

1 STATE OF ILLINOIS)
 2) SS.
 3 COUNTY OF C O O K)
 4 IN THE CIRCUIT COURT OF
 5 COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, CHANCERY DIVISION
 6 BOARD OF EDUCATION OF)
 7 WOODLAND COMMUNITY)
 CONSOLIDATED SCHOOL)
 8 DISTRICT 50,) Case No.
) 14 CH 8573
 9 Plaintiff,)
 10 VS.)
 11 ILLINOIS STATE CHARTER)
 SCHOOL COMMISSION and)
 12 BOARD OF DIRECTORS OF)
 PRAIRIE CROSSING CHARTER)
 SCHOOL, and ILLINOIS STATE)
 13 BOARD OF EDUCATION,)
 14 Defendants.)

The proceedings before

THE HONORABLE JUDGE THOMAS ALLEN
 March 23, 2015

Reported by:
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1 APPEARANCES CONTINUED :

2 MR. RESPICIO VAZQUEZ, of the Law Offices of
 3 Franczek, Radelet
 300 W. Wacker Drive, Suite 3400
 4 Chicago, Illinois 60606
 &
 5 MS. DENEAN K. STURINO, of the Law Offices of
 O'Hagan, LLC
 6 One East Wacker Drive, Suite 3400
 Chicago, Illinois 60601
 7
 8 appeared on behalf of Prairie Crossing
 Charter School.

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1 The proceedings before **THE HONORABLE**
 2 **JUDGE THOMAS ALLEN**, taken before Carrie A.
 3 McCann, CSR, a notary public within and for
 4 the County of Lake and State of Illinois,
 5 on March 23, 2015, at the hour of two
 6 o'clock p.m., at 50 W. Washington Street,
 7 Chicago, Illinois.

11 APPEARANCES :

12 MR. JAMES PETRUNGARO, of the Law Offices of
 13 Scariano, Himes & Petrarca
 Two Prudential Plaza, Suite 3100
 14 Chicago, Illinois 60601

15 appeared on behalf of Plaintiff;

16 MS. AMY MCCARTHY & MS. HELLIN JANG,
 17 Assistant Attorney General, Office of the
 Attorney General
 18 100 W. Randolph Street
 Chicago, Illinois 60601

19 appeared on behalf of the Illinois State
 20 Charter School Commission and the Illinois
 State Board of Education;

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1
 2 THE COURT: Good afternoon.
 3 MR. PETRUNGARO: Good afternoon.
 4 James Petrungaro on behalf of Plaintiff,
 5 Board of Education of Woodland School
 6 District 50.

7 MS. MCCARTHY: Good afternoon,
 8 your Honor. Amy McCarthy on behalf of the
 9 Illinois State Charter School Commission
 10 and the Illinois State Board of Education.

11 MS. JANG: Hellin Jang,
 12 Assistant Attorney General also on behalf
 13 of the Illinois State Board of Education
 14 and the Charter School Commission.

15 MS. STURINO: Good afternoon,
 16 your Honor. Denean Sturino on behalf of
 17 Prairie Crossing Charter School.

18 MR. VAZQUEZ: Good afternoon,
 19 your Honor. Respicio Vazquez, that is
 20 R-E-S-P-I-C-I-O V-A-Z-Q-U-E-Z, on behalf of
 21 Prairie Crossing Charter School also.

22 THE COURT: All right. So we
 23 are here on Board of Education of Woodland
 24 Community Consolidated School District 50's

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1 petition for administrative review of the
2 decision of the Illinois State Charter
3 School Commission vis-à-vis the Prairie
4 Charter School, Prairie Crossing. Pardon
5 me. I ran out of tabs when I was reading
6 the records. So there is definitely a lot
7 here.

8 MS. STURINO: Am I too late?

9 THE COURT: So the record is
10 voluminous while at the same time being a
11 little redundant, which most records are,
12 right, and repetitive, some of it. But it
13 was ably presented and bound very
14 conveniently. So I thank the parties that
15 tendered it.

16 I didn't use the disk. I am not
17 high tech. So I went with paper.

18 So I have the record, reviewed
19 the record and the briefs that the parties
20 submitted also. And I think that's the
21 preliminary observations I have to make.

22 I will certainly allow both
23 sides to argue their positions. But with
24 as many lawyers as we have here, I think we

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1 might have to put a little time limit on
2 it. I would like to be done by -- let's
3 back into it -- like by 3:20 or so, because
4 if all goes well and if there are no
5 surprises, I intend to make an oral ruling.
6 I don't want to wait four months and write
7 something up because it would take me four
8 months to write all the factual
9 recitations.

10 So why don't we say a half hour
11 for each side? Are all the parties going
12 to talk or what's your battle plan? Do you
13 have one?

14 MS. STURINO: Well, your Honor,
15 I think if you have come to the bench today
16 with respect to and prepared to make a
17 ruling, I think that, you know, to put a
18 little bit of form over substance, perhaps
19 we should go about this in a way to address
20 things that concern you.

21 THE COURT: I think things that
22 concern me you folks have written about.

23 MS. STURINO: Okay.

24 THE COURT: That's not too --

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1 there is nothing out there that hasn't been
2 written. I mean, we know what the issues
3 are. We know the chart. We know the law.
4 You have to plug the law into the facts.

5 So anyhow, how about a half hour
6 for Plaintiff max and then 40 minutes for
7 remaining Defendants and all their lawyers?
8 Is that good?

9 MS. JANG: Yes. On behalf of
10 the Defendants, Judge, we are going to
11 respond collectively. So there is no
12 particular order. I think we will just
13 address these arguments.

14 THE COURT: All right. I
15 already wasted five minutes trying to
16 figure out what to do. So let's get going.
17 Your turn, Mr. Petrungaro.

18 MR. PETRUNGARO: Judge, you have
19 always proven yourself to be well prepared
20 for these hearings. So if there is no
21 particular area that you would like us to
22 focus on, then I will address all
23 substantive areas of our brief.

24 THE COURT: Actually, on second
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1 thought, you are right. Ms. Sturino is
2 probably right about the one area that you
3 briefed, and that is the jurisdictional or
4 standing, excuse me. For the sake of
5 discussion, I think I would suggest we rest
6 on what I had done already on the motion to
7 dismiss which we argued at length. That
8 would narrow the -- narrow our discussion.
9 But you can still address it obviously. It
10 will be, you know, wherever this thing
11 goes, somebody is appealing this thing. So
12 they can play with it in the reviewing
13 court as to the standing issue. Does that
14 sound --

15 MS. STURINO: Your Honor, I
16 think your comments are well taken. I
17 think we have done that already. I don't
18 think, despite Mr. Petrungaro's statements
19 in his reply brief, I don't think that the
20 defense has taken that up in full force and
21 effect in its response.

22 THE COURT: No, no. You just
23 preserved your --

24 MS. STURINO: We just dropped a
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1 footnote.

2 THE COURT: Right.

3 MS. STURINO: I think that's
4 really still a footnote and contains -- it
5 can be a footnote today in that we are not
6 waiving any rights with respect to that
7 argument.

8 THE COURT: Nothing is waived.
9 That's obvious, right.

10 MS. STURINO: I think we can
11 dispense with talking about that.

12 THE COURT: Let's not discuss
13 the standing today. That will be for
14 later. Go ahead.

15 MR. PETRUNGARO: Judge, in 1999
16 the State authorized an experiment of
17 sorts. The State Board of Education, over
18 the objection of two local school
19 districts, and today we are here just on
20 behalf of Woodland District 50, but
21 authorized Prairie Crossing to exist,
22 authorized a charter school to operate in
23 Lake County, Illinois using funds from the
24 local school district. There is no

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1 legitimate dispute that those funds are
2 anything other than funds that are owed to
3 the local school district. We know this to
4 be true because in 27A-9(f) the statute
5 specifically provides that funds otherwise
6 due the district are to be paid to the
7 charter school. That's what gives Woodland
8 its standing to be here today, and that's
9 all I will say on the standing issue.

10 Some 15, 16 years later this
11 Court has before it a case of first
12 impression in Illinois. I think it would
13 be undisputed that across this great state
14 there has never been a court before that
15 considered whether the State's renewal of a
16 charter school that it had previously
17 authorized was made in error. And so this
18 Court has a decision before it to determine
19 whether the experiment has run its course
20 and the experiment has gone awry in such a
21 manner that it can no longer be justifiably
22 in existence under the Charter Schools Law
23 as the legislature intended it.

24 Now, Judge, it is Woodland's
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1 position that an overwhelming majority of
2 the final decision issued by the Charter
3 Commission back in April of 2014 can be
4 reviewed under a de novo basis. Much of
5 the decision is based on interpretations of
6 law, interpretations specifically of the
7 Charter Schools Law.

8 I specifically point to the
9 following areas: The Commission's absolute
10 failure to review the Charter School's
11 operations in light of the 2009 renewal by
12 the State Board of Education, the 2009
13 contract that had appended to it a
14 memorandum from the State Board of
15 Education from Superintendent Chris Koch
16 that addressed significantly the State's
17 concerns about Prairie Crossing's
18 operations given that it wasn't educating
19 anywhere near a sufficient number of
20 at-risk students. The Commission
21 completely missed that part in its final
22 decision and its renewal proceedings. It
23 didn't -- admittedly it didn't evaluate the
24 at-risk student enrollment at the school.

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1 It also claims that its economic
2 soundness evaluation, an element of its
3 renewal obligations, can be nothing more
4 than cursory. That it need to look no
5 further than the bottom line solvency of
6 Woodland. That it can look to no more than
7 just the operating funds to determine that
8 as long as there is a positive balance in
9 those funds, then the charter school must
10 not be having a negative enough impact
11 financially on the local school district
12 that would impair the ability of the
13 charter school to move forward.

14 I would also submit to the Court
15 that the Commission's determination that
16 the charter school's transportation plan
17 was sufficient is a matter of subject
18 de novo review because of the Commission's
19 rationale. That rationale being simply
20 that the law doesn't require door-to-door
21 transportation. Well, that's true. The
22 law doesn't require door-to-door
23 transportation. But the law requires a
24 whole lot more than just a carpooling

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1 policy. To the extent that the Court
2 disagrees that that is not purely a de novo
3 standard or de novo review, then it is
4 nothing less than a mixed question of law,
5 in fact, that is, of course, to be
6 determined under clearly erroneous
7 standard.

8 Judge, I will start with
9 principally the enrollment of at-risk
10 students at the charter school. It is
11 first noteworthy that the Commission's
12 model for review, the accountability plan,
13 despite having all kinds of standards and
14 70 some pages of things that the Commission
15 looks at or the staff looks at, that plan
16 does not look at the overarching principle,
17 the No. 1 purpose of the Charter Schools
18 Law. And that is whether at-risk students
19 are receiving education from the charter
20 school.

21 Now, the Commission and the
22 Defendants argue that's not what the
23 Charter Schools Law is for. At most, that
24 policy provision or that requirement

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1 encourages charter schools to educate
2 at-risk students.

3 Judge, this has been decided by
4 the Supreme Court in the Comprehensive
5 Community Case, a 2005 decision, where the
6 Court squarely stated and I quote here,
7 "The Charter Schools Law seeks to expand
8 educational opportunities for at-risk
9 pupils - pupils who because of physical,
10 emotional, socioeconomic, or cultural
11 factors are less likely to succeed in a
12 conventional educational environment. To
13 ensure this purpose is met, the General
14 Assembly indicated that the statute should
15 be interpreted liberally to support the
16 findings and goals of the section to
17 advance renewed commitment by the State of
18 Illinois to the mission, goals and
19 diversity of public education."

20 Judge, the Commission's position
21 that notwithstanding Prairie Crossing's
22 statistics when it comes to educating
23 at-risk students, it is a flat out unlawful
24 position for the Commission to take that

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1 the school doesn't need to place a special
2 emphasis on educating those students. In
3 our brief, we provided a chart
4 demonstrating the disparity between the
5 demographics of students that attend
6 Woodland School District and the
7 demographics of students that attend
8 Prairie Crossing. Your Honor is well aware
9 of this chart.

