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STATE MATTERS:

Authority of State Board of Education
to Prevent Chicago Public Schools
from Incurring Debt

The Honorable Barbara Flynn Currie
House Majority Leader
Chair, House Education Task Force
State Representative, 25th District
300 State House
Springfield, Illinois 62706

Dear Representative Currie:

I have your letter inquiring whether, pursuant to section 1A-8 of the School Code (105 ILCS 5/1A-8 (West 2014)): (1) the Chicago Public Schools (CPS) is precluded from establishing a line of credit or incurring other debt absent the submission of a financial plan to the State Board of Education (State Board); and (2) if CPS is required to submit a financial plan to the State Board, must CPS obtain the State Board's approval of its financial plan before

establishing a line of credit. For the reasons stated below, it is my opinion that section 1A-8 of the School Code does not require CPS to submit a financial plan to the State Board because CPS is not covered by that provision of section 1A-8. As a result, the State Board lacks the authority to prevent the Chicago Board of Education (Chicago Board) from establishing a line of credit or incurring other debt.

Overview

The authority of the State Board to take action with regard to any school district must arise from powers granted to it by the Illinois General Assembly. As school districts in Illinois, including CPS, have experienced financial difficulties, the General Assembly has enacted provisions in the School Code giving the State Board specific authority to address those financial issues. The statutory language clearly distinguishes between the State Board's authority to act with regard to CPS, on one hand, and to deal with financial issues arising in all other Illinois school districts, on the other hand.

Specifically, the plain and unambiguous language of section 1A-8 of the School Code draws a distinction between CPS and other school districts when it sets forth the State Board's powers to assist school districts in financial difficulties. Under section 1A-8, the State Board may investigate the financial condition of all school districts in Illinois, including CPS, and the State Superintendent of Education may require the districts to provide financial information. If appropriate, the State Board may certify that any school district is in financial difficulty. For school districts other than CPS, section 1A-8 grants the State Board further

authority to require a financial plan and provides that the school district may not issue bonds or any evidence of indebtedness, such as a line of credit, until the State Board has approved the required financial plan. The State Board's power to require a financial plan, and the ensuing prohibition on a school district incurring indebtedness until the State Board approves the financial plan provision, do not apply to CPS. Instead, the plain language of the School Code establishes that the General Assembly intended to limit the State Board's authority when addressing financial difficulties at CPS to providing notice of CPS's financial condition to the Governor and the Mayor of the City of Chicago. That conclusion is clear from the statutory language and further supported by the language and history of the other provisions in the School Code which also consistently provide different authority to the State Board to deal with financial issues in school districts other than CPS. As a result, the State Board may not preclude the Chicago Board from establishing a line of credit unless the School Code is amended to grant the State Board this authority.

BACKGROUND

City of Chicago School District 299, more commonly known as CPS, is the third largest school district in the United States. It is comprised of more than 570 schools,¹ which provide education to approximately 400,000 children.² The Chicago Board, a 7-member board appointed by the Mayor of the City of Chicago, oversees CPS. 105 ILCS 5/34-3(b) (West 2014).

¹Letter from Barbara Flynn Currie, House Majority Leader, Illinois House of Representatives, to Attorney General Lisa Madigan (March 28, 2016).

²See CPS Website, *available at* <http://cps.edu/Pages/AboutCPS.aspx>.

The Chicago Board is a body politic and corporate (105 ILCS 5/34-2 (West 2014)), and its powers and duties are set out in article 34 of the School Code (105 ILCS 5/34-1 *et seq.* (West 2014)).

CPS has a long history of financial difficulties. Beginning as early as 1979, CPS has faced a number of financial crises. *See* Chicago Public Schools, Chicago Board of Education, Comprehensive Annual Financial Report For the Year Ended June 30, 2009 (CPS 2009 Financial Report), at 76.³ The General Assembly has frequently enacted legislation to provide guidance to CPS in resolving its financial issues.

In 1979, to specifically address CPS's financial difficulties, the General Assembly enacted article 34A of the School Code (*see* Public Act 81-1221, effective January 16, 1980, now codified at 105 ILCS 5/34A-101 *et seq.* (West 2014)). Article 34A applies only to the Chicago Board and CPS and provides for the creation of a school finance authority to "promote sound financial management and to assure the continued operation of the public schools." 105 ILCS 5/34A-102 (West 2014).⁴ Although some of the provisions of article 34A have been repealed and the Chicago School Finance Authority was abolished in 2010 once all of its obligations had been fully paid, article 34A remains in effect.

