# Midwest Coalition for Human Rights

Advocating for fairness and human dignity

# LETTER OF ALLEGATION REGARDING THE CLOSING OF 49 PUBLIC ELEMENTARY SCHOOLS IN CHICAGO, ILLINOIS, UNITED STATES OF AMERICA

#### ADDRESSED TO:

Kishore Singh, United Nations Special Rapporteur on the Right to Education Rita Izsák, United Nations Independent Expert on Minority Issues Mutuma Ruteere, United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance

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#### Dear Dr. Singh, Ms. Izsák, and Mr. Ruteere:

We write to you pursuant to your mandate to "examine, monitor, and advise and publicly report on human rights situations in specific countries." The United States is a party to a number of UN international human rights treaties that are implicated in the closing of 49 public schools, which account for nearly 10% of public schools in Chicago, Illinois. The Midwest Coalition for Human Rights (on behalf of itself and the undersigned organizations and individuals) requests that you investigate and take preventative measures to address the potential domestic and international human rights violations that may result from these school closings.

#### 1. EXECUTIVE SUMMARY

The City of Chicago announced in March 2013 – and is currently implementing – the closure of 49 public elementary schools. This is the largest wave of school closures in the United States' history, encompassing 10% of all public schools in Chicago, the third largest city in the country. Although many schools are considered "underutilized" in Chicago, the schools targeted for closure are predominately in African American communities. Nearly 30,000 students, over 80% of whom are African American, will be displaced in a matter of months as a result of the closings. Due to the prevalence of gangs in many of these communities, students forced to go to new schools this coming August will face an increased risk of violence. Education quality will suffer for students who need it most. Ignoring widespread opposition by parents, students, teachers, and community members to the school closings, the Chicago Board of Education continues forward with its massive school closure plan.

The United States is bound to comply with certain international treaties and other documents. The Universal Declaration of Human Rights (UDHR) effectively binds the United States as customary international law.<sup>2</sup> The United States has ratified the UN International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup> and the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>4</sup> The United States of America has

<sup>&</sup>lt;sup>1</sup> UN Office of the United Nations High Commissioner for Human Rights, *Special Procedures of the Human Rights Council, Urgent Appeals and Letters of Allegation on Human Rights Violations Brochure*, available at http://www2.ohchr.org/english/bodies/chr/special/docs/communicationsbrochure en.pdf.

<sup>&</sup>lt;sup>2</sup> Antônio Augusto Cançado Trindade, *Universal Declaration of Human Rights*, AUDIOVISUAL LIBR. OF INT'L L. (2008) ("The international community as a whole, moved by the universal juridical conscience, conferred upon the Universal Declaration the dimension that it has today, recognized in the international case law, incorporated in the domain of customary international law, and gave expression to some general principles of law universally recognized.").

<sup>&</sup>lt;sup>3</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 (current signatory and ratification status available at

 $http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY\&mtdsg\_no=IV-4\&chapter=4\&lang=en).$ 

<sup>&</sup>lt;sup>4</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, S. Exec. Doc. C, 95-2 (1978), 660 U.N.T.S. 195 (current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-2&chapter=4&lang=en).

signed (but not ratified) the UN Convention on the Rights of the Child (CRC),<sup>5</sup> the UN International Covenant on Economic, Social and Cultural Rights (ICESRC),<sup>6</sup> and the UN Convention on the Rights of Persons with Disabilities (CRPD).<sup>7</sup> Even though the United States Congress has failed to ratify the CRC, the City Council of the City of Chicago adopted the CRC in a 2009 resolution and directed all city agencies to advance policies that are consistent with it.<sup>8</sup> The massive wave of school closings in Chicago calls these laws and principles into question.