10 Now, the Defendants challenge
11 this chart as being created by Plaintiff's
12 counsel, not having any inherent
13 evidentiary reliability. I just note to
14 your Honor that this chart is modeled
15 precisely off of the same chart that was
16 included in State Superintendent Koch's
17 memorandum back in 2009 that was attached
18 to the Charter School Agreement, that
19 renewal agreement.

20 The State Board of Education's
21 chart looked at the difference between
22 limited English proficient or, as they are
23 conventionally known today, ELL students,
24 between the two schools, the percent of low

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1 income students, the difference between
2 white, black, Hispanic, Asian students.
3 These are all comparisons that were made by
4 one of the Defendants in this case back
5 when the State Board of Education renewed
6 the Charter in 2009 at which time it placed
7 conditions on the Charter, conditions that
8 Prairie Crossing was required to follow in
9 the terms of enhanced, meaningful outreach
10 to attract those students to its schools.

11 Now, Prairie Crossing takes the
12 position and the Commission takes the
13 position that Prairie Crossing has complied
14 with those conditions, that Prairie
15 Crossing has had an outreach policy in
16 place and has exercised outreach efforts.
17 Your Honor, it is Woodland's position that
18 those outreach efforts are substantive in
19 name only. When you look at the actual
20 practices and policies of the school, and I
21 am talking about things like the lack of a
22 meaningful transportation plan, the law
23 makes clear, charter schools have to
24 provide a transportation plan. And

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1 specifically that plan has to address how
2 low income and at-risk students are going
3 to get to school. Prairie Crossing's
4 answer to that requirement, we will have
5 carpooling.

6 Judge, this isn't an urban
7 district where kids can jump on the CTA to
8 get to school or any other kind of reliable
9 means of public transportation. This is a
10 charter that draws students from a 60-mile
11 radius across two school districts. There
12 is no question that that transportation
13 plan is a deterrent to at-risk students
14 getting to school.

15 Kids in these communities have
16 parents -- if they have both parents living
17 at home, they are fortunate. To the extent
18 they have single parents, you know, those
19 parents are working jobs, sometimes
20 multiple jobs. We are talking about low
21 income families, many of whom can't even
22 afford transportation. And the school's
23 answer to this is, oh, we will rely on
24 carpooling within the neighborhoods to get

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1 the kids to school. When you look at the
2 number and the percentage of students from
3 that low income demographic that are
4 attending the school, it is clear that the
5 transportation plan is not working.

6 In this most recent renewal,
7 despite having been warned and implored to
8 have an ELL policy, the Commission
9 discovered again that the school still
10 doesn't have an ELL policy. So the school
11 scrambled to put one together in February
12 2014, and the Commission passed that off as
13 acceptable.

14 What students who are limited
15 English proficient who have the choice
16 between attending Woodland and the Charter
17 School are going to attend a school that
18 can't understand their language, that
19 doesn't have the ability to deliver
20 education in a language that they can
21 understand to get them to the point where
22 they are speaking English?

23 The school doesn't take
24 advantage of federal funding to provide

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1 free and reduced lunch -- free and reduced
2 price lunch services that would be expected
3 in attracting these low income and LEP
4 students to the extent that the LEP
5 students are similarly low income.

6 All of these barriers -- and,
7 Judge, that was a term used by a
8 representative of the Commission at the
9 time of the April 15 board meeting where
10 the Commission considered a presentation by
11 Prairie Crossing and debated and issued its
12 decision -- all of these barriers, these
13 policy deterrents are what stand between
14 low income and limited English proficient
15 and, then to a related but perhaps lesser
16 extent, black and Hispanic students from
17 attending the school.

18 When read as a whole, Article
19 27A of the School Code, the Charter Schools
20 Law unquestionably requires the charter
21 school to place a special emphasis on
22 educating at-risk students. The
23 Defendants' response to that is, well, if
24 you look at 27A-8(3), that provision states

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1 that charter schools, and I am paraphrasing
2 here, your Honor, who do not educate a
3 substantial portion of at-risk students
4 should not be prohibited from existing.

5 That single phrase when read in conjunction
6 with the entire statute as the Court must,
7 we know under cardinal rules of statutory
8 construction that the Court has to first
9 look to the intent of the legislature and,
10 two, it must read the provisions of the
11 article in harmony with each other to the
12 extent it can. That provision, 27A-8(3),
13 stands for the notion that the State is not
14 going to prohibit charter schools from
15 operating in neighborhoods that perhaps do
16 not have large numbers of at-risk students.

17 You know, if we cherry pick, you
18 can talk about the Hinsdales or the New
19 Triers of the world. But that is not to
20 say that where the charter school has been
21 authorized in a district where you have
22 demographics along the lines of 27 percent
23 of its students being Hispanic, 30 percent
24 of its students being low income, 13

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1 percent of its students being limited
2 English proficient, 7 percent of its
3 students being black, where you have those
4 kinds of numbers of at-risk students
5 attending the schools, that provision
6 cannot stand for the principle that the
7 charter school can optionally determine
8 whether it is going to serve those
9 students. It is a mandate of the law that
10 that charter school place a special
11 emphasis on serving those students.

12 Defendants point to the fact
13 that enrollment at the charter school is
14 subject to a lottery, a blind lottery, and
15 it cannot control which students are spit
16 out on the end of that lottery so-to-speak.
17 Now, I find this argument to be
18 disingenuous for two reasons. First of
19 all, statistically speaking, I am not a
20 math guy, your Honor, but statistically
21 speaking this Court can look at these
22 numbers and understand full well that this
23 isn't a matter of hundreds and hundreds of
24 at-risk students trying to get into Prairie

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1 reauthorized by the State Board of
2 Education, a condition was put in place
3 that would allow the charter school to
4 modify that plan to specifically meet the
5 transportation needs of the at-risk
6 students. That never happened.

7 We have 15 years of data now to
8 look at to know that these kids are not
9 getting to the school. And it is not a
10 stretch by any means of the imagination to
11 believe that the transportation plan is a
12 substantial barrier to those kids getting
13 into the school.

14 The Defendants take the
15 position, well, the transportation plan
16 that is required as one of the elements of
17 a charter proposal, that's an element only
18 of the initial proposal. We don't look at
19 that at each renewal. Judge, that's
20 precisely what the Commission is charged
21 with doing. 27A-9 requires that the
22 Commission review whether the charter
23 school is making progress towards meeting
24 the original elements of the first charter.

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1 Crossing Charter School but just not making
2 it through the lottery. The fact of the
3 matter is these kids aren't even enrolling
4 in the lottery.

5 Now, Defendants would point to
6 the fact that, well, Plaintiff's counsel is
7 making an argument that is not supported by
8 any direct evidence in the record. But,
9 Judge, examining the impact of all of these
10 policies makes clear that that is what is
11 happening or not happening in this case.

12 In making that argument, the
13 Defendants don't overcome the fact that
14 there are all these other policies that
15 deter these students from actually coming
16 to the school despite the claimed open
17 invitation that is given to these students
18 through the purported outreach efforts.

19 On the issue of the
20 transportation plan specifically, your
21 Honor, this is the same plan verbatim that
22 has been in place since 2003, since four
23 years after the charter school was first
24 authorized. In 2009 when the Charter was

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1 Those elements don't disappear. It is not
2 as though the legislature set down 15
3 elements that every charter school must
4 include in its initial charter agreement
5 only to abandon those years down the line.
6 There is no sense that can be made of that
7 argument.

8 And certainly given that in 2009
9 the State Board of Education specifically
10 addressed the failure of the Charter School
11 to educate similar demographics -- and I
12 want to make it clear, Woodland is not
13 submitting to this Court that the
14 demographics between the two schools need
15 to be identical. But where you have a
16 disparity of the magnitude that is between
17 the charter school and Woodland, by no
18 means is that permissible under the Charter
19 Schools Law.

20 The Defendants take the position
21 that the Charter School Law does not
22 require door-to-door transportation
23 services to these students. Woodland
24 agrees with that position. It doesn't

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1 require that. But it does require some
2 sort of meaningful transportation policy.
3 There is a lot that can be accomplished
4 somewhere in the middle of not spending a
5 dime on transportation which we know from
6 the record is the case when it comes to
7 Prairie Crossing Charter School. Not a
8 single dime has been allocated in the
9 school's budget for transportation.
10 Between that and the other extreme,
11 door-to-door service, chauffeur service
12 so-to-speak, there is a happy median that
13 can be met by the charter school that can
14 be required by the Charter Commission.
15 There is a lot of room for improvement
16 there. Yet the Commission didn't find it
17 necessary to include that as a particular
18 condition in its renewal.

19 Woodland submits to this Court
20 and to your Honor that the transportation
21 plan as designed by Prairie Crossing is a
22 violation of the Charter Schools Law. And,
23 therefore, the Commission fundamentally
24 failed in determining that there was not a
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1 material violation of either the current
2 charter agreement or the Charter School
3 Law.
4 On the issue of the Commission's
5 failure to conduct a substantive analysis
6 concerning the economic impact of the
7 charter school upon Woodland, your Honor,
8 the Commission's position is that it can
9 look at the bottom line solvency of
10 Woodland and, to a related extent, Fremont
11 and determine that as long as the school is
12 solvent, as long as the school has positive
13 balances in its operating funds, the
14 charter school must not be having a
15 negative impact or must not be economically
16 unsound on the local school district.

17 Your Honor, we pointed out in
18 our brief that's like looking at my bank
19 account to determine my net worth without
20 considering my liabilities, my credit that
21 I have had extended to me, loans,
22 mortgages, all things that in the total
23 picture should be considered when
24 determining the impact that the charter
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1 school has upon the local school district.
2 There was absolutely no
3 communication between the Commission and
4 the local school district as to data,
5 statistical information that would lead the
6 Commission to make an informed decision as
7 to whether the charter school is having an
8 adverse economic impact on Woodland to the
9 extent that any positive benefits that the
10 charter school may have been serving upon
11 the community are perhaps balanced by an
12 equal or more negative impact on the effect
13 of the funds that are lost from Woodland.

14 THE COURT: They had an expert,
15 didn't they?

16 MR. PETRUNGARO: Well, Judge, I
17 guess that would be your words or perhaps
18 the Defendants' words.

19 THE COURT: A two-page report
20 from --

21 MR. PETRUNGARO: A two-page
22 report that recognized that he was limited
23 by the Commission in the extent in which he
24 was able to conduct his analysis and give
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1 his opinion. He pointed out that the
2 Commission thought it would just be too
3 expensive for him to look under the surface
4 of any kinds of numbers to actually commit.

5 Your Honor, I am going to
6 recognize that I am for a moment stepping
7 outside the record here. But had that
8 expert conducted or the Commission and its
9 employees conducted a meaningful evaluation
10 of the finances, it would have learned from
11 Woodland that Woodland had incurred
12 significant debt within recent years,
13 particularly through the working cash fund
14 just to allow it to meet its expenses. It
15 would have learned that over the course of
16 this last charter between 2009 and 2014 the
17 District had made dozens and dozens of cuts
18 to staff, to programs, that its
19 technological resources are behind, that it
20 has made significant inroads in slashing
21 programs just to keep the District solvent,
22 just to keep the District at that status,
23 that ISBE rating that it has been given
24 that the Commission wants to rely on as the
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1 end-all be-all of economic soundness.
2 Judge, the Comprehensive case
3 addresses exactly what happened here. The
4 Supreme Court announced there is to be no
5 bright-line rule, there is to be no
6 consideration of economic soundness in a
7 vacuum. You can't just look at bottom
8 lines to determine solvency. You have to
9 look at things like what is the actual
10 impact of the charter school on the
11 programs at the local district.

12 In a case like this, your Honor,
13 where Woodland is educating 30 percent of
14 its students being low income and the
15 charter school having less than 2 percent,
16 there is an imbalance here. It can go
17 without I think further explanation, this
18 Court can take judicial notice that at-risk
19 students are more expensive to educate than
20 the quote-unquote regular students or the
21 non-average students. This per capita
22 tuition charge, that is a convenient number
23 that the legislature has used to determine
24 how to fund the charter school. But it

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1 does not have any logical or rational
2 relation to the amount of money that the
3 school actually spends on each student.
4 Johnny might cost 10,000. Susie might cost
5 15,000. Billy might be \$8,000. Every kid
6 comes with his own needs, her own needs.