³Available at http://cps.edu/About_CPS/Financial_information/Documents/FY_Budget_2009.pdf.

⁴Article 34A is intended to "promote the financial integrity of boards of education of cities having a population exceeding 500,000[.]" 105 ILCS 5/34A-102 (West 2014). The City of Chicago was and is the only Illinois city with a population exceeding 500,000. The legislative debates for House Bill 1264, which became Public Act 81-1221, effective January 16, 1980, and which enacted article 34A of the School Code, make clear that House Bill 1264 was meant to apply only to CPS. Remarks of Rep. Collins, Rep. Conti, and Rep. Braun, January 11, 1980, House Debate on House Bill No. 1264, at 50, 56, 86.

As you have described in your letter, CPS is again facing financial difficulties. Recently, on February 3, 2016, the Chicago Board borrowed \$725 million through the sale of bonds.⁵ On February 18, 2016, the State Board initiated an investigation of CPS finances.⁶ The Chicago Board currently plans to establish a line of credit to address a cash flow shortage. However, you have indicated that CPS has encountered difficulties in doing this based upon the Governor's contention that the State Board has the authority to "block any debt offerings[.]"⁷

ANALYSIS

The Chicago Board's Authority to Establish a Line of Credit

As an initial matter, I would note that it is well established that a school district board possesses only those powers expressly conferred by statute and those which may be necessary to carry into effect those powers expressly granted by the General Assembly. *Byerly v. Board of Education of Springfield School District No. 186*, 65 Ill. App. 3d 400, 401 (1978). Section 34-23.5 of the School Code (105 ILCS 5/34-23.5 (West 2014)) expressly authorizes the Chicago Board to "issue notes, bonds, or other obligations[.]" The language of section 34-23.5

⁵Heather Gillers, *CPS Borrows \$725 Million at Extraordinarily High Interest Rate*, Chicago Tribune, February 3, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-chicago-public-schools-bonds-0204-20160203-story.html>; Heather Gillers, *Next CPS Budget Will Have An Even Bigger Hole to Fill: \$800 Million*, Chicago Tribune, January 21, 2016, <http://www.chicagotribune.com/news/watchdog/ct-cps-budget-second-semester-met-20160121-story.html>.

⁶Juan Perez Jr., *State Launches Investigation of Chicago Public Schools' Finances*, Chicago Tribune, February 18, 2016, <http://www.chicagotribune.com/news/local/politics/ct-chicago-public-schools-state-financial-review-met-20160219-story.html>.

⁷Paris Schutz, *Gov. Rauner Threatens to Choke CPS Borrowing*, Chicago Tonight WTTW, February 22, 2016, <http://chicagotonight.wttw.com/2016/02/22/gov-rauner-threatens-choke-cps-borrowing>.

makes it clear that this grant of authority includes establishing a line of credit.⁸ Nothing in section 34-23.5 requires the Chicago Board to develop, adopt, or submit a financial plan to the State Board or to obtain the State Board's approval of a financial plan prior to seeking a line of credit. Accordingly, the Chicago Board and CPS are not required to seek the State Board's approval of a financial plan before establishing a line of credit, unless such a requirement is contained in a statutory provision other than section 34-23.5.

Section 1A-8 of the School Code

Section 1A-8 of the School Code grants specific powers to the State Board to deal with school districts experiencing financial difficulty. Section 1A-8 is the only statutory provision that expressly authorizes the State Board to require certain school districts to adopt and submit financial plans.⁹ Just as the Chicago Board's powers are limited, the State Board, as an administrative agency, possesses no inherent or common law powers. *Schalz v. McHenry County Sheriff's Department Merit Comm'n*, 113 Ill. 2d 198, 202 (1986); *Board of Education of Community Consolidated School District No. 59 v. State Board of Education*, 317 Ill. App. 3d 790, 794 (2000). Rather, the State Board's authority to act must arise from powers that are expressly granted to it by statute or that are necessarily implied therefrom to effectuate the

⁸See 105 ILCS 5/34-23.5 (West 2014) (providing that in lieu of issuing tax anticipation warrants in accordance with section 34-23 of the School Code (105 ILCS 5/34-23 (West 2014)), the Chicago Board may issue notes, bonds, or other obligations (and in connection with that issuance, establish a line of credit with a bank)).

