EL students"). At schools with a large EL student population, CPS often teaches English learners in separate, bilingual classrooms. Those classrooms help ensure that students learn their coursework in their native language while also learning English. CPS is fully committed to honoring all of its statutory obligations with respect to English learners, but there is an obvious danger that statutory minimum requirements will become all that schools can provide.
- ***Inadequate resources for social and emotional learning.*** Many CPS students come from difficult or unstable home and family environments. For many of those children, social and emotional learning ("SEL") is a necessary component of academic learning. Support staff – including deans, assistant principals, counselors, social workers, and security officers, among others – play an essential role in ensuring that schools can function by helping students handle personal and home-life issues. SEL programs help students learn how to manage their emotions, set positive goals, and maintain positive relationships so that they can focus on learning. Budget cuts also threaten those essential programs.

- ***Increased exclusionary discipline and youth imprisonment.*** CPS has made substantial progress reducing the number of its students referred to the criminal justice system or subjected to exclusionary discipline. For example, in February 2016, CPS announced that out-of-school suspensions have declined 65% from Fiscal Year 2013 to 2015, expulsions have declined 57%, and police notifications have declined 19%. CPS has achieved those gains by devoting considerable staff resources to restorative disciplinary practices that help students understand the consequences of their actions, remediate their behavior, and return to the classroom so that they can learn. Those disciplinary methods, however, are time-intensive. Reductions in support staff threaten the continuation of those successful restorative programs.
- ***Reduced access to college.*** College enrollment rates for CPS graduates have increased steadily in recent years. CPS students also have made immense strides in accessing the financial resources necessary for them to attend and succeed in college. The most recent CPS graduating class, the Class of 2016, received a total of $1.1 billion in scholarship offers, a substantial increase over the previous year's $950 million in scholarship offers. And for seven of the past eight years, CPS has led the nation in the number of Gates Millennium Scholarships – competitive and prestigious need-based college scholarships – awarded to its students. To achieve those successes, CPS students depend on support staff to help them navigate the college application and scholarship process. Many students do not come from families with college graduates and are unable to afford college without grants or

scholarships. Budget cuts are likely to require the elimination of staff positions that support the college application and financial aid process.

12. The February 22 budget cuts do not fill the $215 million hole created by Governor Rauner's veto. If CPS must re-balance its budget by making additional cuts, those cuts will be even more painful. If CPS ends the school year on June 1 – instead of June 20 – students will receive fewer days of instruction. If students are not in class, they forever lose those days of learning. There is no way to compensate for missed time in the classroom. If CPS eliminates summer school for grade-school and middle-school students, those children will not receive the additional instruction they require to get on track. Those children are at risk of falling even farther behind.

13. As an educator who has worked with these children as a teacher, a principal, and now as Chief Education Officer, it is agonizing to impose these cuts, because I know that we are sacrificing our students' educations. I know that we are putting at risk the gains we have fought so hard to achieve.

14. I verified the statements above and the educational statements set forth in the Complaint filed in this matter.

I certify that the statements set forth in this instrument are true and correct.

FURTHER AFFIANT SAYETH NOT.

Janice K. Jackson, EdD.

EXHIBIT B

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

BOARD OF EDUCATION OF THE CITY OF CHICAGO; et al.,	)	
Plaintiffs,	)	Case No. 2017-CH-002157
v.	)	Calendar: 3
BRUCE RAUNER, Governor of Illinois; et al.,	)	Honorable Franklin Ulyses Valderrama
Defendants.	)	

AFFIDAVIT OF JENNIE HUANG BENNETT

I, Jennie Huang Bennett, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), certify as true and correct and state as follows:

1. My name is Jennie Huang Bennett. I am the Chief Financial Officer of Chicago Public Schools ("CPS"). I am responsible for monitoring CPS's operating budget, cash flow, debt management, investments and risk management, among other things. I have been in this position since 2016.

2. I obtained a B.A. in Economics in 2000 from the University of Pennsylvania. Prior to my current employment, I worked as an Executive Director at Morgan Stanley from 2000 until 2012. I then started working as Treasurer for CPS in 2012.

3. Combining all major sources of funding from the State, in Fiscal Year 2017 CPS expects to receive $1,734,345,898 from the State. The State funding sources and amounts are set forth in Exhibit A.

4. Combining all major sources of funding from the State, in Fiscal Year 2017 all other school districts in Illinois are expected to receive $9,571,937,253 from the State. The State funding sources and amounts are set forth in Exhibit B.