7 Woodland's kids unquestionably
8 are more expensive to educate because the
9 charter school is not carrying its share of
10 the job in educating at-risk students.
11 That should have been considered as part of
12 the economic soundness evaluation. It
13 wasn't.

14 There were 15 years of data that
15 the Commission could have considered. This
16 case is unlike the Rich Township case that
17 the State Board and the Commission cite to.
18 It is even unlike, in some sense, the
19 Comprehensive case. This is the first time
20 that the Commission has had decades of data
21 that it could look at to determine what is
22 the true economic impact of this charter
23 school upon the local school district.

24 It is not prospective reports.
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1 It is not looking into a magic 8 ball or
2 crystal ball to determine, well, we think
3 this is what is going to happen. They
4 could have looked at hard data, but they
5 chose not to. It is that absolute failure
6 to conduct a meaningful economic impact
7 analysis that Woodland submits brings this
8 Court's decision, at least on the issue of
9 economic impact, into the de novo range.

10 On the issue of Woodland's
11 claims of violations of the Administrative
12 Procedures Act, your Honor, Woodland rests
13 on its brief for the position that it is a
14 party, at least under the eyes of the
15 Administrative Procedure Act and the
16 Administrative Review Law. To the extent
17 it wasn't technically a party in the
18 proceedings before the Commission, that's
19 only because the Commission dropped the
20 ball when it came to inviting Woodland to
21 the party. That's because the Commission
22 didn't provide Woodland a hearing like it
23 should have.

24 Under the Administrative
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1 Procedures Act, Section 10-25(a), in a
2 contested case a hearing, a full due
3 process hearing where there is
4 cross-examination, the ability to present
5 evidence and argument is to be had. That
6 didn't happen here. The Commission is not
7 allowed to have ex parte communications in
8 a contested case. Yet the record is
9 replete with the relationship between the
10 Commission's staff and Prairie Crossing
11 where there is this back and forth of
12 asking questions and asking for more
13 evidence, particularly after Woodland
14 submitted its written objection in January
15 2010.

16 Your Honor, Woodland submits
17 that the record is replete with sufficient
18 evidence that creates a convincing mosaic.
19 To the extent that the record doesn't have
20 substantive direct evidence of Prairie
21 Crossing's policies absolutely deterring
22 and discriminating against at-risk
23 students, there is a sufficient mosaic for
24 this Court to find that that is, in fact,

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1 what was happening. Illinois law
2 recognizes that in any case where
3 discrimination is the essence of the
4 argument.

5 Now, in this case, your Honor,
6 it is discrimination as that is prohibited
7 within the scope and the boundaries of the
8 Charter Schools Law. But where there is a
9 convincing mosaic that the charter school's
10 policies and practices are deterring
11 at-risk students from attending the school,
12 that is a substantive violation of the
13 Charter Schools Law.

14 This Court needs to look no
15 further than the Commission's actual
16 response to all of this. Even after Judge
17 Wharton, retired Judge Wharton who sits as
18 a commissioner in January 2014 raised the
19 prospect that, hey, this charter school is
20 not doing its job, it is not educating
21 at-risk students, and I can look back and
22 see at 2004, 2009, the State Board raised
23 this and they put conditions on the Charter
24 renewal. But nothing has changed. In

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1 fact, the numbers got worse between 2009
2 and 2014.

3 Judge Wharton raises this to the
4 Commission, to the rest of his commission.
5 The response was that is not a part of our
6 obligation. That is not a part of our
7 renewal review. That is not in our
8 accountability plan that our experts have
9 put together and have told us this is based
10 on national standards. This is what other
11 states are doing.

12 Well, your Honor, this case that
13 is before you is about what Illinois law
14 requires, what the Charter School Law
15 requires. In response to all of that, the
16 Commission not only renewed the Charter for
17 another five years, it did that at 100
18 percent of the funding. No penalty, no
19 slap on the wrist whatsoever.

20 But some of the other
21 commissioners said, in response to Judge
22 Wharton, well, if I wasn't convinced that
23 the staff's conditions that they are
24 recommending to us would fix this, then I

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1 wouldn't be voting in favor of this. These
2 conditions, this robust outreach program
3 and, oh, by the way, now you have to have
4 an ELL policy which the law required
5 anyway, they are nothing more than what
6 were passed upon by ISBE back in 2009.
7 Judge Wharton's comment that this is
8 groundhog day all over again rings
9 absolutely true.

10 In this case the experiment has
11 gone awry. And the party charged with
12 being the gatekeeper, the overseer of this
13 charter school, to make sure that not only
14 the kids at the charter school are getting
15 the educational benefits that they should
16 receive -- and, Judge, Woodland does not
17 submit that the charter school is doing a
18 poor job of educating the kids that are
19 there. That is not part of this dispute.
20 By all accounts, based on the Blue Ribbons
21 and other awards that the school is
22 receiving and the academic progress and the
23 numbers that those kids are achieving, by
24 all means those kids are being educated.

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1 This case is about the charter school
2 choosing not to educate at-risk students,
3 the very kids that the state legislature
4 decided the Charter Schools Law was
5 designed to benefit.

6 I will reserve any time that I
7 have left for rebuttal, your Honor.

8 THE COURT: Thank you. Who is
9 talking here?

10 MS. JANG: Your Honor, the
11 correct standard that the Court should be
12 reviewing this administrative review action
13 is the clearly erroneous standard. Under
14 this standard, as the Court knows, the
15 Court must affirm the Commission's decision
16 unless the Court is left with a definite
17 and firm conviction that a mistake has been
18 committed. Plaintiff's counsel just used
19 the words convincing mosaic, that the data
20 and the evidence contained in the
21 administrative record points to this Court
22 and that this Court should determine what
23 really went on. And this Court should
24 determine whether the policies and

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1 procedures that were set in place were
2 sufficient.

3 However, that is not the
4 standard. What Plaintiff's counsel is
5 seeking this Court to do is to make its
6 determination and to make an independent
7 determination of fact and reweigh the
8 evidence. That is precisely what
9 Plaintiff's counsel is asking this Court to
10 do. That is not the standard. This Court
11 is not to reweigh the evidence or
12 substitute its opinion or ruling on what
13 the Court thought that the Commission
14 should have done based on the evidence.

15 The correct standard is whether
16 or not within the five-volume
17 administrative record there was evidence to
18 support the Commission's decision. The
19 Commission in a 5-to-4 decision reviewed
20 substantively and discussed many of the
21 issues -- actually, all of the issues that
22 Plaintiff's counsel raised.

23 The Commission staff conducted
24 ample due diligence activities starting in
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1 August of 2013. The Commission staff, in
2 conducting its due diligence, conducted a
3 site visit using an evaluation team with
4 independent experts. They included
5 classroom observations and faculty and
6 parent interviews, interviews with the
7 executive director, members of the board,
8 the leadership team. In addition, the
9 Commission staff also held a community
10 forum at the school and received comments,
11 public comments from members of the public
12 which included the Plaintiff.

13 The Plaintiff was not a party in
14 this proceeding. It was not a contested
15 hearing. They had the same standing and
16 position --

17 THE COURT: That wasn't a
18 contested hearing what I read the other
19 day?

20 MS. JANG: They had some
21 disagreement.

22 THE COURT: Well, in the legal
23 sense, it wasn't a contested hearing. But
24 from what I read, there was some contest
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1 among the Commission members. That's for
2 sure.

3 MS. JANG: Yes.

4 THE COURT: I see what you are
5 saying. From a legal perspective, it is
6 not a contested hearing.

7 MS. JANG: Right. Because of --

8 THE COURT: No
9 cross-examination, just what Mr. Petrunaro
10 referred to. But I understand that. Okay.

11 MS. JANG: Plaintiff's counsel
12 argues that they have been afforded all of
13 those things because it was a contested
14 hearing. However, it was not. They only
15 had the rights that the members of the
16 public have. They attended the public
17 forum, community forum. They had counsel
18 present as well as other representatives
19 from Woodland present. They gave a written
20 objection. They spoke on numerous
21 occasions at numerous public forums. So
22 they did have an opportunity to be heard as
23 a member of the public does. All of those
24 comments and written objection that

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1 Woodland filed were all considered by the
2 Commission and the staff.

3 In addition to the community
4 forum, the staff also conducted further
5 interviews at the school's -- of the
6 school's administration members. They also
7 collected additional information and data
8 from the charter school. They also
9 retained an expert to conduct an analysis
10 of the school's facilities. They also
11 engaged an expert to conduct an analysis of
12 the school's finances and to perform an
13 economic soundness assessment. All of
14 those matters were conducted by the
15 Commission and the staff because of the
16 issues that the Commission found in the
17 renewal application as well as the issues
18 and comments that Plaintiff Woodland had
19 raised.

20 There was extensive debate, as
21 the parties and the Court has already seen
22 in the record, that has the differing
23 opinions and the discussions, very detailed
24 discussions that different members of the
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1 Commission had. There was a 5-to-4
2 opinion. All of these issues that
3 Plaintiff raises were very seriously
4 considered by the Commission and debated.
5 And after a very long due diligence and
6 contemplated procedure, the Commission as a
7 whole made the decision that there were no
8 violations of the previous agreement and
9 that there were no violations of the
10 Charter School Law.

11 The Commission does have
12 expertise and experience in dealing with
13 these matters. None of these issues that
14 Plaintiff raises were ignored. All of
15 these issues, including the at-risk
16 students and the fact that the -- its
17 student body at the charter school is not a
18 similar percentage of these students in
19 Woodland --

20 THE COURT: It is not even in
21 the same solar system.

22 MS. JANG: The Charter School
23 Act does not require.

24 THE COURT: I know, I know.
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1 MS. STURINO: Nor is the student
2 enrollment in the same solar system, right?

3 THE COURT: I know. I know what
4 the Charter School Act says. I have read
5 it a zillion times. I know what the
6 legislators probably contemplated when they
7 passed the Act. I will -- I got a few
8 tidbits from the legislative record that I
9 will pass onto you when it gets to be my
10 turn to talk.

11 MS. JANG: Sure. As the Court
12 is alluding to, the legislature could have
13 put in express language in the language of
14 the Charter School Law that would more --
15 that would support what Plaintiff's counsel
16 would prefer and hope that the Charter
17 School Law --

18 THE COURT: At-risk pupils,
19 special emphasis on expanded learning
20 experience for at-risk pupils, that's in
21 the law.

22 MS. JANG: Yes. Let me actually
23 refer to other parts of the Charter Schools
24 Law. The Charter Schools Law requires the
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1 charter schools provide a high quality
2 educational program to all students on an
3 equal basis. The charter school cannot be
4 found to violate the Charter School Law on
5 the sole basis that the majority of student
6 enrolls in services are not classified as
7 at-risk or that its demographics --

8 THE COURT: I am not talking
9 about majority. I am talking about 1.8
10 percent.

11 MS. JANG: Right. Well, the
12 intent of -- the legislature's intent that
13 charter schools will expand opportunities
14 for at-risk students through innovation,
15 accountability, and non-inclusive,
16 nondiscriminatory open enrollment policies
17 is being complied with, your Honor. The
18 charter school, as found by the Commission,
19 did not -- is not in violation of any
20 provision of the Charter Schools Law.

21 There is a reference to the fact that in
22 Section 27A-8(a)(3) that Plaintiff's
23 counsel refer to, that section deals with
24 when evaluating -- when the Commission

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1 evaluates a charter school proposal. Right
2 now we are dealing with a renewal. It says
3 Commission shall give preference to
4 proposals. So when there are different
5 proposals coming in from different
6 applicants, the Commission can give
7 preference to those differing proposals
8 depending on the issues of at-risk that
9 they have.

10 But it is not a requirement that
11 the school -- that the charter school
12 renewal -- renewal application must have.
13 It is not expressly saying what Plaintiff's
14 counsel would like the language to say.