⁹Other sections of the School Code implement section 1A-8 (see, e.g., 105 ILCS 5/1B-1 *et seq.*, 1H-1 *et seq.* (West 2014)), but section 1A-8 is the only provision that authorizes the State Board to act with regard to school districts found to be in financial difficulty.

powers which have been granted. *Schalz*, 113 Ill. 2d at 202-03; *Board of Education of Community Consolidated School District No. 59*, 317 Ill. App. 3d at 794. As a result, in determining whether the State Board may require CPS to develop, adopt, and submit a financial plan, it is necessary to determine the scope of the authority granted to the State Board by section 1A-8.

Section 1A-8 provides the steps that the State Superintendent of Education and the State Board are authorized to take "to promote sound financial management and continue operation of the public schools" in financial difficulty. In the language describing each step, section 1A-8 expressly states whether the authority of the State Superintendent of Education and the State Board extends to the Chicago Board and CPS.¹⁰ Section 1A-8 provides, in pertinent part:

To promote the financial integrity of school districts, the State Board of Education shall be provided the necessary powers to promote sound financial management and continue operation of the public schools.

(a) *The State Superintendent of Education may require a school district, including any district subject to Article 34A of this Code, to share financial information relevant to a proper investigation of the district's financial condition and the delivery of appropriate State financial, technical, and consulting services to the district if the district (i) has been designated, through the State*

¹⁰Section 1A-8 uses the phrases a "district subject to Article 34A" and a "district in a city with 500,000 inhabitants or more[.]" It is generally recognized that the legislature may use terms interchangeably in legislation. *See generally Balmoral Racing Club, Inc. v. Topinka*, 334 Ill. App. 3d 454, 460-61 (2002). As previously noted, CPS is the only district in a city with a population exceeding 500,000 and, because article 34A explicitly applies only to cities with more than 500,000 residents, CPS is the only school district in Illinois subject to article 34A. Thus, it appears that the General Assembly intended to use these two clauses interchangeably to refer to CPS.

Board of Education's School District Financial Profile System, as on financial warning or financial watch status, (ii) has failed to file an annual financial report, annual budget, deficit reduction plan, or other financial information as required by law, [or] (iii) has been identified, through the district's annual audit or other financial and management information, as in serious financial difficulty in the current or next school year[.] * * *

(b) *The State Board of Education*, after proper investigation of a district's financial condition, *may certify that a district, including any district subject to Article 34A, is in financial difficulty* when any of the following conditions occur:

* * *

* * * *If the State Board of Education certifies that a district in a city with 500,000 inhabitants or more is in financial difficulty, the State Board shall so notify the Governor and the Mayor of the city in which the district is located.* The State Board of Education may require school districts certified in financial difficulty, *except those districts subject to Article 34A*, to develop, adopt and submit a financial plan within 45 days after certification of financial difficulty. The financial plan shall be developed according to guidelines presented to the district by the State Board of Education within 14 days of certification. Such guidelines shall address the specific nature of each district's financial difficulties. Any proposed budget of the district shall be consistent with the financial plan submitted to and approved by the State Board of Education.

A district certified to be in financial difficulty, *other than a district subject to Article 34A*, shall report to the State Board of Education at such times and in such manner as the State Board may direct, concerning the district's compliance with each financial plan. * * * If the State Board of Education determines that a district has failed to comply with its financial plan, the State Board of Education may rescind approval of the plan and appoint a Financial Oversight Panel for the district as provided in Section 1B-4. * * *

No bonds, notes, teachers orders, tax anticipation warrants or other evidences of indebtedness shall be issued or sold by a school district or be legally binding upon or enforceable against a local board of education of a district certified to be in financial difficulty unless and until the financial plan required under this Section has been approved by the State Board of Education.
(Emphasis added.)