5. From Fiscal Year 2011 to the current school year, Fiscal Year 2017, State funding for CPS has declined by $67 million – while State funding for all other districts increased by $2.3 billion.[1] Thus, in Fiscal Year 2017, CPS will receive about 15% of the State's education funding, despite having nearly 20% of the students. CPS's predominantly African American and Hispanic students currently receive from the State just 78 cents for every dollar that the predominantly white students in the rest of the State receive.

6. Pursuant to State law, teachers outside of Chicago participate in the Teachers' Retirement System ("TRS"). 40 ILCS 5/16-101, 16-123. Chicago teachers, however, participate in the Chicago Teachers' Pension Fund ("CTPF"). 40 ILCS 5/17-101, 17-106. CTPF and TRS provide similar benefits, but, by State statute, they are funded differently.

7. The State assumes the ultimate responsibility for funding TRS. By contrast, the State imposes on CPS the ultimate responsibility for ensuring that CTPF is adequately funded. 40 ILCS 5/17-129. Regardless of what contribution the State makes to CTPF, CPS must make up the difference to ensure a State-mandated level of funding. 40 ILCS 5/17-129. The present mandate, established in 2010, requires CPS to make annual contributions sufficient for CTPF to be 90% funded by 2059 and to remain at that level of funding thereafter. 40 ILCS 5/17-129(b)(iv)-(v).

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[1] In this Affidavit, as in Plaintiffs' Motion and Memorandum, Fiscal Year 2017 refers to the fiscal year beginning July 1, 2016 and ending June 30, 2017. This Affidavit uses the same naming convention for the other fiscal years.

8. From Fiscal Year 2011 through Fiscal Year 2014, the State has generally contributed approximately only 0.5% of CPS's teacher payroll to CTPF. That meagre contribution serves only to offset (in part) a 1998 State-imposed increase in retirement benefits. 40 ILCS 5/17-127(b). CPS is required to make up the rest of the required annual contributions. The State's failure to provide significant funding for CTPF – coupled with the State mandate that CPS make up the difference – has the effect of requiring CPS to contribute many hundreds of millions of dollars to CTPF every year. Meanwhile, the State's contribution to TRS has grown from approximately 25% of downstate and suburban teacher payroll in Fiscal Year 2011, to a TRS actuarially-projected contribution of 42% of teacher payroll by Fiscal Year 2017, based on salaries for active TRS members as of June 30, 2016. The State's Fiscal Year 2017 payment to TRS is projected to be approximately $4.0 billion.

9. To comply with the funding obligation imposed by statute, CPS contributed $601 million to CTPF in Fiscal Year 2014 and $634 million in Fiscal Year 2015. Those contributions represented 11% of CPS's entire operating budget. For Fiscal Year 2016, to comply with the funding obligation imposed by statute, CPS contributed $676 million to CTPF. That statutory funding obligation consumed 12% of CPS's operating budget. In Fiscal Year 2017, the State requires CPS to contribute $721 million to CTPF, which is consuming 13% of CPS's operating budget. The State does not require any other school district to make pension contributions remotely comparable to those that State law demands of CPS.

10. In Fiscal Year 2017, assuming active member salaries remain flat to CTPF-calculated salaries as of June 30, 2016, CPS's statutory funding obligation to CTPF amounts to approximately 35% of CPS's total teacher payroll. By contrast, in Fiscal Year 2017, assuming active

member salaries remain flat to TRS-calculated salaries as of June 30, 2016, non-CPS school districts will contribute only 1.5% of total teacher payroll to TRS.

11. For Fiscal Year 2017, CPS anticipates that it will spend $1,891 per student on CTPF pensions, while the State will have contributed only $32 per student to CTPF. Over the same period, CPS estimates that other school districts are spending only $86 per student on TRS pensions, while the State is spending $2,437 per student on their behalf. Furthermore, the State's annual contribution for CTPF pensions is expected to grow by only 5% ($0.7 million) from Fiscal Year 2017 to Fiscal Year 2021, while the State's annual contribution for TRS pensions is expected to grow over that same time period by 27% – or $1.1 billion.

12. Those disparate funding obligations leave CPS with far fewer resources than other schools to educate its students, despite the greater costs of educating students living in poverty. In Fiscal Year 2015, taking account of both State and local revenue and factoring out both State and local pension contributions, CPS was left with $9,779 to spend per student, whereas the average non-CPS district was left with $12,174 to spend per student. Although data for Fiscal Year 2016 and Fiscal Year 2017 are not yet available from the Illinois State Board of Education, the disparity will grow with CPS's mounting pension-funding obligation.