15 The 2009 renewal contract, all
16 the provisions of that were also complied
17 with. That is what the Commission found.

18 There were two conditions that
19 the Commission included, and the charter
20 school has complied with those conditions.
21 There are different policies that were
22 related to the ELL and the transportation
23 and the outreach. Those policies are in
24 place. Plaintiff's counsel is trying to

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1 challenge and go into the specifics of what
2 he would like the plans to dictate or not
3 dictate. However, the requirement under
4 the Charter Schools Law is whether they
5 have the -- the charter school has a
6 sufficient policy in place. And the
7 Commission defined that the school does
8 have these policies in place.

9 THE COURT: Okay. Mr. Vazquez?
10 Who is speaking next, Mr. Vazquez?

11 MR. VAZQUEZ: Sure. Yes, your
12 Honor. Thank you.

13 Your Honor, I do want to
14 highlight some points. I am not going to
15 be repetitive, I hope.

16 I know there is this emphasis on
17 27A-2(b)(2) regarding to increase learning
18 opportunities for all pupils with special
19 emphasis on expanded learning experiences
20 for at-risk pupils. But it doesn't stop
21 there, your Honor. The language keeps
22 reading, consistent, however, with an equal
23 commitment to increase learning
24 opportunities for all other groups of

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1 pupils in a manner that does not
2 discriminate on the basis of disability,
3 race, creed, color, gender, national
4 origin, religion, ancestry, marital status,
5 or the need for special education services,
6 your Honor.

7 What I want to emphasize, your
8 Honor, is I heard counsel so many times
9 saying there is deterrents, there is
10 deterrents. Your Honor, there is no
11 evidence in the record showing any
12 deterrents. He is trying to claim, just by
13 the fact of numbers, by trying to allege
14 based on the transportation plan that we
15 have heard so much about, which I will
16 address a little later, that somehow that
17 automatically ipso facto is a deterrent.
18 But there is nothing in the record that
19 reflects that.

20 Your Honor, there is nothing in
21 the record that reflects that any child was
22 denied transportation to the Prairie
23 Crossing Charter School. Yes, I understand
24 carpooling is part of it, but part. It is

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1 not the only thing.

2 There are parent volunteers who
3 are also willing to pick up a child if a
4 child needs to go and be picked up to
5 attend the school. If not, part of the
6 plan is also for the charter school to pay
7 to pick up someone, a child if he needs --
8 if he needs transportation. And if the
9 numbers are big enough, there is a plan for
10 the bus transportation due to be utilized
11 if the need is there for the child.

12 THE COURT: Let me ask you a
13 question on that, Mr. Vazquez. I recognize
14 that. I saw that in the record. And I
15 searched through every volume high and low
16 looking for a line item showing one nickel
17 from 1999 to 2014 that is spent on the
18 transportation program. Is there one
19 there?

20 MR. VAZQUEZ: Your Honor, it is
21 not broken out by transportation. If that
22 is what you are looking for --

23 THE COURT: Not even a cab ride,
24 not one receipt for a cab ride.

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1 MR. VAZQUEZ: Your Honor --

2 THE COURT: And the board or the
3 school talks in their policy about just the
4 things you recited. I am all on board with
5 that. I searched high and low in the
6 record. I found zero, not one nickel in
7 this record over 14 years has been spent on
8 transporting anybody by the charter school.
9 Now, point it out if I am wrong. I didn't
10 see it.

11 MS. STURINO: Why does there
12 need to be? I mean, if you have a
13 transportation program --

14 THE COURT: Why does there need
15 to be?

16 MS. STURINO: Yeah. If you have
17 a transportation program that is based
18 on --

19 THE COURT: So if I tell you --

20 MS. STURINO: -- volunteerism
21 and that's how it has been working in the
22 past, why would there be a line item budget
23 for that particular service?

24 MR. VAZQUEZ: In addition --

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1 MS. STURINO: There is a lot --
2 there is a lot of areas in corporate
3 America, in family household budgets where
4 money is spent or things are volunteered or
5 your neighbor provides you sugar when you
6 need to bake some cookies that is a
7 volunteered item that doesn't make it into
8 budgetary constraint. The plan is in place
9 that your Honor has read about is one based
10 in the volunteer works of parents of the
11 school.

12 THE COURT: I see nothing --

13 MS. STURINO: But if you can
14 receive --

15 THE COURT: I see nothing in the
16 record --

17 MS. STURINO: Yes.

18 THE COURT: -- that shows the
19 execution of this plan that is on paper in
20 2003 and remains on paper and has never
21 been amended or changed or anything. I see
22 nothing. Here is transportation plan.
23 (Indicating).

24 MS. STURINO: Why would there
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1 Johnny --

2 MS. STURINO: -- would you
3 expect there to be a receipt?

4 THE COURT: All the moms and the
5 dads are driving the kids around?

6 MS. STURINO: Well, that is what
7 volunteerism is.

8 MR. VAZQUEZ: Your Honor, if I
9 may add, there have been occasional times
10 in which they have paid for a taxi to
11 transport the kids.

12 THE COURT: I understand. It is
13 not in the record.

14 MR. VAZQUEZ: Your Honor, it
15 wasn't an issue. I mean, it was not --

16 THE COURT: It is not an issue?

17 MR. VAZQUEZ: Let me explain.
18 It wasn't an issue that we had to have a
19 transportation line item --

20 THE COURT: If you are trying to
21 prove your case and you are under fire and
22 the whole Commission is asking you
23 questions about your transportation
24 program, it is not an issue? I would bring

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1 be --

2 THE COURT: Excuse me. December
3 15, 2003, that's your transportation plan.

4 I see nothing. I mean, just talking --
5 talk is cheap, okay? Talk is cheap.

6 MS. STURINO: I agree.

7 THE COURT: Numbers don't lie.

8 MS. STURINO: Right.

9 THE COURT: Zero, not a penny
10 has been spent on transportation. How can
11 someone -- now --

12 MR. VAZQUEZ: Your Honor --

13 THE COURT: -- a firm conviction
14 that a mistake has been committed, how can
15 someone say that you have got a
16 transportation plan and that a live,
17 breathing person with 2 cents in their head
18 is going to listen to that and see their
19 plan on paper and then look for a receipt
20 for 14 years and there is nothing?
21 Nothing.

22 MS. STURINO: What if there is
23 no cost incurred?

24 THE COURT: Oh, okay. So I
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1 a little ammo. I bring a gun to a
2 gunfight. I wouldn't come with my bare
3 hands. I would bring something. If you
4 are trying to prove a case, if we are
5 lawyers and you have to prove your case in
6 a courtroom to a jury or judge or
7 something, bring them something. You can't
8 sit here and go, don't worry. We wrote it
9 down in '03, December 15. We are covered.
10 Transportation is covered.

11 MR. VAZQUEZ: But, your Honor,
12 there has been no evidence in the record
13 that no child hasn't been transported. So
14 how are you going to assume that children
15 aren't being transported or they are
16 objecting or not getting to school?

17 THE COURT: All right. Let me
18 give you something in the record, okay?
19 This is Exhibit 17, Volume 4, communication
20 received after PCCS renewal community
21 forum. I found this, this E-mail that was
22 sent to the Commission. It is part of the
23 record. It is at Page, of the record, ISCS
24 1000. Written by a parent who is a charter

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1 school advocate. The name is deleted and
2 redacted, which it should be.

3 "I lobby for charter schools
4 both on Capital Hill and in Springfield. I
5 have seen how charter schools can change
6 lives in cities where the traditional
7 public school system has struggled. I
8 believe in public charter schools because
9 they work.

10 We say that we are a public
11 school of choice," referring to Prairie.
12 "I would respectfully disagree with this
13 statement. To me, a public school of
14 choice is one that is available to any and
15 all eligible students in the host districts
16 regardless of race, ethnic background,
17 income level, household status, and
18 geographic location within the districts.
19 This is not true at PCCS.

20 PCCS does not offer
21 transportation. Consequently, students
22 whose families do not live within walking
23 distance or whose parents cannot arrange
24 for them to be driven to school cannot

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1 attend this public school.

2 Our family lives in the middle
3 of the Fremont district, an average
4 20-minute drive from the school. To drive
5 my son to school daily is 40 minutes
6 roundtrip on the road and about 30 minutes
7 sitting in the carpool lane. And I do this
8 twice each day. That's over two hours of
9 my day consumed with simply transporting my
10 son to and from our public school.

11 Not everyone can afford to do
12 this. Some families in the Fremont
13 district don't even own a car.

14 PCCS does not offer a lunch
15 program. Rather, our students are required
16 to bring a trash free lunch to school
17 daily. Students who rely upon a free or
18 reduced cost lunch cannot attend this
19 public school.

20 PCCS does not provide ESL or LEP
21 classes. So students who are not
22 proficient in English cannot attend this
23 public school. If you look at our Illinois
24 State report card, our demographics clearly

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1 do not reflect the diversity of our host
2 districts.

3 Many of our families have access
4 to private preschools, private sports
5 teams, tutors and other private academic
6 enrichment because of our exclusive
7 demographics."

8 Now, I am reading this to you
9 because it talks about transportation.
10 There is a parent and it is in the record
11 and there is somebody that has the good
12 fortune to be able to do it. And she
13 alludes to the obvious, that the low income
14 bracket probably can't do it.

15 MR. VAZQUEZ: Your Honor?

16 THE COURT: So just because you
17 have a piece of paper that says
18 transportation and you got nothing to back
19 it up but words, and that's all it is is
20 words, nothing in the record. We all know
21 I have to rely on the record. I am looking
22 in the record. I don't see anything.

23 MR. VAZQUEZ: You are looking at
24 one E-mail, your Honor, that alludes to the

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1 fact. That parent is not claiming that
2 they are not being able to get their child
3 into or to, back and forth to Prairie
4 Crossing Charter School.

5 THE COURT: No, you are right.

6 MR. VAZQUEZ: And the Commission
7 obviously received that and did its due
8 diligence in reviewing the record and not
9 just looking at one child or whoever this
10 person is that you are referring to, but
11 looking at the overall program, your Honor,
12 and finding that --

13 THE COURT: The only reason I
14 read that is because that person, that
15 person makes the point 100 times better
16 than I could make. So anyhow, go ahead. I
17 am sorry. That's pertinent to the
18 transportation issue.

19 MR. VAZQUEZ: Well, your Honor,
20 it is also in terms of, I guess, if we are
21 going by E-mails, then I am arguing too
22 that there is no evidence of discrimination
23 based on the ELL policy. Counsel
24 references the ELL policy adopted by the

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1 Prairie Crossing Charter School. However,
2 there is no evidence that the charter
3 school was not educating its ELL students.

4 The ELL program is what is being
5 used at the charter school to educate those
6 kids. Counsel is just assuming that
7 because we didn't have an ELL policy at the
8 time, that we were not educating ELL
9 students. And that was not the case, and
10 there was no evidence in the record that
11 our ELL students were not being educated.

12 Your Honor, regarding the
13 financials, counsel referred to the fact
14 that there was no financial information or
15 data that was submitted. I would like to
16 call your attention to on the Commission's
17 decision, they did, by the way, receive
18 Woodland's objections and its statement or
19 data, whatever they were using to argue
20 about the economics and the impact to their
21 district. However, I would like to call
22 your attention to Page 12 of the
23 Commission's decision in which the data
24 that is available on the Illinois State

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1 opening brief as well as his reply brief,
2 has made it a point to say that the review
3 of this issue is really about a violation.
4 And if that is the row that is hoed by the
5 Plaintiff in this case, we should consider
6 what a violation is.

7 And a violation, when it comes
8 to the law and it comes to the four corners
9 of what law is, a violation is a mandate.
10 A violation is something that is provided
11 in a statutory scheme up that gives
12 everyone clear notice of what you cannot
13 do. A violation is also something in a
14 contract that gives you clear notice of
15 something which you cannot do. A violation
16 is a mandate.