First, in contravention of the right to equality and nondiscrimination enshrined in the ICCPR, ICERD, CRC, and CRPD, the school closings disproportionately and negatively impact minority and disabled children. African American children make up 42% of the students in Chicago's public schools, but 80% of the children impacted by the school closures are African American. Hastily closing 49 public schools in a matter of months will also impact disabled children who will be forced to move to new schools without any guarantee that their special needs will be met.

Second, in violation of the right of children to be free from violence in the CRC and right to life in the ICCPR, the school closings place children at greater risk of violence and death. When the school-year begins in August 2013, approximately 30,000 children will be forced to attend new schools, many of which are farther from their homes than their original schools. Many Chicago neighborhoods are gang-controlled. When children or adults from one gang-dominated neighborhood travel to another neighborhood – or even from one block to another block – they are at risk of violence even if they are not affiliated with any gang. The Chicago Board of Education is attempting to provide "safe passage" to children scheduled to attend schools in such neighborhoods. The effectiveness of this program is questionable given that it merely enlists community members to watch students on their way to school. If the city of

<sup>&</sup>lt;sup>5</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-11&chapter=4&lang=en).

<sup>&</sup>lt;sup>6</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3; current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-3&chapter=4&lang=en).

<sup>&</sup>lt;sup>7</sup> Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Jan. 24, 2007) (current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-15&chapter=4&lang=en).

<sup>&</sup>lt;sup>8</sup> City of Chicago Resolution Adopting the UN Convention on the Rights of the Child (Feb. 11, 2009), available at http://www.njjn.org/uploads/digital-library/City-of-Chicago-Resolution-UN-Convention-on-Rights-of-Child-2.11.09.pdf.

<sup>9</sup> Lauren Fitzpatrick and Art Golab, *Black Students Most Likely to Have Their School on CPS Closure List*, CHI. SUN-TIMES (Mar. 6, 2013), http://www.suntimes.com/news/education/18626817-418/black-students-far-more-likely-to-see-their-cps-school-closed-than-others-sun-times-analysis.html.

<sup>&</sup>lt;sup>10</sup> Alex Keefe, *Emanuel: CPS School Closures 'Not Taken Lightly,' but Must be Done*, WBEZ91.5 (Mar. 23, 2013), http://www.wbez.org/news/emanuel-cps-school-closures-not-taken-lightly-must-be-done-106253.

<sup>&</sup>lt;sup>11</sup> Judy Wang, CPS Announces New Hires for Safe Passage and Welcoming Programs, WGNTV (Jul. 1, 2013), http://wgntv.com/2013/07/01/cps-announces-new-hires-for-safe-passage-and-welcoming-programs/.

<sup>&</sup>lt;sup>12</sup> Stephanie Farmer, Isaura Pulido, Pamela J. Konkol, Kate Phillippo, David Stovall and Mike Klonsky, *CReATE Research Brief on School Closures*, CHICAGOLAND RESEARCHERS AND ADVOCS. FOR TRANSFORMATIVE EDUC. (Mar. 2013), http://www.createchicago.org/2013/03/create-releases-research-brief-on.html (CReATE is a Chicago-based network of academics who research education and school policy).

<sup>&</sup>lt;sup>13</sup> For a high profile example, *see* Tracy Connor, *Chicago Shooting Victim Hadiya Pendleton Starred in Anti-Gang Video*, NBC NEWS (Jan. 31, 2013), http://usnews.nbcnews.com/\_news/2013/01/31/16792373-chicago-shooting-victim-hadiya-pendleton-starred-in-anti-gang-video?lite.

<sup>&</sup>lt;sup>14</sup> Sarah Karp, CPS Won't Take Recommendations Against Closings, CATALYST CHI. (May 7, 2013), http://www.catalyst-chicago.org/notebook/2013/05/07/21041/cps-wont-take-recommendations-against-closings (Catalyst Chicago is published by the Community Renewal Society, a respected civil society organization which focuses on local public affairs).
<sup>15</sup> Id.

