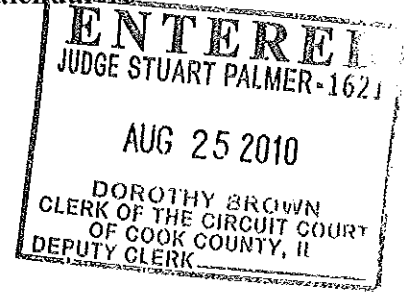


IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

MOSE VINES ACADEMY LOCAL )  
SCHOOL COUNCIL *et. al.*, )  
Plaintiffs, )  
 )  
v. )  
 )  
BOARD OF EDUCATION OF THE )  
CITY OF CHICAGO and ARNE DUNCAN )  
 )  
Defendants. )

No. 08 CH4912

Calendar 10



Memorandum Opinion and Order

This matter comes before the Court on Defendant, Board of Education of the City of Chicago's ("Defendant") Motion for Summary Judgment on the First Amended Complaint. The Court previously dismissed, under 735 ILCS 5/2-619, Plaintiffs' original claims that the Illinois School Code, 105 ILCS 5/34 *et. seq.*, required Mose Vines Academy ("Mose Vines"), the School of Technology ("Technology"), and the School of Entrepreneurship ("Entrepreneurship"), all Small Schools, to be governed by elected Local School Councils ("LSCs") rather than Board-appointed advisory LSCs. (Judge Hall Decision, April 11, 2008). The Court found that the Small Schools were exempt from the elected LSC requirements under 105 ILCS 5/34-2.4b.

**I. BACKGROUND**

The original complaint was filed by the LSC's of Mose Vines, Technology and Entrepreneurship, as well as Reverend Charlie Walker, a member of the Mose Vines LSC, (hereinafter collectively referred to as "Plaintiffs"). The Plaintiffs requested a declaratory judgment (Count I), a writ of mandamus (Count II), and a writ of *certiorari*, (Count III), seeking to enforce legislation relating to these Small Schools that would require the Small Schools to be governed by elected LSCs as opposed to Board-appointed advisory LSCs. The Defendant

moved to dismiss the original complaint arguing that the Plaintiffs did not have a clearly protectable right to an order requiring LSC elections because the School Code expressly exempts “small schools,” schools at correctional and juvenile detention facilities, and certain “alternative schools” from the requirements of the elected LSCs. (105 ILCS 5/34-2.4b). The Court analyzed the legislative history of Section 34-2.4b of the School Code and found in favor of the Defendant’s interpretation and granted the Defendant’s motion to dismiss.

## **II. PARTIES’ ARGUMENTS**

In the motion for summary judgment currently before the Court, the Defendant argues that the First Amended Complaint restates the Plaintiffs’ original claims, and also seeks to extend the claims to four more schools. The schools include: Pershing West Magnet School, a Small School (“Pershing West”), Suder Montessori Magnet School, a Small School, (“Suder”), Williams Preparatory School of Medicine, a Small School, (“Williams Prep”); and Carver Military Academy, an Alternative School, (“Carver”). In addition, the Amended Complaint adds nine new Plaintiffs including, three advocacy groups (Parents United for Responsible Education, Chicago Westside Branch of the NAACP, and Southside United LSC Federation); school-attendance area residents (Steven Ross, Valencia Rias, Larissa Bilous and Darryl Gibson); Former LSC members (Rias and Ross named above); a parent (LaJoyce Hall); and a school staff member (Jessica Benuzzi), (collectively, “Plaintiffs”).

Defendants argue that the Court’s previous finding that Section 34-2.4b exempts Small Schools from elected LSC governance applies to these other Small Schools including Williams Prep, Pershing West and Suder. Defendant further argues that the exemption also extends to Carver, as an Alternative School. Further, Defendant argues it received applications in regard to

each of these schools for Small School designation and the Board appropriately closed Carver for the purpose of reopening it as an Alternative School.

The Plaintiffs claim that Section 34-2.4b only exempts certain small and alternative schools from elected LSC governance. Plaintiffs argue that where no application was made for small or alternative school designation, and where the designation is applied to a building with a legally constituted LSC, the exemption does not apply. According to Plaintiffs, the named Small Schools did not apply for the small school designation and Carver was designated as an Alternative School when a legally constituted LSC was already in existence, and therefore, the exemption does not apply.