17 There is nowhere in this Charter
18 School Law that provides for a mandate on
19 the sufficiency of a program which is what
20 Plaintiff, in essence, is arguing Prairie
21 Crossing falls short. So when we talk
22 about violation, as Plaintiff has suggested
23 that we do and perhaps is what we should
24 do, there has to be due process

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1 Board of Education's website is the
2 financial information that ISBE receives
3 and designates to all school districts. It
4 is like the school report card, your Honor.
5 The State Board of Education also publishes
6 the financial ratings or designations of
7 school districts.

8 Now, that is the data the
9 Commission had. It is on the website, free
10 to everybody, and found that Woodland and
11 Fremont were given the highest financial
12 status which is recognition. So to say
13 that the Commission did not consider or
14 have outside data when it found that it was
15 economically -- the school district as well
16 as the charter school was economically
17 sound was in the record or is in the record
18 I should say.

19 THE COURT: Okay. Thank you.
20 Mr. Vazquez, anything else?

21 MR. VAZQUEZ: That's it for now.

22 THE COURT: Ms. Sturino?

23 MS. STURINO: Yes. I think that
24 Plaintiff, in his briefing, in both his

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1 consideration to the State, to the
2 Commission, and to the school. And the due
3 process right is if you are going to find a
4 violation of a statutory scheme up, the
5 statutory scheme up has to define what the
6 violation is and what it means to violate
7 that.

8 There is nowhere in this law
9 that says you have to educate X percentage
10 of at-risk pupils. There is nowhere in
11 this law that says you have to have a
12 transportation program that looks like X.
13 There is nowhere in this law that says you
14 have to have an ELL program that looks like
15 this, nowhere.

16 What happens is this, is this
17 law was intended by the legislature based
18 on what we know from a clear statutory
19 construction, plain language approach which
20 I think is appropriate in this case. That
21 programs are to be put in place if a
22 condition is required of it. And the
23 contract calls for it.

24 And what the contract says about
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1 these topics is that you, Prairie Crossing,
2 need to have an outreach program. Check,
3 that was done. A violation is a yes or no.
4 Check, that was done. You need to have an
5 ELL policy, or you have to have the ability
6 to serve ELL students in your district.
7 Check, that was done. You have to also
8 provide information to the Commission so
9 that the people who are specifically
10 trained in the area of education, who are
11 specifically educated in the administration
12 of education can take all of this
13 information and synthesize it, not through
14 briefing, not through the black and white
15 record that your Honor has been tendered,
16 but through living that experience and
17 having the constant association with this
18 law to make the determination of whether or
19 not there is a violation. In this case
20 there is no evidence that there is a
21 violation.

22 What Plaintiff wants to suggest
23 is that the programs were built from
24 drywall, but the programs should have been

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1 built of brick. They are not happy with
2 what the program details are. But the
3 program details are not what is at issue.
4 His issue is whether or not the school
5 complied with the law as it is written, not
6 as it is suggested or probably intended to
7 say, but as it says.

8 It does not say that the only
9 purpose, the purpose of the Charter Schools
10 Law is to educate at-risk students. Sure,
11 it says special emphasis. It says
12 preference when there is competition among
13 cheating charter schools in a particular
14 district. It says --

15 THE COURT: You think 1.8
16 percent comes under the umbrella of special
17 emphasis?

18 MS. STURINO: I don't think it
19 matters, your Honor.

20 THE COURT: All right.

21 MS. STURINO: You know why?
22 Because there is no --

23 THE COURT: So it doesn't matter
24 what the legislature put in there?

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1 MS. STURINO: No, no, it
2 doesn't. Because guess what? Had they
3 wanted a bright-line percentage basis for
4 students to be educated in our at-risk
5 category, they would have provided that
6 percentage.

7 THE COURT: Who made --

8 MS. STURINO: They would have
9 provided the word "the" instead of "a."

10 THE COURT: Who determines what
11 constitutes the appropriate number for
12 special emphasis?

13 MS. STURINO: There is none.

14 THE COURT: There is none. So
15 they get a get out of jail free card all
16 day long.

17 MS. STURINO: Until Woodland
18 seeks permission from the legislature to
19 have a mandate, until Woodland seeks
20 permission --

21 THE COURT: Why are we bothered
22 with this law?

23 MS. STURINO: -- lottery
24 provision --

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1 THE COURT: Ms. Sturino, based
2 on your argument, we don't need this
3 stinking law.

4 MS. STURINO: That's not true.

5 THE COURT: Sure, it is --

6 MS. STURINO: No, that's not
7 true.

8 THE COURT: You are saying we
9 don't have to abide by the language here.

10 MS. STURINO: No.

11 THE COURT: Well, then who
12 decides what the language is?

13 MS. STURINO: The language, your
14 Honor, I respectfully disagree, does not
15 require a percentage. It does not --

16 THE COURT: I agree with you. I
17 didn't say it requires a percentage.

18 MS. STURINO: Well, you asked me
19 about the percentage.

20 THE COURT: Yes. Do you think
21 1.8 percent constitutes a special emphasis
22 in the universe of 100 percent? You think
23 that is special emphasis?

24 MS. STURINO: I think it is a
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1 red herring --
 2 THE COURT: Okay.
 3 MS. STURINO: -- that doesn't
 4 have effect on this situation.
 5 THE COURT: Well, I have to
 6 determine the legislative intent, which is
 7 a red herring.
 8 MS. STURINO: No, the
 9 legislature's intent you don't have to
 10 determine. You have to determine what the
 11 plain language of the statute reads. What
 12 the plain language of the statute reads is
 13 a criteria, that is a preference, that is
 14 with special preference.
 15 THE COURT: All right.
 16 MS. STURINO: It doesn't require
 17 a specific mandate.
 18 And, you know, Plaintiff's
 19 counsel gratuitously commented that he was
 20 for a moment going to go outside of the
 21 record. But in reality, his whole briefing
 22 and his whole argument is outside of the
 23 record because he doesn't know one bit
 24 about whether or not these policies, this

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1 policy versus this policy versus this
 2 policy deterred any single student. He
 3 doesn't know that. Nor do you, your Honor.
 4 THE COURT: So there is no
 5 smoking gun. Therefore, he has no case.
 6 MS. STURINO: Therefore, there
 7 is no violation.
 8 THE COURT: Okay. Did you ever
 9 hear of a thing called -- there is
 10 different types of evidence, right?
 11 MS. STURINO: Yes.
 12 THE COURT: Direct evidence?
 13 MS. STURINO: Yes.
 14 THE COURT: How about the old
 15 circumstantial evidence? Ever hear about
 16 that one?
 17 MS. STURINO: I have. You know
 18 what, your Honor? It is based on
 19 reasonable inference of evidence that is
 20 contained in the record. That's the --
 21 THE COURT: Let me --
 22 MS. STURINO: -- classification
 23 definition of circumstantial evidence.
 24 THE COURT: Let me tell you a

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1 good one. I have to digress for a minute.
 2 When I was at 26th Street, 25
 3 years ago a good old criminal defense
 4 lawyer and I were working on a murder case.
 5 And it was all circumstantial evidence. I
 6 said to him, hey, you know, we are in the
 7 game here. We have circumstantial
 8 evidence. They didn't have eyewitnesses.
 9 They didn't have the smoking gun. They
 10 didn't have the confession. They had
 11 receipts. They had this. They had that.
 12 They had numbers.
 13 He told me something and it
 14 always stuck with me. He said, well, you
 15 know what, you know what the hardest
 16 evidence to overcome is circumstantial
 17 evidence because it is not biased, it
 18 doesn't tell a story, it doesn't lie. It
 19 is a fact, a receipt, you know, statistics,
 20 whatever.
 21 So there is such a thing as
 22 circumstantial evidence. And that is in
 23 this case, okay, at least from my analysis.
 24 You may disagree with that.

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1 But listen, while you are
 2 talking about intent, okay, this is --
 3 because we just talked about the statute
 4 and that there is no mandate. And it is
 5 left up to the educators to figure out what
 6 it means. All right. Let me read a
 7 portion of the legislative debate.
 8 February 17, 1995, on at that time Speaker
 9 Daniels, Lee Daniels. Senate Bill 19 and
 10 House Bill 207 which is the Charter School
 11 Act that was being debated at the time.
 12 So let's see. Speaker Daniels
 13 recognizes Representative Brunsvold,
 14 B-R-U-N-S-V-O-L-D. "Thank you,
 15 Representative." He goes on to say, "I am
 16 going to work off of Senate Bill 19 if that
 17 is all right?" "Yes." "In the remarks at
 18 the beginning of the bill, legislative
 19 declaration, there is a number of or a
 20 section here dealing with at-risk pupils.
 21 In a charter school situation, what is your
 22 view of how many at-risk students could --
 23 could be in that school?"

And Representative Cowlshaw
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1 responds. "Representative Brunsvold, the
2 legislation says that there have to be a
3 substantial number of at-risk students
4 served by a charter school. Now, the bill
5 does not actually define what substantial
6 means. But I would suppose that not only
7 those people at the local level who are
8 holding the public hearings and going
9 through all the other processes of
10 developing the proposal would realize
11 significant means just what it says, and
12 certainly the State Board of Education
13 would take that into account when it came
14 to the point of trying to determine which
15 charter, which charter proposals to grant."

16 Then State Representative
17 Brunsvold responds, "So what you are
18 saying, when they submit their request for
19 a charter school, they are to put in that
20 proposal the at-risk children that they
21 would like to include in there for
22 approval."

23 The Representative Cowlshaw
24 responds: "Representative Brunsvold, that
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1 is one of the requirements that has to be
2 in their proposal. They not only have to
3 let the State Board know which group or the
4 number of at-risk students they intend to
5 serve, they also have to have a specific
6 part of that proposal saying how they are
7 going to go about doing that."

8 So they are talking about
9 substantial at-risk kids.

10 MS. STURINO: But you know what
11 is interesting about legislative debate,
12 your Honor, is that they can debate all
13 they want. And what wins out at the end of
14 the day is the language that ends up in the
15 statute. And nowhere in this statute does
16 it talk about substantial. Nowhere in this
17 statute does it talk about --

18 THE COURT: Whoa, whoa, whoa,
19 whoa, time out.

20 MS. STURINO: -- substantial
21 at-risk pupils.

22 THE COURT: Time out. 105 ILCS
23 5/27A-8, the valuation of charter
24 proposals. You give preference to those

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1 that are designed to enroll and serve a
2 substantial proportion of at-risk children.

3 MS. STURINO: But that is
4 taken -- you take that out of context, your
5 Honor. The preference between two
6 competing charters that want to fill the
7 same district, the preference is given to
8 the charter that suggests that that is
9 where their emphasis is going to be.

10 THE COURT: Okay. So if two
11 charters --

12 MS. STURINO: We don't have the
13 situation here. It is not applicable in
14 this particular renewal.

15 What is applicable in this
16 renewal and what you recognize from looking
17 at the legislative intent and what we all
18 went to law school to learn is that what
19 happens at the end of the day with
20 legislature is that after all the debate,
21 is when the law is passed that is based
22 upon what can be agreed upon. And what can
23 be agreed upon in this particular statute
24 is the percentage number that is required.

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1 That it has to be substantial. That it has
2 to be the one and only thing that charter
3 schools have to be designated to serve.
4 Otherwise, we wouldn't have those other
5 nine categories of a purpose of a charter
6 school.

7 And because of that and because
8 there is no violation of this law that
9 anyone can point to that Prairie Crossing
10 or that the Commission didn't uncover, it
11 is inappropriate to reverse the renewal.

12 MR. VAZQUEZ: Your Honor --

13 THE COURT: Yes.

14 MR. VAZQUEZ: -- may I add? I
15 know I spoke. On that point, that specific
16 language does not end at --

17 THE COURT: I know. It goes on
18 to say that we can also have charter
19 schools for everybody else, not just
20 at-risk. I know that.

21 MR. VAZQUEZ: I just wanted to
22 point that out.

23 THE COURT: Anything further?

24 MS. STURINO: There is a lot
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1 further. I will rest at this point.
2 THE COURT: Most of it was
3 included this time and last time. So I
4 appreciate and respect that we have kind of
5 touched on everything. I will give you
6 like five minutes to wrap up.