In construing a statute, where the statutory language is clear and unambiguous, it must be given effect as written. *First American Bank Corp. v. Henry*, 239 Ill. 2d 511, 516 (2011). Moreover, a statute should be construed, when possible, so that no clause is rendered meaningless or superfluous. *Niven v. Siqueira*, 109 Ill. 2d 357, 365-66 (1985); *Bernstein v. Department of Human Services*, 392 Ill. App. 3d 875, 886 (2009).

Subsection 1A-8(a) (105 ILCS 5/1A-8(a) (West 2014)) expressly authorizes the State Superintendent of Education to initiate the process of assessing a school district's financial condition by requesting financial information. Pursuant to subsection 1A-8(a), the State Superintendent is authorized to require all school districts in Illinois, including CPS, to share financial information related to the district's financial condition with the State. After a "proper investigation of a district's financial condition," subsection 1A-8(b) (105 ILCS 5/1A-8(b) (West 2014)) provides that the State Board may certify that any school district in the State, including CPS, is in financial difficulty. Thus, section 1A-8 clearly and unambiguously authorizes the State Superintendent to require financial information from any district in the State and, when certain conditions are met, authorizes the State Board to certify that any school district is in financial difficulty.

After certifying that a school district is in financial difficulty, however, the next step that the State Board may take depends on whether the State Board is dealing with CPS or another school district. If certifying that CPS is in financial difficulty, "the State Board shall so notify the Governor and the Mayor[.]" That is the last step section 1A-8 authorizes the State Board to take with regard to a district "in a city with 500,000 inhabitants or more" or a district "subject to Article 34A[.]" Thus, it is the last step the State Board can take when addressing CPS's financial difficulties. No other authority for the State Board to act may be implied from the language of section 1A-8 because the State Board's authority with regard to other steps it may take is expressly limited to districts that are *not* "subject to Article 34A[.]"

For all other school districts certified as being in financial difficulty, the State Board is authorized to require the submission of a financial plan developed in accordance with guidelines the State Board presents to the district. Once a district is required to submit a financial plan, the statute grants the State Board the authority to take further steps to ensure compliance with the plan. Among other things, subsection 1A-8(b) mandates that the school district, other than CPS, "shall report to the State Board" concerning compliance with the district's financial plan. If the State Board determines that a district "has failed to comply with its financial plan," the State Board may rescind its approval of the district's financial plan "and appoint a Financial Oversight Panel for the district as provided in Section 1B-4." Finally, section

1A-8 states that "unless and until the financial plan required under this Section has been approved by the State Board[.]" a school district may not issue or sell "bonds * * * or other evidences of indebtedness[.]"

The plain and unambiguous language of subsection 1A-8(b) limits the State Board's authority to act with regard to CPS. That subsection permits the State Board to require school districts, "*except [for] those districts subject to Article 34A,*" to submit a financial plan. (Emphasis added.) As previously noted, CPS is the only school district to which article 34A applies. The powers of the State Board that flow from its authority to require a school district to submit a financial plan – including the provision that a district may not issue bonds or other evidences of indebtedness until the State Board approves the required financial plan – do not extend to "those districts subject to Article 34A[.]"

Although the General Assembly has amended section 1A-8 on several occasions since the creation of the school finance authority provided for in article 34A and since it has been abolished,¹¹ the General Assembly has not changed the language in section 1A-8 requiring the State Board to simply notify the Governor and Mayor if it certifies that CPS is in financial difficulty, or the language excluding districts subject to article 34A from the financial plan

¹¹See Public Acts 90-802, effective December 15, 1998; 94-234, effective July 1, 2006; 96-668, effective August 25, 2009; 96-1423, effective August 3, 2010; 97-429, effective August 16, 2011.

requirement.¹² This language suggests that it is the General Assembly's intent to limit the State Board's authority to address financial situations in districts subject to article 34A and to treat CPS differently than other school districts facing financial difficulty in terms of State Board oversight. To conclude otherwise would render all references to article 34A in section 1A-8 meaningless and would render the clause "the financial plan required under this Section" found in the paragraph restricting the incurrence of indebtedness superfluous. Consequently, it is my opinion that under the plain and unambiguous language of section 1A-8, the State Board cannot require CPS to submit a financial plan, and, as a result, the State Board lacks the authority to prevent the Chicago Board from establishing a line of credit.