13. The impact of Illinois's discriminatory funding obligations, already disastrous, will become even worse with time. The chart attached as Exhibit C reflects the CPS actuarial advisor's projections of CPS's future contributions to CTPF. As the chart shows, CPS's pension-funding obligation will grow by many millions of dollars each year, forcing CPS to redirect more of its scarce resources from education to pension-funding, and crippling CPS's ability to perform its core mission of educating Chicago's children. In Fiscal Year 2017, CPS is statutorily obligated to contribute $721 million. By Fiscal Year 2020, that figure is expected to rise to an estimated $811

million. This State-imposed obligation has increased as a percent of CPS's annual budget from 11% in Fiscal Year 2014 to 13% in Fiscal Year 2017, and is projected to continue to grow.

14. The State's discriminatory funding has created a cash flow and budget crisis for CPS. The State's discriminatory funding has forced CPS to deplete its cash reserves to make pension payments that Illinois requires, by statute, CPS – and only CPS – to fund. At the end of Fiscal Year 2013, CPS had a positive general operating fund balance of $949 million. By the end of Fiscal Year 2016, CPS had depleted all of that reserve and ended with a negative general operating fund balance of $127 million. In other words, CPS's general operating fund balance has declined by $1.1 billion in just three years. Over that same time period, CPS made required pension payments totaling $1.9 billion. In those same three years, the State's discriminatory funding has shortchanged CPS by $1.1 billion.

15. To address the cash flow crisis, CPS has relied upon a combination of new tax revenues, maximized to the extent allowable under State law, and massive borrowings through the capital markets. In Fiscal Year 2016, CPS borrowed $1.1 billion to fund its operating budget. In Fiscal Year 2017, CPS planned to rely upon a combination of new tax revenue from the State, new tax revenue from the City of Chicago, and additional massive borrowings in the capital markets. CPS planned for those additional operating funds to permit CPS to meet its cash flow requirements and to balance its budget. Even before Governor Rauner vetoed a bill providing an additional $215 million funding contribution to CPS, CPS was working on aggressive cost-cutting measures to reduce Fiscal Year 2017 spending by approximately $300 million, and CPS was working on additional borrowings in the capital markets to support cash flow. Those borrowings, aggressive

cost-cutting measures, and tax revenues are critical to CPS's ability to meet its cash flow requirements, including the payment CPS must make to CTPF by June 30, 2017 to meet a pension funding obligation of $721 million.

16. The State's discriminatory funding has forced CPS to slash the amounts that CPS can devote to educating students. CPS's budgets for the past two fiscal years show the devastating toll.

17. For Fiscal Year 2016, CPS adopted a balanced budget assuming that the State would provide a $480 million increase toward equitable funding of CPS's pension obligation, consistent with the Legislature's stated "goal and intention," 40 ILCS 5/17-127(b). When the State made no such contribution, CPS imposed midyear reductions that cut spending by $173 million annually. Those reductions included a $120 million cut to the school-based budgets from which principals fund their schools. The reductions also included the elimination of 433 administrative and central office positions, which cut $45 million in spending. In addition, in March 2016, CPS imposed three furlough days to save approximately $30 million in cash.

18. Those cuts, however, pale in comparison to the budget crisis that CPS has experienced in Fiscal Year 2017. Through cuts, efficiencies, and an increase in City taxes, CPS managed to pass a balanced budget in spite of facing a $1.1 billion operating deficit at the start of the fiscal year. The Fiscal Year 2017 budget included $215 million from the State in the form of pension relief, based on Senate Bill 2822 passing both chambers of the General Assembly with overwhelming bipartisan support. However, on December 1, 2016, Governor Rauner's veto threw CPS into another mid-year financial crisis.

19. To close the $215 million gap, CPS must make additional cuts to balance its budget as required by State statute. 105 ILCS 5/34-43. CPS has run out of cuts that do not affect the

classroom. On February 22, 2017, CPS amended its Fiscal Year 2017 budget to begin to address the $215 million gap. CPS cut school budgets and cut one Teacher Institute Day, two School Improvement Days, and one professional development day. Those cuts do not fill the $215 million hole created by Governor Rauner's veto.

20. To re-balance its budget, CPS must make additional cuts that will directly affect the classroom. If CPS cuts days from its school calendar and ends the school year on June 1 – instead of June 20 – CPS could save approximately $91 million. If CPS cancels summer school for grade-school and middle-school students, CPS could save an additional $5 million. Even those additional cuts will not plug all of the $215 million hole.