7 MR. PETRUNGARO: Judge, the
8 argument that the Court is somehow
9 restrained from considering legislative
10 debate, the only rule that really matters
11 in statutory construction is to interpret
12 legislative intent. There is an abundance
13 of case law from the Supreme Court that
14 says even where the plain language of the
15 statute is clear but it produces an absurd
16 result, Courts are allowed to ignore that
17 plain language and give meaning to the
18 actual intent.

19 So your Honor is absolutely
20 correct in relying on those legislative
21 debates. And unless there is additional
22 debate that counters what your Honor has
23 read in open court, that is an absolute
24 correct interpretation of the statute.

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1 decision was wrong and, if so, it produced
2 the result of closing Prairie Crossing
3 Charter School. In some sense, that is
4 extraordinary relief, and Woodland
5 recognizes that.

6 Woodland also recognizes that it
7 is more than capable of serving the
8 interests of the students that attend
9 Prairie Crossing that also reside within
10 its school district. These kids would have
11 an education. They would have an excellent
12 education at Woodland. And Woodland is
13 confident that if the Court rules in its
14 favor, there would not be some sort of
15 derivative harm that is of any kind of
16 calculation to these students.

17 I will rest with that.

18 THE COURT: Okay. Well, one
19 thing I will say is and I agree with
20 Mr. Petrungaro's last statement, that this
21 case is extraordinary, and the relief being
22 requested is extraordinary, and the
23 presentation to the Commission which was
24 the what, successor to Illinois State Board

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1 I will also note that
2 Ms. Sturino or maybe Mr. Vazquez, one of
3 their comments about preference in 27A-8
4 being given only amongst competing charter
5 proposals, that is not stated in the law.
6 It is preference that is to be given by the
7 Commission or previously the State Board of
8 Education to a proposal. It says nothing
9 about competing proposals. So I believe
10 that that's taken out of context.

11 MS. JANG: Respectfully, reading
12 the expressed language of 27A-8(a)(3) it
13 says, in evaluating any charter school
14 proposal submitted to it, and it continues,
15 the Charter shall give preference to
16 proposals --

17 THE COURT: All right. We are
18 not going to play Ping-Pong here. Let him
19 wrap up without adding anything else.
20 Thanks.

21 MR. PETRUNGARO: Your Honor,
22 lastly, I will just state that the ultimate
23 issue to be decided by this Court, of
24 course, is whether the Commission's

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1 of Education, that presentation was
2 extraordinary.

3 It is a case of first
4 impression. And why are we in chancery?
5 No wonder. It is extraordinary. Everyone
6 calls it extraordinary.

7 So I have to try to wade through
8 this extraordinary set of circumstances and
9 facts. And I have to go and match up the
10 law with the facts and the facts that exist
11 in the record and, also, with the further
12 limitation of reviewing courts and the
13 Chancery Division reviewing administrative
14 decisions that in many sense their hands
15 are tied.

16 You have all alluded to the
17 standards. You know, is it a de novo
18 review? If it is a mixed question of fact
19 and law, the standard is that the
20 administrative agency's decision must be
21 clearly erroneous. I think that's what we
22 have here is a mixed question of fact and
23 law. Fact being what was presented to the
24 Commission. The law being the Charter

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1 School Law.
 2 You know, I have a vivid
 3 recollection of the last time we were here
 4 arguing the motion to dismiss and also
 5 wading through some pretty voluminous
 6 material and difficult issues of law. I
 7 said back then that this case comes down to
 8 this chart of the enrollment numbers. And
 9 little did I know that sitting here today
 10 five months later I am kind of left with
 11 the same feeling.

12 Now, let me say something about
 13 the statute because I remember when we were
 14 here before talking about the statute. And
 15 the statute created the charter school
 16 concept. As you can -- As I would have
 17 guessed even before I looked at some of the
 18 legislative debate on it, a charter school
 19 concept was likely created or enacted by
 20 the legislators to help kids that weren't
 21 doing too good in school and needed better
 22 progress, better environment, better
 23 whatever you call it. And the term at-risk
 24 children or at-risk pupil is the first

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1 passed in 1996, April of '96. So I would
 2 surmise that the Prairie Charter School was
 3 probably one of the earlier charter schools
 4 in the State of Illinois.

5 So they were authorized in 1999
 6 for five years, and then in 2004 authorized
 7 again for another five years. In 2009,
 8 authorized again for another five years.
 9 In 2014, authorized again. That matter is
 10 here now before me. Now what I want to do
 11 is talk about this record.

12 The Charter School Agreement
 13 that I am looking at in Exhibit 1 just as a
 14 note, Page 1, effective July 1, 2014, this
 15 is the agreement. And right in the
 16 preamble, the recitals, front page of the
 17 Charter School Agreement talks about the
 18 Charter School Law was enacted for the
 19 following purposes, and it lists the
 20 statutory reference language. No. 2 is "to
 21 increase learning opportunities for all
 22 pupils with special emphasis on expanded
 23 learning experiences for at-risk pupils."

24 This 2014 contract that was
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1 definition under 27A-3 in the Charter
 2 School Law.
 3 It reads as follows: At-risk
 4 pupil means a pupil who because of
 5 physical, emotional, socioeconomic or
 6 cultural factors is less likely to succeed
 7 in a conventional educational environment.

8 I am not going to go through the
 9 whole Charter School Law, but I still have
 10 my notes from the last time. And the term
 11 at-risk children or pupil appeared six
 12 times in the legislation, six times. And
 13 that debate portion that I read to you
 14 underscores the concern of the legislators.
 15 It is in there. So that's the law. That's
 16 the background. That's what the law says.

17 Now, how does that law plug into
 18 these facts? So the legislators envisioned
 19 these charter schools to kind of hold the
 20 at-risk children, and not just them, but
 21 emphasis on them, up by their bootstraps in
 22 trying to give them a better opportunity.
 23 And in 1999 the Prairie Charter School was
 24 authorized the first time. The Act was

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1 entered into had renewal conditions. We
 2 all know about that. There were two
 3 conditions, that Prairie Charter School
 4 must develop a detailed plan for robust
 5 outreach for the educationally
 6 disadvantaged on or before May 31, 2014.
 7 And then the second condition was something
 8 about the management, which I didn't think
 9 was necessarily pertinent or critical to
 10 our discussion.

11 I will tell you as I plotted
 12 through this with the charts and the data,
 13 one thing was certain to me. That is,
 14 there is a dizzying amount of analysis,
 15 testing, evaluation, proposals,
 16 philosophies, standards, you name it. Now
 17 I know why the discussion exists out there
 18 about all the mandates on education and
 19 what they are up to. And I didn't know if
 20 I found it very helpful, I will tell you.
 21 I don't see how the board could have found
 22 it very helpful because it tells a story
 23 that, plain and simple, yes, this school is
 24 off the charts. Yes, this is an excellent

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1 school. Yes, the academics are 95, 93, 94
2 percent. Yes, yes, yes to all of those. I
3 mean, it could have been put on one page.
4 That really wasn't our issue. Our issue is
5 not that. Everybody knows that. And so it
6 took me a while to wade through all that.

7 The elephant in the room is who
8 is in that group that is hitting home runs
9 and hitting the ball out of the park at the
10 Prairie Crossing Charter School which is a
11 charter school that is authorized by the
12 State, given money by the State, and
13 educates a portion of the kids in that
14 School District.

15 On the decision by the Board --
16 I mean, another thing is they create all
17 these analytical standards and
18 accountabilities. And that's all in there
19 too, academic domain, the financial domain,
20 the organizational domain. And this whole
21 case is about the people that aren't in
22 that school. That's what this case is
23 about. And how is that fact, see if I can
24 get this word right, juxtapositioned

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1 against the State statute that created the
2 charter school world. And you think that
3 if you brought an enrollment chart like
4 this to the legislators, either past,
5 present, or future, the enrollment chart
6 with the numbers that we know exist here,
7 1.8 percent low income students at the
8 charter school versus 30 percent
9 district-wide, if you brought that to the
10 legislators, you think that's what they
11 envisioned when they passed the enabling
12 statute to create charter schools?

13 Let's even go down further. If
14 you brought that to the Lake County Board,
15 brought it to the municipality, brought it
16 to anywhere, any legislative body in the
17 year 2015 and you showed them this chart, I
18 will let you folks use your imagination on
19 that.

20 I want to talk about the
21 hearing, and that's April 15, 2014. We
22 have a transcript of that hearing. And
23 Mr. Petrungaro has alluded, even though it
24 is not his primary argument, that it wasn't

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1 really a, I will use my words, maybe
2 evenhanded or level playing field. I read
3 it.

4 And the first witness was -- I
5 was trying to figure out is there an
6 advocate. Is this an advocacy hearing? Is
7 this just a fact hearing, or is someone --
8 is it an adversarial hearing? After I read
9 it, I concluded that it was -- this is not
10 going to play into my decision. But to me,
11 it was -- I am trying to choose my words
12 carefully -- it was very well lopsided, let
13 me put it that way, orchestrated. It seems
14 to me that the Commission did most of the
15 homework for Prairie Charter School. I
16 would have thought it would be the other
17 way around. If the charter school is
18 trying to get re-upped, I know they
19 presented a big plan and all that. But the
20 first witness was Karen Washington. She is
21 the staff -- I am sorry -- deputy director.

22 Just to give me a little flavor,
23 she talks about, on Page 3, that the school
24 is doing well. Their financials are good.

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1 Their scores are good. But the staff
2 received a few questions regarding Prairie
3 Crossing's demographics and their outreach.
4 Therefore, staff revisited these items with
5 Prairie Crossing. So we asked, how does
6 Prairie Crossing Charter School do in terms
7 of educating educationally disadvantaged
8 children? What were the details of Prairie
9 Crossing's outreach and is Prairie Crossing
10 Charter School willing to do more in this
11 area? And their answer was a resounding
12 yes.

13 Then she talks about how they do
14 give transportation to all the students.
15 As a matter of fact, it is in their flyers
16 that if the parents of a student cannot
17 reciprocate in any type of carpooling, then
18 they will share transportation for any
19 students. Then she talks about the numbers
20 a little bit.

21 Again, this is their opening
22 statement to the Commission. She states,
23 thus, while the significant difference in
24 demographics is limited to one district and

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1 only to certain categories, referring to
2 Woodland, in that district, nonetheless,
3 the staff raised these differences with
4 Prairie Crossing and asked that the
5 school -- asked that the school, whether it
6 was willing to reevaluate its outreach plan
7 to date and do more. Prairie Crossing
8 agreed to do more, responding with
9 professionalism, genuine openness, and
10 substantive thoughtfulness.

11 These are a couple of the
12 examples. On February 25, the Board
13 unanimously adopted a board resolution to
14 increase opportunities for educationally
15 disadvantaged students by increasing
16 outreach efforts, adding the goal to the
17 strategic plan and devoting staff as well
18 as allocating resources to the goal.

19 Is that the biggest bunch of
20 gobbledegook you ever heard? So let me now
21 track that resolution that Ms. Washington
22 refers to.

23 So the Board ran back when the
24 heat was on, the Prairie Crossing Board

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1 will allocate resources and assist in the
2 efforts of reaching a wide range of
3 prospective staff and students for
4 inclusion at PCCS.

5 What is this? Is that anything
6 concrete? Is that anything other than what
7 is in this record from 1999 to 2014? I
8 don't see how it is. Okay, so that's --

9 Now Ms. Washington calls the
10 attention of the Commission to this. Don't
11 worry. Now they have seen the light. Now
12 they are going to do a resolution.

13 Continuing with Ms. Washington's
14 testimony, in March of 2014, Prairie
15 Crossing Charter School also submitted a
16 preliminary plan that included the
17 following, lottery alterations. They are
18 considering these -- they are focusing on
19 the possibility of lottery alterations.
20 They were considering their transportation
21 system, possible increased partnership as
22 well as an evaluation of their current
23 outreach plan.