Article 34A of the School Code

This conclusion finds additional support in the language and history of other provisions of the School Code. As briefly noted above, in 1979, CPS faced a financial crisis. As

¹²The legislative debates for Senate Bill 3681, which as enacted became Public Act 96-1423, effective August 3, 2010, and amended section 1A-8 of the School Code, note that:

Eddy: * * * Once again, this is language that the State Board of Education annually does some cleanup for duplicative language in the School Code or obsolete language and this Bill would accomplish their intent to remove that. Remarks of Rep. Eddy, May 6, 2010, House Debate on Senate Bill No. 3681, at 121.

The State Board has continued its efforts to streamline the School Code by amending or repealing outdated or obsolete provisions (*see* 99th Ill. Gen. Assem., House Bill 6044, 2016 Sess.) and has introduced similar legislation over the last several years. Memorandum from Tony Smith, State Superintendent of Education, and Karen Corken, First Deputy Superintendent, to Illinois State Board of Education (March 16, 2016), *available at* <http://www.isbe.net/board/meetings/2016/mar/packet.pdf>; *see* State Board of Education Board Archives, *available at* <http://www.isbe.net/board/html/archives.htm>; Public Acts 99-030, effective July 10, 2015; 98-739, effective July 16, 2014; 98-610, effective December 27, 2013; 97-256, effective January 1, 2012; *see also* 97th Ill. Gen. Assem., House Bills 5825, 5826, and 5827, 2012 Sess.; 97th Ill. Gen. Assem., Senate Bills 1794 and 1795, House Bills 3022 and 3027, 2011 Sess. Despite the annual effort to clean up obsolete provisions in the School Code, article 34A has not been repealed.

a result of that crisis, the General Assembly enacted article 34A of the School Code (105 ILCS 5/34A-1 *et seq.* (West 2014)), which authorizes the creation of a school finance authority "[f]or each school district organized under Article 34" of the School Code (105 ILCS 5/34A-104 (West 2014)). Article 34 "applies only to cities having a population exceeding 500,000" and, thus, only to CPS. 105 ILCS 5/34-1 (West 2014).

The Chicago School Finance Authority (the Authority) was established in January 1980 to exercise oversight and control over the financial affairs of CPS, while leaving primary responsibility for educational policies of the schools with the Chicago Board. 105 ILCS 5/34A-102(b) (West 2014). The Authority, a separate body corporate and politic and unit of local government (105 ILCS 5/34A-104 (West 2014)), was governed by a five-member board of directors appointed by the Governor and the Mayor of the City of Chicago (105 ILCS 5/34A-301 (West 2014)). The Authority had the power, among other things, to borrow money (105 ILCS 5/34A-201(g) (West 2014)), including through the issuance of bonds (105 ILCS 5/34A-501 through 34A-502 (West 2014)), and to levy taxes for debt service on the bonds (105 ILCS 5/34A-503 (West 2014)). The Chicago Board was required to annually submit financial plans to the Authority for its approval (105 ILCS 5/34A-403 (West 2014)) and was prohibited from entering into any contract or other obligation that was inconsistent with the financial plan and budget in effect (105 ILCS 5/34A-405 (West 2014)).

In 1989, the General Assembly made significant amendments to articles 34 and 34A of the School Code in an effort to reform CPS. *See* Public Act 85-1418, effective July 1,

1989. In addition to establishing local school councils for CPS (*see* 105 ILCS 5/34-2.1 (West 2014)), Public Act 85-1418 amended article 34A to require the Chicago Board to develop, adopt, and submit an annual System-Wide Educational Reform Goals and Objectives Plan (Plan) to the Authority for its approval. 105 ILCS 5/34A-412 (West 1992) (repealed by Public Act 88-511, effective November 14, 1993). Further, the Public Act prohibited the Chicago Board from entering into any contract, agreement, or other obligation unless it was consistent with the approved Plan. 105 ILCS 5/34A-413 (West 1992) (repealed by Public Act 88-511, effective November 14, 1993). The Authority was also given the responsibility to examine and audit the Chicago Board's records and was required to annually audit the educational performance of the Chicago Board to determine whether it had met the Plan goals for the year. 105 ILCS 5/34A-414 (West 1992) (repealed by Public Act 88-511, effective November 14, 1993).