### **III. DISCUSSION**

The issues before the Court in the First Amended Complaint (“Complaint”) are a reassertion of the same claims stated in the original complaint regarding the Small Schools (Mose Vines, Technology and Entrepreneurship), as well as against three additional small schools: Williams Preparatory (“Williams Prep”), Suder Montessori (“Suder Montessori”), and Pershing West Magnet School (“Pershing West”). The Complaint also addresses one alternative school, Carver Military Academy (“Carver”), and states that the designation of Carver as an Alternative School was applied in violation of Section 34-2.4b of the School Code as there was a legally constituted LSC in existence. The Court finds as follows:

(1). The Court finds no reason to disturb the ruling made by Judge Hall on April 11, 2008 which held that the initial Plaintiff Small Schools are exempt under Section 34-2.4b from the statutorily prescribed Local School Council elections. Further, the record submitted to the Court contains evidence that written proposals were submitted by members of the respective school communities to the Board requesting that Jean Baptiste Point DuSable High School,

Suder Elementary School, and Douglas Elementary School be converted to Small Schools. The result of those proposals was the opening of Williams Prep, Suder, and Pershing West, respectively. (See, Exhibit A to the Board's Motion which details the proposals submitted by the named small schools; B.R. 06-0222; B.R 04-0623 Ex-6; and 04-0623 Ex-4). The language of Section 34-2.4b exempts from elected LSC governance "attendance centers that have applied for and been designated as 'Small Schools' by the Board..." The Court further finds that nothing in the Statute requires the LSC to be the applicant for small school designation. Therefore, the analysis found in the April 11, 2008 order applies not only to the originally named Small Schools, but also to Williams Prep, Suder, and Pershing West.

(2). Section 34-2.4b of the Statute states in relevant part:

The provisions [which require elected LSC governance]...shall not apply to attendance centers that have applied for and been designated as a "Small School" by the Board, the Cook County Juvenile Detention Center and Cook County Jail schools, nor to the district's alternative schools for pregnant girls, nor to alternative schools established under Article 13A, nor to a contract school, nor to the Michael R. Durso School, the Jackson Adult Center, the Hillard Adult Center, the Alternative Transitional School, or any other attendance center designated by the Board as an alternative school, provided that the designation is not applied to an attendance center that has in place a legally constituted local school council, except for contract turnaround schools...

105 ILCS 5/34-2.4b. (Emphasis added reflecting the proviso language at issue).

The Defendant's decision to designate Carver as an Alternative School does not violate the above underlined proviso language. As Defendant states in its Motion, alternative schools are exempt from the School Code provision requiring LSC elections so long as the designation of the school was not applied to an attendance center that had a legally constituted LSC in place. Carver did not have a legally constituted LSC in place when it was designated as an Alternative School. The designation of Carver as an Alternative School took place the day after the school closed, the LSC members' terms expired, and the LSC dissolved.

Plaintiffs' argue that the Defendant's decision to close Carver High School as a school governed by an elected LSC and reopen it as a military academy is an unlawful attempt to avoid the effect of the Illinois School Reform Act ("Act"). The core of the argument is that at the end of the School Year an LSC remains in existence and then new members are elected and therefore the school falls within the proviso of 105 ILCS 5/32-2.4b in that there is a legally constituted LSC in place. Plaintiffs further their argument by analyzing an elected LSC to the United States Congress arguing that the Congress does not ever dissolve when the members' terms expire. The Court does not have this view and finds this argument to misconstrue the intent of the School Code. Taken to its logical conclusion, this position would mean that once an LSC was in place at a school building, the school could never be closed and reopened as a different exempt school. That is not the intent of the Act.

The Board has the express power to maintain, establish, and close schools. (*See*, 105 ICS 5/34-18(1); and 105 ILCS 5/34-18(24)). In that regard, the Board made a determination that Carver should become a full military academy. As a result, Carver Military Academy in its previous form was closed and Carver Military Academy reopened as a full military academy. Carver Military Academy is now an alternative school and is therefore not to be governed by an elected LSC. Under the statute, it is the nature of the school that determines the existence of the elected LSC, it is not the existence of the elected LSC that determines the nature of the school. The existence of the elected LSC at the prior school cannot be said to prevent the Board from closing it and reopening it in an exempt form.

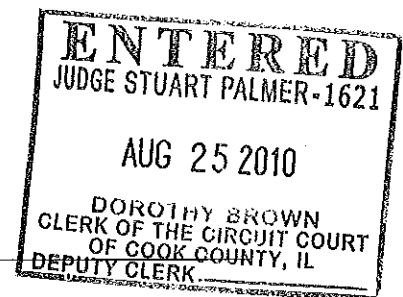
Finally, although the Court finds the motive argument to be legally misplaced, from a factual standpoint the Court recognizes that the decision to transform Carver military academy into a full military academy was the result of a long process that was initiated by Carver's LSC.

After numerous changes were implemented to transform Carver to a military academy and in response to criticism that not enough had been done, a public hearing was held to decide if Carver should be closed and reopened as an alternative school and full military academy. The result of said hearing was the hearing officer's recommendations and the Board's decision which was effective July 1, 2006. (Statement of Rick W. Mills, ¶¶ 20-24). As a result of the closure and at the end of the elected LSC member's terms the LSC was effectually dissolved. Thus, the argument that this was all done to avoid the requirement of an elected LSC, is factually misplaced.

WHEREFORE: This Court finds:

(1) The Board's Motion for Summary Judgment is granted.

Entered:



Judge Stuart E. Palmer