24 So Ms. Washington presented this
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1 that is. This is at the record 518, Page
2 518. Here is their resolution to put out
3 the fire. Board of Directors of Prairie
4 Crossing Charter School resolution
5 regarding increasing opportunities for
6 educationally disadvantaged students. We,
7 the Board of Directors, etcetera, now,
8 therefore, be it resolved the Board of
9 Directors as follows:

10 No. 1, the Board of Directors of
11 Prairie Crossing Charter School resolves to
12 increase efforts to provide opportunities
13 for low income students, students with
14 disabilities, homeless students, migrant
15 students, and English language learners to
16 join the PCCS community. Prairie Crossing
17 Charter School will include increasing
18 opportunities as a principal component
19 within its strategic plan. The executive
20 director will be charged to create and
21 execute goals in a strategic plan, and the
22 Board of Directors will monitor the efforts
23 and outcomes of the goals on a quarterly
24 basis. Secondly, the Board of Directors

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1 to the Board. And then Mr. Deigan,
2 D-E-I-G-A-N, he is the executive director,
3 I guess. I wanted to read some of his
4 testimony into the record.

5 He is talking about the school.
6 Being outdoors with a hands-on
7 experience -- this is on Page 174 of the
8 record. Being outdoors -- Line 16. Being
9 outdoors with a hands-on experience is part
10 of our unique approach at Prairie Crossing.
11 And our kids are outside nearly every day.
12 Through the ecological lines, we are able
13 to show that all lines are connected.
14 Through that understanding of these
15 relationships between people, planet and
16 all living things help to strengthen our
17 community. Being located in Prairie
18 Crossing, one of the nation's leading
19 conservation communities, provides valuable
20 resources and opportunities that other
21 schools have to organize field trips for.
22 For us, it is literally in our front yards.

23 Now, the record Page 181,
24 Commissioner Wharton, Line 10, he talks
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1 about one of the unique aspects and
2 experiences of charter schools have been
3 that people who are confined to less than
4 adequate educational experience for their
5 kids were given an opportunity and were
6 given an opportunity for an excellent or
7 better future for their kids, they took
8 advantage of it. They came. They got in a
9 lottery.

10 Prairie Crossing is a little bit
11 different. In spite of all the Blue
12 Ribbons, in spite of all the accolades, in
13 spite of all the praise, for some reason,
14 poor people, some minorities, are really
15 hesitant to enthusiastically get involved
16 with this charter school. What do you
17 think the reason is for that? And they put
18 that question to Mr. Deigan.

19 Then Commissioner followed up
20 with this, what is it keeping people who
21 should be banging and trying to tear your
22 doors down from coming. Mr. Deigan says,
23 sir, I can't answer that. I don't know the
24 exact reason for that statement. I don't

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1 know.
2 Further on Page 186 of the
3 record, Mr. Deigan, acknowledging we have
4 to do more work. In addition to that, we
5 do have to do more work. More rigorous
6 approach in getting robust approach, that
7 seems to be the magic word in their change
8 in approach, it is going to be a robust
9 approach. Before it was just a regular
10 approach. But now it is a robust approach
11 getting the word out to the far reaches to
12 everyone in our district. We are and some
13 say we are the best kept secret. Although,
14 we don't try to keep it a secret. So we
15 are going to do a lot of focus and we are
16 going to reevaluate and reassign staff, and
17 the budget's moving forward very quickly.

18 Commissioner Robbins on Page
19 188: I have a question along the same
20 lines. I am concerned as well about the
21 transportation and the outreach policies
22 which seem to have for the life of the
23 school served to exclude rather than
24 include everyone and to discourage rather

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1 than encourage. I guess I am gratified to
2 see that now as a condition for renewal
3 your board has taken some steps to increase
4 opportunities for at-risk students through
5 your transportation, through your outreach.

6 But I guess my question is -- I
7 believe it is our concerns that have been
8 raised in 2004, in 2009, why has there not
9 been greater efforts made towards this?
10 What has your board -- why has your board
11 not taken greater steps in the past, and
12 how is it going to be doing it different
13 now?

14 Well, they explained how they
15 are doing it different. They passed a
16 resolution. Their transportation policy is
17 the same. I haven't seen any amendment of
18 the transportation policy in the record.
19 So they passed the resolution in 2014.

20 Commissioner Wharton, again on
21 Page 191, he asks, I don't know if you
22 reviewed the 2003 ISBA rating for Prairie
23 Crossing. If you did -- he is talking
24 about 2003. If you did, I think you have

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1 the groundhog day feeling that I have right
2 now. As you have been -- as has been said
3 by my partner on the board, these were all
4 issues that were litigated back in 2003. I
5 have two things I will pull up, just two
6 amongst some of the ones that are still at
7 issue with the school right now.

8 No. 1, in 2013 the ISBA made the
9 following recommendation to Prairie
10 Crossing, improve transportation by
11 planning for a stipend in the budget,
12 develop a feasible alternative plan than
13 carpooling, and include the transportation
14 plan in news releases and applications for
15 admission to the charter school. Is that
16 complied with? I didn't see any indication
17 that transportation policy was reflected as
18 recommended in 2003 by the ISBA.

19 Page 194, Commissioner Wharton
20 again, in 2003 the ISBA basically charged
21 you -- was concerned enough to raise these
22 issues about transportation. How do you
23 explain 11 years later being in a
24 situation, for instance, Woodland in 2013

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1 indicated in the transportation funds they
2 paid over \$4 million and Prairie Crossing
3 indicated zero. How can you indicate there
4 is a serious willingness to deal with what
5 was recommended back in 2003 if right now,
6 I mean, you don't even have any advertising
7 costs? It would seem that something would
8 be charged to that particular fund to show
9 that you are making an effort to deal with
10 what the young lady said back there,
11 serious issues about transportation as
12 being an impediment to people being able to
13 get their kids to school.

14 Mr. Deigan then responds on Page
15 195, Line 13. He says, we have
16 investigated opportunities for
17 transportation. We haven't cracked that
18 nut yet. But we are going to continue to
19 work on that. And we are starting to do
20 some of the legal work right now. And I
21 believe that will be part of our submittal
22 on the May 14 deliverable that Karen was
23 talking about. But I don't have those
24 answers right now today in 2014.

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1 which is the public communications to the
2 Commission, Page 988 of the record. I am
3 going to read a couple E-mails.

4 "Ladies, it is stunning to me
5 that no meaningful change has ever been
6 required of Prairie Crossing Charter School
7 to remedy its quasi-private status. This
8 school absolutely reeks of insiderism,
9 nepotism, haves and have nots. The fact
10 that the test scores are good is not
11 justification to allow a select group of
12 wealthy homeowners to run rush over
13 outsiders."

14 Page 990 of the record, also an
15 E-mail from someone talking about the
16 public comment. "These numbers of the
17 people who appeared there demonstrate the
18 geographic and consequently socioeconomic
19 concentration in this charter school. Of
20 the 15 community members providing public
21 comment, more than half, 8 are residents of
22 the Prairie Crossing subdivision.
23 Residents of the subdivision have a vested
24 interest in the success of the school as

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1 Page 198, again Mr. Deigan
2 trying to explain what they are going to
3 do, I think the intent for the school is to
4 work with your staff, to meet those or to
5 establish those benchmarks to see how
6 thorough those benchmarks are. I think the
7 intent of the Board and the school is to
8 dedicate somebody. Personally I will be
9 100 percent accountable for the performance
10 of the outreach in efforts to increase this
11 effort. I can't answer that today who that
12 will be or how that will look, but I will
13 be able to answer to that in our May
14 submittal to the plan that goes May 14, I
15 think was the submittal.

16 Then Commissioner Guzman asks
17 him, on Page 199 he asks Mr. Deigan, Jeff,
18 if I heard you, you are accountable. But
19 the how is not yet determined. He answers,
20 not completely defined, yeah.

21 That was the three-hour hearing
22 or two-and-a-half-hour hearing, some of
23 what I read into the record.

24 Now I am going to Exhibit 17
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1 the premier school of choice for their
2 children within walking distance of their
3 home but also as an amenity of the
4 community. As the community's website
5 states, 'which enhances the fair market
6 value of their utopian community home
7 investments.' The concentration of
8 residents on our School Board, 6 of 9
9 members, most certainly provides the
10 perception, if not a reality, that this
11 school is run by the subdivision for the
12 benefit of the subdivision.

13 Further, the perception that any
14 School Board decisions could be influenced
15 deliberately or otherwise by their personal
16 financial interests in the neighborhood is
17 apparent.

18 It is all very nice and very
19 friendly, but it is not at all reflective
20 of a legitimate public school with a nearly
21 \$4 million budget funded by tax dollars
22 that would otherwise be directed to
23 Woodland and Fremont districts."

24 This is on Page 996 of the
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1 public comment. Quoting a parent and
2 former board member, Laura Elizabeth Fay,
3 had a different concern saying more efforts
4 should be made to increase diversity at the
5 school. She said, it appears the school
6 has an abundance of pupils from the upscale
7 Prairie Crossing subdivision in Grayslake
8 bordering the campus. Fay contended the
9 lack of transportation services deter
10 minority children within Fremont and
11 Woodland boundaries from attending the
12 charter school if they are not within
13 walking distance.

14 So I am asking how this can be a
15 public school of choice when so many
16 children in our district cannot choose to
17 attend? That's a former Prairie Crossing
18 board member.

19 All right. Well, let me add a
20 comment about the lottery thing which
21 really had me a little puzzled for a while.
22 I am thinking that's problematic, which it
23 is. It is in the law.

24 So just like the transportation
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1 issue when we say don't worry, we fixed it,
2 I waded through the record here to see -- I
3 assume the argument is that because we have
4 a lottery system, there is a lot of these
5 low income folks and others in these
6 categories, at-risk that we would define,
7 that can't get in because their lottery
8 numbers aren't called. I thought, well,
9 yeah, that is a fair and legal sound
10 argument.

11 So all these years we have a
12 lottery. I saw some chart about the
13 lottery here. But how about what's the
14 makeup of those people that are in the
15 lottery. There is nothing in the record,
16 nothing. There is not like a year where
17 here we had a lottery and we had 60 people
18 for 20 spots. And here is the demographic
19 makeup of these 60 students and, look, we
20 had this many that were, you know, low
21 income. We had this many were English
22 second language. We had this many maybe
23 were Hispanic or African American.

24 It is not in there. So I mean,
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1 this is another example of talk. I mean,
2 just because somebody says something
3 doesn't make it true.

4 And the criteria, Page 742 of
5 the record, Section B, enrollment and
6 lottery outreach, this is out of the
7 2012-13 accountability report from the
8 charter school. Our admission criteria
9 will continue to achieve a student
10 population generally reflective of the
11 larger population including children of low
12 income families, limited English
13 proficiency, students of different ethnic
14 backgrounds, and those with special
15 education needs. Therefore, the school,
16 talking about the lottery, taken
17 affirmative steps to increase the
18 representation. There is nothing in this
19 record about students that got bumped from
20 the lottery, those who would have upped
21 their low income group or any of the other
22 at-risk pupils.

23 Well, it reminds me -- I think I
24 am just wrapping up. It reminds me of --
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1 what comes to mind is the old saying, I
2 don't know if I have it correctly. But one
3 asks what is the definition of insanity.
4 Doing the same thing over and over again
5 and expecting to get a different result.
6 This kind of reminds me of that little
7 saying.

8 We have volumes of data here
9 about how good the school is. We all know
10 that. We have a lip service transportation
11 policy. We have lip service of
12 inclusiveness and reaching all these
13 at-risk population. Smoke and mirrors,
14 puffing, camouflage. That's how I would
15 characterize what I see in this record.

16 That's not -- you know what? My
17 role here is I can't substitute my judgment
18 or my viewpoint or my -- that I would have
19 done something different from the Board.
20 That's why I loaded the record with facts.
21 The facts in this case, to me, are plain.