In 1993, in response to growing budget deficits at CPS, the General Assembly enacted Public Act 88-511, effective November 14, 1993, which repealed the annual Plan submission requirements. Public Act 88-511 also amended article 34A to require the Authority to initiate and direct financial and managerial assessments of the Chicago Board (105 ILCS 5/34A-408 (West 2014)) and appoint an Inspector General to conduct investigations into allegations of waste, fraud, and financial mismanagement at CPS (105 ILCS 5/34A-201.1 (West 1995 Supp.)) (repealed by Public Act 89-698, effective January 14, 1997)).

Two years later, in the face of "an education crisis * * * in the Chicago Public Schools" (105 ILCS 5/34-3.3 (West 1996)), the General Assembly temporarily transferred

control of CPS to a five-member Chicago School Reform Board appointed by the Mayor of Chicago.¹³ In creating this new reform board to run CPS, the General Assembly also suspended the Authority's power with regard to CPS's budget until July 1, 1999, leaving the Authority with the limited duty to administer and oversee its outstanding bonds.¹⁴ The General Assembly subsequently extended the suspension to July 1, 2004 (Public Act 90-757, effective August 14, 1998), and December 31, 2010 (Public Act 93-488, effective August 8, 2003); *see also Noyola v. Board of Education of the City of Chicago*, 284 Ill. App. 3d 128, 130 (1996) (upon the enactment of subsection 34A-411(c) of the School Code, "the Chicago School Finance Authority has absolutely no power with regard to the budgets for Chicago public schools"), *aff'd*, 179 Ill. 2d 121 (1997).

As of June 30, 2009, the Authority had no outstanding debt. CPS 2009 Financial Report at 76, 141. Section 34A-604 of the School Code (105 ILCS 5/34A-604 (West 2014)) provides for the abolition of the Authority upon the discharge of all of its debts:

The Authority shall be abolished one year after all its Obligations have been fully paid and discharged or otherwise provided for. Upon the abolition of the Authority, all of its rights and property shall pass to and be vested in the Board.

¹³Public Act 89-015, effective May 30, 1995, amended section 34-3 of the School Code (105 ILCS 5/34-3 (West 2014)) to abolish the terms of all members of the Chicago Board within 30 days of the effective date of the Public Act, provide the Mayor with appointment authority for the five-member Chicago School Reform Board, establish the Chicago School Reform Board for a 4-year period (105 ILCS 5/34-3.3 (West 2014)), and transfer the Inspector General's jurisdiction to the Chicago School Reform Board of Trustees (105 ILCS 5/34-13.1 (West 2014)).

¹⁴*See* Public Act 89-015, effective May 30, 1995 (adding subsection 34A-411(c) to the School Code (105 ILCS 5/34A-411(c) (West 1996)) and providing that "the powers and responsibilities granted to or imposed upon the Authority and the Board under Sections 34A-401 through 34A-410 and Section 34A-606 are suspended until July 1, 1999").

Article 34A defines the term "Board" to mean "any board of education to which this Article is applicable[.]" 105 ILCS 5/34A-103(b) (West 2014). As article 34A only applies to CPS (*see* 105 ILCS 5/34A-104 (West 2014)), all of the Authority's rights and property passed to, and were vested in, the Chicago Board when the Authority was abolished in June 2010. *See* Public Act 96-705, effective January 1, 2010.

Despite the fact that the Authority was suspended starting in 1995 and abolished in 2010, the General Assembly has never repealed article 34A; its provisions remain in effect and a part of Illinois law. Further, the General Assembly still relies on the provisions of article 34A to authorize actions by the Chicago Board and CPS. *See, e.g.*, 105 ILCS 5/34-29.2(d) (West 2014) ("Any monies on deposit in any such debt service fund and not necessary for immediate use may be invested or reinvested in Investment Obligations, as defined in Section 34A-103 of this Act"). These two facts evince a legislative intent that CPS remains "subject to Article 34A," and, as a result, CPS is not a school district subject to the financial plan requirements and debt limitations of section 1A-8.