Chicago does not sell the closed school buildings, these vacant buildings may become a center for criminal activity and violence in the communities. <sup>16</sup>

Third, the right to education, which includes quality of education, will be eroded with increasing class sizes. Many transferred students, as well as students in receiving schools, will encounter class sizes larger than in the prior school year due to the school closings. Larger class sizes can have a negative impact on learning, particularly in vulnerable communities. Additionally, many displaced students from closed schools will not go to schools with better academic records than their prior schools. 19

Fourth, the city of Chicago effectively denied people the right to participate in deciding whether or not to close the schools. Since the Chicago Board of Education announced the school closings in March 2013, parents, community residents, and teachers have resoundingly and consistently objected to the closures in many public hearings, street demonstrations, and direct pleas to members of the Board of Education. The Chicago Board of Education did not change its decision because of these views. Additionally, Chicago's Board of Education rejected most of the findings of an independent commission of hearing officers appointed by the school district. If a governmental body can simply ignore the views of the people they claim to represent, the right to participate in governmental affairs is meaningless. 22

The closing of 49 public schools in Chicago implicates the human rights of children, their parents and guardians to non-discrimination and equality, to be free from violence, to education, and to participate in public policy decisions. On behalf of parents, students, teachers, community members, and the undersigned civil society organizations, the Midwest Coalition for Human Rights files this Letter of Allegation to request that you urge the United States to investigate and prevent these human rights violations. This Letter of Allegation is based on input from parents, community members, and teachers provided at a meeting held that the University of Chicago Law School on June 18, 2013 and research conducted by International Human Rights Clinic at the University of Chicago Law School and the Human Rights Program of the University of Chicago.

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<sup>&</sup>lt;sup>16</sup> Natalie Moore, *School Closures Only Add to Blight in Some Chicago Neighborhoods*, WBEZ91.5 (May 23, 2013), http://www.wbez.org/news/school-closures-only-add-blight-some-chicago-neighborhoods-107345.

<sup>&</sup>lt;sup>17</sup> Linda Lutton, 50,421 Chicago Kids in Homerooms Over the Class Size Limit, WBEZ91.5 (May 16, 2013), http://www.wbez.org/news/education/50421-chicago-kids-homerooms-over-class-size-limit-107196.

<sup>&</sup>lt;sup>18</sup> Council of Economic Advisors, the Domestic Policy Council, and the National Economic Council, *Investing in Our Future:* Returning Teachers to the Classroom, EXECUTIVE OFFICE OF THE PRESIDENT (Aug. 2012), http://www.whitehouse.gov/sites/default/files/Investing in Our Future Report.pdf.

<sup>&</sup>lt;sup>19</sup> Linda Lutton, Few Chicago School Closings Will Move Kids to Top-Performing Schools, WBEZ91.5 (May 19, 2013), http://www.wbez.org/news/few-chicago-school-closings-will-move-kids-top-performing-schools-107261.

Steven Yaccino, *Protests Fail to Deter Chicago From Shutting 49 Schools*, N.Y. TIMES, May 22, 2013, at A20, available at http://www.nytimes.com/2013/05/23/education/despite-protests-chicago-closing-schools.html.

<sup>&</sup>lt;sup>21</sup> Teachers Union Files New Lawsuit To Stop School Closings, CBS CHI. (May 29, 2013), http://chicago.cbslocal.com/2013/05/29/teachers-union-files-new-lawsuit-to-stop-school-closings/.