22 This is not what the legislature
23 intended in 1996, April 10, I believe, 1996
24 when they passed this law. And I disagree
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1 with the argument that we can't figure out
 2 what the law is. I looked at it. It says
 3 what it says. It is not a mandate. I am
 4 not buying that. It is not a mandate.
 5 Anybody that has common sense
 6 can look at the law. Anybody that has
 7 common sense knows what the law was drafted
 8 for. Anybody that knows how political
 9 creatures, legislators and others, go down
 10 to Springfield and do their job, they do it
 11 because they are trying to fix something or
 12 people want it or their voters want it.
 13 That is what was going on there. They went
 14 down, created a Charter School Act to help
 15 different types of education, not to
 16 exclude people that don't incorporate all
 17 the at-risk kids. That argument when you
 18 have 1.8 percent of low income and 30
 19 percent district-wide, I mean, you don't
 20 need a Blue Ribbon committee to figure that
 21 one out.

22 This record -- first of all, I
 23 commend the Commission for their vigorous
 24 debate. If it was a novel and I didn't

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1 know the end of the story when I was
 2 reading it, I would be like okay, they are
 3 going to do something here. But they
 4 didn't. 5-to-4 they didn't. But they
 5 almost did.
 6 And how difficult is this? This
 7 case is not going to end here. But you can
 8 tell by what I have read into this record
 9 that this is a clearly erroneous result
 10 from the purpose of what is in the record,
 11 the facts and the law. You can't just come
 12 in and say I did it and then have the
 13 Commission accept that as a fact. You
 14 didn't do it. You didn't do it in 2003.
 15 You didn't do it in 2005. You didn't do it
 16 in 2009. You didn't do it in 2014. And
 17 when the clock ran out, they gave them more
 18 time.

19 They spoon-fed them. They
 20 spoon-fed them. Then they ran around and
 21 did a resolution and waved the resolution
 22 in the air, don't worry, I fixed it, I
 23 fixed it. Kind of reminds me of, in a
 24 different life if I had one, something bad

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1 would happen with the government. And the
 2 leader of government would be asked by the
 3 press, you have to fix this. Don't worry,
 4 I fixed it. Well, what did you do? I
 5 fired the guy that was in charge. Then the
 6 press would just go away. Wow, who does
 7 that?

8 That's what they are just saying
 9 here, I fixed it. Don't worry. It is
 10 done.

11 This is not done. There is
 12 nobody -- you go down and find any, I said
 13 this before, any legislator, any person.
 14 You show them that chart and you ask them
 15 if that's what the Charter School Law was
 16 supposed to be. You know what the answer
 17 would be. So that's my finding.

18 This is a clearly erroneous
 19 decision based on the facts and the law and
 20 what's in the record. And I am left with
 21 the firm conviction that a mistake has been
 22 committed. That's it.

23 So get onto the reviewing court.
 24 It is a final and appealable order, right?

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1 MS. STURINO: Yes.

2 THE COURT: Are we all done?
 3 Need anything else?

4 MS. STURINO: I think we asked
 5 for dismissal of Counts 2, 3, 4 because
 6 they were pled in the alternative.

7 MR. PETRUNGARO: They were pled
 8 in the alternative, your Honor. I believe
 9 your ruling renders them moot.

10 THE COURT: All right.

11 MR. PETRUNGARO: The only thing
 12 that has not been addressed today is the
 13 request for attorneys' fees under our claim
 14 that the Administrative Procedure Act has
 15 been violated. If your Honor wants to
 16 address that through a prove-up, we can do
 17 that.

18 THE COURT: I am not addressing
 19 that now. My head is spinning.

20 MR. PETRUNGARO: I am not
 21 prepared to address it now anyway.

22 Otherwise, we would need an order --

23 THE COURT: Just for the reasons
 24 stated on the record.

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1 MR. PETRUNGARO: -- allowing
 2 this to go up.
 3 THE COURT: Right. Go on up.
 4 That's why I wanted to get this done fast.
 5 I don't want to sit on this for three
 6 months and write a long, loquacious ruling.
 7 MS. STURINO: Any requests for
 8 fees, they should be stayed since you just
 9 gave us 308(a) language.
 10 THE COURT: What did I give you?
 11 MS. STURINO: 308(a), final and
 12 appealable order.
 13 THE COURT: Isn't that 304(a)?
 14 MR. PETRUNGARO: Typically 304.
 15 308 is when we have other issues remaining
 16 to be resolved.
 17 MS. STURINO: Just got them
 18 done.
 19 MR. PETRUNGARO: If you are
 20 staying that issue, then that would be --
 21 THE COURT: Final and
 22 appealable, that's all I want because --
 23 then they don't review what I say anyhow.
 24 It is purely the administrative record,

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1 which always amazes me. So you will have
 2 three people looking at it, rather than
 3 one.
 4 Thanks for everybody's patience
 5 and hard work.
 6
 7 (After a short recess, the
 8 proceedings resumed as
 9 follows:)
 10
 11 THE COURT: What's our issue?
 12 MR. PETRUNGARO: The
 13 Plaintiff -- I am sorry. The Defendants
 14 have requested that your Honor's ruling be
 15 stayed pending review by the Appellate
 16 Court.
 17 MS. STURINO: In other words,
 18 that the school isn't disbanded and the
 19 students kicked out pending what we all
 20 know is going to be a venture in front of
 21 the Appellate Court and possibly the
 22 Illinois Supreme Court.
 23 THE COURT: Right. Why don't we
 24 let the Appellate Court enter the stay?

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1 That's my feeling. Let the -- you are
 2 going to the Appellate Court. Let them
 3 enter the stay.
 4 MS. STURINO: Because by the
 5 time the briefing is done --
 6 THE COURT: All you have to do
 7 is make a motion for a stay.
 8 MS. STURINO: Motion for a stay?
 9 THE COURT: Yes.
 10 MS. STURINO: Stay of your
 11 order?
 12 THE COURT: Yes. Right?
 13 MS. STURINO: I guess --
 14 THE COURT: You are appealing.
 15 You are going to file an appeal, right?
 16 MS. STURINO: Yes.
 17 THE COURT: Notice of appeal
 18 right away. Then go in on a motion to stay
 19 in front of the Appellate Court. If that
 20 turns out to be a procedural problem, let
 21 me know.
 22 MR. VAZQUEZ: I believe, your
 23 Honor, that we are supposed to make the
 24 request to you first and then to the

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1 Appellate Court.
 2 THE COURT: Well, I am reading
 3 the rule here. This is a non-money
 4 judgment. Except in cases provided for in
 5 Paragraph B on notice and motion. An
 6 opportunity for opposing party to be heard,
 7 the Court may also stay the enforcement of
 8 any judgment other than a judgment --
 9 portion of a judgment for money or the
 10 enforcement force and effect of appealable
 11 and interlocutory orders or any other
 12 appealable judicial or administrative
 13 order.
 14 MS. STURINO: Is that the
 15 Appellate rule?
 16 THE COURT: No, that's mine.
 17 That's Rule 305(b).
 18 Now, the Appellate rule says
 19 except in cases provided for in Paragraph E
 20 of this rule, application for a stay
 21 ordinarily must be made in the first
 22 instance to the circuit court, right. The
 23 motion for a stay may be made to the
 24 reviewing court or to a judge thereof. But

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1 such a motion must show that the
2 application to Circuit Court is not
3 practical or the Circuit Court has denied
4 an application or has failed to afford the
5 relief that the applicant has requested and
6 must be accompanied by suggestions in
7 support of a motion and a supporting
8 record.

9 MS. STURINO: So we have to make
10 a motion here first.

11 THE COURT: You have to make the
12 motion here first.

13 MR. PETRUNGARO: If your Honor
14 denies it, then they have the opportunity
15 at the Appellate Court.

16 THE COURT: Right.

17 MS. STURINO: With a lot of --

18 THE COURT: I will tell you
19 what. As long as we are, you know, we got
20 the procedural trail in front of us and I
21 am reading the rule, I think you should --
22 it says on notice and motion an opportunity
23 for opposing party to be heard. So why
24 don't you put it in a motion?

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1 their motion, or are we setting up a
2 briefing schedule?

3 MS. STURINO: Setting up a
4 briefing schedule.

5 MR. PETRUNGARO: I have no idea
6 what is going to be in their motion.

7 MS. STURINO: Right.

8 THE COURT: Right.

9 MS. STURINO: So how long do you
10 want?

11 THE COURT: Let's give you a
12 date for presenting the motion. How is
13 that? You don't have to spindle it up. Or
14 we just leave today, or you figure it out
15 when you get it together and put it on the
16 9:30 call.

17 MR. PETRUNGARO: The morning of
18 the 13th is fine if you want to do a clerk
19 status.

20 MR. VAZQUEZ: Your Honor, not
21 that I want to belabor this any longer, so
22 your ruling today, is it going to be at
23 least stayed until this motion or what
24 is -- I just want to be clear because, in

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1 MS. STURINO: Make a motion.

2 THE COURT: That will give me
3 time to clear my head too and everybody
4 else. You will have time to respond. So
5 just --

6 MS. STURINO: Can we --

7 THE COURT: Do you want a date?
8 Want me to give you a date now?

9 MR. VAZQUEZ: Yes.

10 THE COURT: Whatever is easier
11 for you.

12 MS. STURINO: I am going on
13 vacation tomorrow.

14 THE COURT: You don't have to
15 spindle it if I give you a date.

16 MR. VAZQUEZ: Okay.

17 MS. STURINO: If we can have our
18 motion filed by -- is the 13th okay, your
19 Honor?

20 THE COURT: Sure.

21 MS. STURINO: April 13.
22 Response due -- what do you want?

23 MR. PETRUNGARO: Are we coming
24 in for a clerk status for the filing of

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1 the meantime, we do have parents and
2 students attending our school.

3 THE COURT: Right.

4 MR. VAZQUEZ: If your ruling
5 gets issued before there is a stay, that
6 would cause obviously concerns for the
7 parents and students.

8 THE COURT: Well, you as lawyers
9 know you are going to appeal this and it is
10 going to go somewhere.

11 MR. VAZQUEZ: Right.

12 THE COURT: So I mean, I would
13 like to see your motion and contemplate
14 this and give some thought to it and shift
15 gears and change my looking at this record
16 as I have been for the last week or so.

17 MR. PETRUNGARO: Your Honor, I
18 think the parties can agree that the effect
19 of your Honor's motion, even if it is not
20 stayed, is effective beginning the '15-16
21 school year. I don't think anyone,
22 including the plaintiffs in this courtroom,
23 expected that the Prairie Crossing kids
24 were going to be at Woodland tomorrow.

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1 THE COURT: No. You know --
 2 MS. STURINO: Why won't you
 3 agree to the stay while we appeal this to
 4 the Appellate Court?
 5 MR. PETRUNGARO: Are you asking
 6 me?
 7 MS. STURINO: Yes, I am asking
 8 you.
 9 MR. PETRUNGARO: Because there
 10 is another 3 and a half million dollars
 11 that Woodland is potentially out next year.
 12 We know how slow cases can move through the
 13 Appellate Court. I don't understand why
 14 this motion, if you are going to take it up
 15 to the Appellate Court, why it couldn't be
 16 done on an expedited schedule in the
 17 Appellate Court. It is mid March.
 18 THE COURT: I will tell you
 19 what. Here is my suggestion. Motion it
 20 up. Spindle it up at 9:30.
 21 MS. STURINO: All right.

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1 financially interested directly or
 2 indirectly in this action.
 3 IN WITNESS WHEREOF, I have set
 4 my hand.
 5
 6
 7
 8

Carrie McCann

Carrie McCann
 Certified Shorthand Reporter
 Certificate No. 84-004374

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1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF L A K E)
 4
 5
 6
 7
 8 I, Carrie McCann, CSR,
 9 Certified Shorthand Reporter, and a notary
 10 public in and for the County of Lake and
 11 State of Illinois, do hereby certify that
 12 the testimony given in the proceedings
 13 before THE HONORABLE JUDGE THOMAS ALLEN on
 14 March 23, 2015 was recorded
 15 stenographically by me and transcribed by
 16 me.

17 I FURTHER CERTIFY that the
 18 foregoing transcript of said proceedings is
 19 a true, correct, and complete transcript of
 20 the testimony given by the said witnesses
 21 at the time and place specified.

22 I FURTHER CERTIFY that I am not
 23 a relative or employee or attorney or
 24 employee of such attorney or counsel, or

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