Additionally, as previously noted, section 34A-604 of the School Code provides that "[u]pon the abolition of the Authority, all of its rights and property shall pass to and be vested in the Board." 105 ILCS 5/34A-604 (West 2014). Prior to 2010, section 34A-604 provided that all rights and property of the Authority "shall pass to and be vested in the State." 105 ILCS 5/34A-604 (West 2008). Public Act 96-705, effective January 1, 2010, amended

section 34A-604 to delete "State"¹⁵ and replace it with "Board." Where the General Assembly amends an existing statute, the presumption is that the General Assembly intended a material change in the law. *In re K.C.*, 186 Ill. 2d 542, 549 (1999). The change in the statutory language of section 34A-604 presumptively indicates a legislative intent that all of the Authority's rights and property pass to and are vested in the Chicago Board, and not the State or the State Board.

Articles 1B and 1H of the School Code

Similarly, articles 1B and 1H of the School Code (105 ILCS 5/1B-1 *et seq.*, 1H-1 *et seq.* (West 2014)), which implement section 1A-8, make it clear that section 1A-8's provisions regarding compliance with financial plans and the appointment of financial oversight panels do not apply to CPS. As discussed previously, section 1A-8 of the School Code provides that the State Board may require school districts certified as being in financial difficulty to adopt and submit a financial plan. It further provides that "[i]f the State Board of Education determines that a district has failed to comply with its financial plan, the State Board of Education may rescind approval of the plan and appoint a Financial Oversight Panel for the district as provided in Section 1B-4."

Article 1B of the School Code provides for the creation of financial oversight panels and the provision of emergency State financial assistance to certain school districts. One of the purposes for enacting article 1B was "[t]o promote the financial integrity of boards of education of *school districts with a population of less than 500,000[.]*" (Emphasis added.) 105

¹⁵As used in article 34A of the School Code, the term "State" means the State of Illinois. 105 ILCS 5/34A-103(n) (West 2014).

ILCS 5/1B-2 (West 2014). As used in article 1B, the term "district" is defined to include "any school district of this State not subject to the provisions of Article 34[.]" 105 ILCS 5/1B-3(e) (West 2014). As previously noted, CPS is the only school district in the State that falls within the provisions of Article 34. Accordingly, based on the quoted statutory language, article 1B does not apply to CPS. Consequently, the State Board has not been granted the authority to appoint a financial oversight panel for CPS under article 1B of the School Code.

In 2011, the General Assembly added article 1H to the School Code (*see* Public Act 97-429, effective August 16, 2011). Article 1H is intended to allow for the establishment of financial oversight panels for petitioning school districts or for other school districts where the State Board determines it is appropriate. The term "district" is defined in article 1H to include "any school district having a population of *not more than 500,000* that has had a Financial Oversight Panel established under this Article." (Emphasis added.) 105 ILCS 5/1H-10 (West 2014). Applying the plain language of that definition, it is clear that article 1H does not apply to CPS.¹⁶ Further, article 1H of the School Code was added after the Authority was abolished (*see* Public Act 97-429, effective August 16, 2011), yet it specifically excludes CPS from its

¹⁶Additional support for this conclusion is found in the legislative debates for Senate Bill 2149, which as enacted became Public Act 97-429, effective August 16, 2011, and added article 1H to the School Code. The debates indicate that article 1H was intended to combine the existing statutory provisions concerning financial oversight panels and school finance authorities into one article. Remarks of Sen. Sullivan, April 14, 2011, Senate Debate on Senate Bill No. 2149, at 232; Remarks of Rep. Eddy, May 20, 2011, House Debate on Senate Bill No. 2149, at 42, 48-51, 54. Consistent with this legislative intent, Public Act 97-429 amended article 1B of the School Code to provide that "[n]o school district may have a Financial Oversight Panel established pursuant to this Article after Article 1H of this Code is established." 105 ILCS 5/1B-25 (West 2014). Public Act 97-429 also amended articles 1E and 1F of the School Code to provide that, "[w]hen the Authority established pursuant to this Article is abolished * * * this Article shall be repealed." 105 ILCS 5/1E-165, 1F-165 (West 2014).

provisions. 105 ILCS 5/1H-10 (West 2014). Had the General Assembly intended for CPS to be subject to the heightened financial oversight of the State Board and the requirements of section 1A-8, it could have included CPS within the definition of "district" in article 1H. It did not. In addition, Public Act 97-429 amended articles 1B, 1E, and 1F of the School Code (105 ILCS 5/1B-1 *et seq.*, 1E-1 *et seq.*, 1F-1 *et seq.* (West 2014))¹⁷ to reflect the changes made by article 1H, yet no amendments were made to article 34A of the Code. This language further indicates that in section 1A-8, the General Assembly was concerned solely with financial plans, financial oversight panels, and school finance authorities relating to school districts outside of the City of Chicago. Public Act 97-429 also amended section 1A-8 of the School Code, but made no changes with respect to the references to school districts subject to article 34A that are contained in that section.