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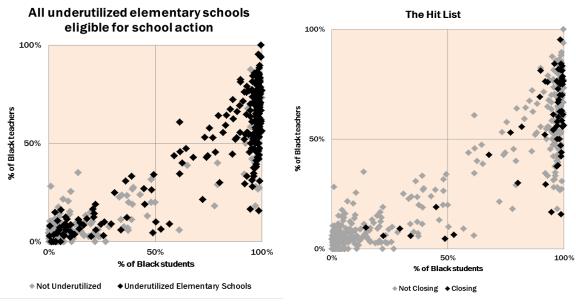
22 Rick Perlstein, Chicago Rising!, THE NATION (July 2, 2013), http://www.thenation.com/article/175085/chicago-rising/energy/272Ny/VI m. ("A recent Chicago Tribung/WGN pp.ll found that more than 60 percent of Chicago citizen

rising#axzz2ZXhvXLrn ("A recent Chicago Tribune/WGN poll found that more than 60 percent of Chicago citizens opposed the closings, and a healthy cross section of them had turned out for the first of three straight days of marches in protest.").

#### 2. FACTUAL BACKGROUND ON THE SCHOOL CLOSINGS

#### A. The school closings disproportionately impact African American children.

Public schools in Chicago are the most racially segregated schools in the United States.<sup>23</sup> The 49 school closings are concentrated in predominantly African American neighborhoods and will disproportionately impact African American students.<sup>24</sup> African American children are 42% of Chicago's public school students, but represent 80% of the children who would be impacted by the school closings.<sup>25</sup> In addition, 87% of the schools marked for closure are majority African American.<sup>26</sup> The Chicago Teachers Union (CTU) analyzed the racial impact of the school closures and found that schools with a majority African American population and teaching staff were ten times more likely to be closed or "turned around" than schools with a minority African American student population and teaching staff.<sup>27</sup> Although many schools are considered "underutilized" in Chicago, the schools that were targeted for closure are in minority communities. As seen in the charts below,<sup>28</sup> the final list of schools to be closed (the "Hit List") contains many more schools that are majority African American children and teachers than were on the original list of schools to be considered for closure ("All underutilized elementary schools eligible for school action").



<sup>&</sup>lt;sup>23</sup> Ford Fessenden, A Portrait of Segregation in New York City's Schools, N.Y. TIMES (May 11, 2012),

http://www.ctunet.com/pdf/SchoolClosingsFactsStats.pdf. (Schools "turned around" are schools over which central authorities take control due to poor performance.)

http://www.nytimes.com/interactive/2012/05/11/nyregion/segregation-in-new-york-city-public-schools.html?ref=education. 
<sup>24</sup> Lauren Fitzpatrick and Art Golab, *Black Students Most Likely to Have Their School on CPS Closure List*, CHI. SUN-TIMES (Mar. 6, 2013), http://www.suntimes.com/news/education/18626817-418/black-students-far-more-likely-to-see-their-cps-school-closed-than-others-sun-times-analysis.html.

<sup>&</sup>lt;sup>25</sup> Alex Keefe, *Emanuel: CPS School Closures 'Not Taken Lightly,' but Must be Done*, WBEZ91.5 (Mar. 23, 2013), http://www.wbez.org/news/emanuel-cps-school-closures-not-taken-lightly-must-be-done-106253.

<sup>&</sup>lt;sup>27</sup> CTU Research, *School Closures: Facts and Statistics*, CHI. TEACHER'S UNION (Apr. 18, 2013), http://www.ctunet.com/blog/school-closures-facts-and-statistics;

<sup>&</sup>lt;sup>28</sup> Id. Note: Since this chart was created, four schools were removed from the list of schools targeted for closing.

#### B. The school closures will have a negative impact on disabled children.

The school closures will have a greater negative impact on students with disabilities. Twelve percent of the students that will be displaced by the schools closings receive some type of special education service.<sup>29</sup> Parents and a commissioned panel of retired judges have expressed fears that these children's needs have been ignored during the accelerated closure process.<sup>30</sup> School closings were announced in March and became effective in June 2013. Chicago's Board of Education promised that special-needs teachers will be trained in the receiving schools to meet disabled students' needs, but parents have alleged that this training may prove inadequate.<sup>31</sup> For example, Lafayette Elementary School's special program for autistic children places them in general education classrooms for a portion of each day, which their new school does not do.<sup>32</sup> A few months may not be enough time to train teachers in sign language or to integrate autistic children into regular classrooms.<sup>33</sup>

## C. Children traveling to school through certain areas and children attending new schools in hostile neighborhoods will face a significant risk of violence.