21. CPS has been working on additional borrowings to address its cash flow. Even if the State had followed through and committed $215 million to CPS pension funding, CPS still would require hundreds of millions of additional borrowings to meet its cash flow obligations, including its required $721 million payment to CTPF by June 30.

22. CPS, therefore, must re-balance its budget to fill the $215 million hole and CPS also must arrange for hundreds of millions of dollars of additional borrowings to meet its cash flow requirements.

23. I verified the statements above and the demographic and financial statements set forth in the Complaint filed in this matter.

I certify that the statements set forth in this instrument are true and correct.

FURTHER AFFIANT SAYETH NOT.

Jennie H. Bennett

Exhibit A

Projected Major Sources of State Funding for CPS in Fiscal Year 2017

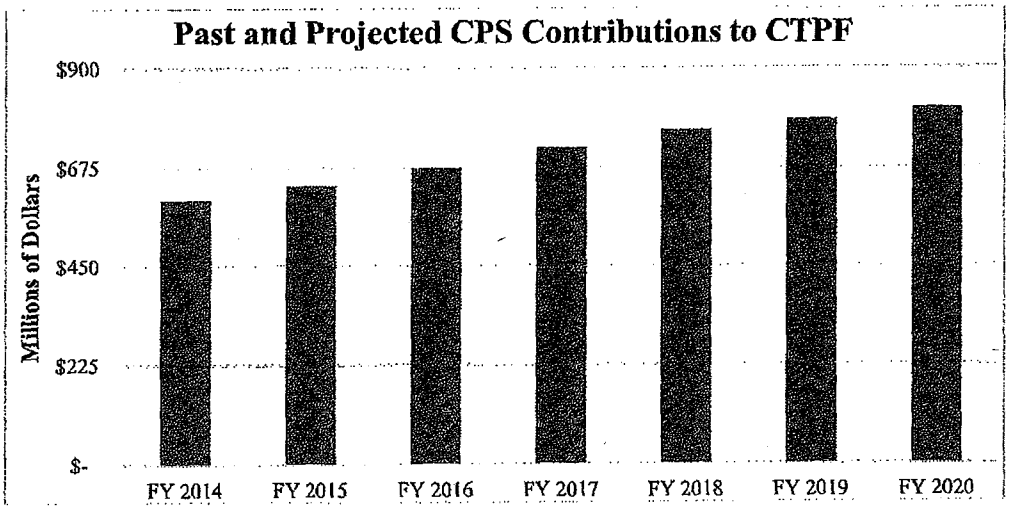
General State Aid	$1,073,719,699
Bilingual Education	$21,360,269
Illinois Free Lunch/Breakfast	$4,563,000
Regional Offices of Education - School Services	$1,038,530
Special Education - Funding for Children Requiring Services	$88,718,300
Special Education - Orphanage Tuition	$34,010,000
Special Education - Personnel Reimbursement	$84,498,400
Special Education - Private Tuition	$112,772,000
Special Education - Summer School	$6,364,800
Special Education - Transportation	$138,303,500
Transportation - Regular/Vocational	$8,026,500
Agricultural Education	$19,800
Early Childhood Education	$145,683,100
Truant Alternative and Optional Education	$3,082,000
State Contribution for Pensions to CTPF	$12,186,000
Total	***$1,734,345,898***

Exhibit B

Projected Major Sources of State Funding for Non-CPS Districts in Fiscal Year 2017

General State Aid	$4,004,866,201
Bilingual Education	$42,320,931
Illinois Free Lunch/Breakfast	$4,437,000
Regional Offices of Education - School Services	$5,931,470
Special Education - Funding for Children Requiring Services	$215,111,400
Special Education - Orphanage Tuition	$60,990,000
Special Education - Personnel Reimbursement	$357,901,600
Special Education - Private Tuition	$120,228,000
Special Education - Summer School	$5,335,200
Special Education - Transportation	$312,196,500
Transportation - Regular/Vocational	$197,782,400
Agricultural Education	$1,780,200
Early Childhood Education	$248,055,000
Truant Alternative and Optional Education	$8,418,000
State Contribution for Pensions to TRS	$3,986,583,351
Total	***$9,571,937,253***

Exhibit C


Past and Projected CPS Contributions to CTPF
Millions of Dollars
$900
$675
$450
$225
$-
FY 2014
FY 2015
FY 2016
FY 2017
FY 2018
FY 2019
FY 2020