¹⁷Articles 1C through 1G of the School Code (105 ILCS 5/1C-1 through 1G-20 (West 2014)) address a variety of school district financial matters. Articles 1C and 1D (105 ILCS 5/1C-1 *et seq.*, 1D-1 *et seq.* (West 2014)) provide for block grants for qualifying school districts and are not relevant to the resolution of your inquiry.

Articles 1E and 1F of the School Code authorize the creation of school finance authorities for petitioning districts. As used in article 1E, the term "district" refers to "any school district having a population of not more than 500,000 that prior to the effective date of this amendatory Act of the 92nd General Assembly has had a Financial Oversight Panel established * * * under Section 1B-4 of [the] Code[.]" 105 ILCS 5/1E-10 (West 2014). As used in article 1F, the term "district" refers to "any elementary school district having a population of not more than 500,000 that prior to December 1, 2002 has had a Financial Oversight Panel established for the district under Section 1B-4 of [the] Code[.]" 105 ILCS 5/1F-10 (West 2014). The legislative debates relating to the enactment of articles 1E and 1F indicate that the articles were meant to apply only to Round Lake School District and Hazel Crest School District, respectively. Remarks of Rep. Currie, April 4, 2002, House Debate on House Bill No. 5734, at 6; Remarks of Rep. Lang, December 5, 2002, House Debate on Senate Bill No. 912, at 4. These provisions are therefore not relevant to the resolution of your inquiry.

Likewise, Article 1G of the School Code (105 ILCS 5/1G-1 (West 2014)) authorizes the use of Mathematics and Science Block Grant moneys and is not relevant to this inquiry.

Based on the plain language of articles 1B and 1H, it is clear that neither of them apply to CPS. Further, articles 1B and 1H are the only articles that reference the financial plan requirement and the financial oversight panels of section 1A-8. *See* 105 ILCS 5/1B-4, 1H-15 (2014).

When the School Code is read as a whole, and each provision is construed with every other section (*see generally General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 180 (2011)), it must be concluded that the financial plan provisions of section 1A-8 do not apply to CPS and that CPS remains subject to article 34A. Because the financial plan provisions of section 1A-8 do not apply to CPS, the language found in section 1A-8 prohibiting the incurrence of debt by a district certified to be in financial difficulty unless and until the State Board approves the district's financial plan likewise does not apply to CPS.

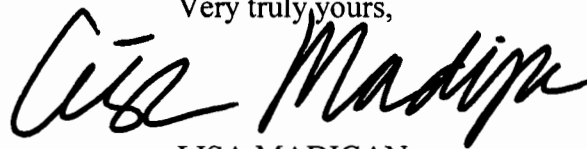
CONCLUSION

Based on the foregoing, it is my opinion that the clear and unambiguous language of the School Code indicates that the General Assembly intended to treat the Chicago Public Schools differently than other Illinois school districts with respect to financial oversight by the State Board of Education. Section 1A-8 of the School Code does not grant the State Board the statutory authority to require CPS to develop, adopt, or submit a financial plan. Further, section 1A-8 also does not require that the Chicago Board of Education seek approval of a financial plan from the State Board before it can issue bonds or any other evidence of indebtedness, such as establishing a line of credit. Therefore, the Chicago Board may continue to exercise those

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powers granted to it by article 34 of the School Code, including the power to establish a line of credit. Under section 1A-8, if the State Board certifies that CPS is in financial difficulty, the State Board's authority is limited to notifying the Governor and Mayor of the certification. The Governor and the Mayor, in conjunction with the General Assembly, may then proceed to craft a financial oversight solution specific to CPS.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a larger, more prominent script than the last name "Madigan".

LISA MADIGAN
ATTORNEY GENERAL