There is an epidemic of violence against children in Chicago. From 2008 to early 2012, "more than 530 youth have been killed in Chicago with nearly 80 percent of the homicides occurring in 22 African American or Latino community areas on the city's South, Southwest and West sides." Students forced to transfer to schools outside their neighborhoods will face a greatly increased risk of violence. The Chicago Board of Education estimates that students will need to travel an additional one to one-and-a-half miles to reach their new schools. Parts of Chicago are gang-controlled and when individuals, including children, from one neighborhood travel to another neighborhood (or even from one block to another block), they are at risk even if they are not affiliated with any gang. Recently, parents and community activists walked some of the routes their children will navigate when the school year starts. An alderman expressed safety concerns about the walk and one parent asserted she did not want her children "walk[ing] through the gangs." Other parents have expressed similar concerns about their children

<sup>&</sup>lt;sup>29</sup> Emily Feldman, *Specter of School Closings Weighs Heavily on Parents of Special Needs Students*, NBC CHI. (Apr. 11, 2013), http://www.nbcchicago.com/news/local/NATL-School-Closings-Impact-Special-Needs-Students-198977761.html.

<sup>&</sup>lt;sup>30</sup> Fran Spielman and Tina Sfondeles, *Mayor Isn't Promising to Follow Hearing Officers' School-Closing Recommendations*, CHI. SUN-TIMES (May 8, 2013), http://www.suntimes.com/news/cityhall/19978282-418/cps-parents-want-mayor-to-walk-new-routes-reconsider-school-closings.html.

<sup>&</sup>lt;sup>31</sup> Complaint at 97, Swan v. Byrd-Bennett, No. 13-CV-03623, (N.D. Ill. May 15, 2013).

<sup>&</sup>lt;sup>32</sup> Federico R. Waitoller, *A Perfect Storm: Chicago's School Closings and Students of Color with Special Needs*, www.pureparents.org, http://pureparents.org/wp-content/uploads/2013/05/WaitollerA-Perfect-Storm-final.pdf. <sup>33</sup> *Id.* 

<sup>&</sup>lt;sup>34</sup> Kari Lydersen and Carlos Javier Ortiz, *More Young People are Killed in Chicago Than Any Other American City*, THE CHI. REP. (Jan. 25, 2012), https://www.chicagoreporter.com/news/2012/01/more-young-people-are-killed-chicago-any-other-american-city.

<sup>&</sup>lt;sup>35</sup> Stephanie Farmer, Isaura Pulido, Pamela J. Konkol, Kate Phillippo, David Stovall and Mike Klonsky, *CReATE Research Brief on School Closures*, CHICAGOLAND RESEARCHERS AND ADVOCS. FOR TRANSFORMATIVE EDUC. (Mar. 2013), http://www.createchicago.org/2013/03/create-releases-research-brief-on.html.

<sup>&</sup>lt;sup>36</sup> For a high profile example, see Tracy Connor, Chicago Shooting Victim Hadiya Pendleton Starred in Anti-Gang Video, NBC NEWS (Jan. 31, 2013), http://usnews.nbcnews.com/\_news/2013/01/31/16792373-chicago-shooting-victim-hadiya-pendleton-starred-in-anti-gang-video?lite.

<sup>&</sup>lt;sup>37</sup> Aaron Cynic, *CPS Parents 'Walk The Walk' to Highlight Safety Issues of School Closings'*, CHICAGOIST (Apr. 10, 2013), http://chicagoist.com/2013/04/10/cps\_parents\_walk\_the\_walk\_to\_highli.php.

crossing over into dangerous territories.<sup>39</sup> Retired Judge Paddy McNamara, a commissioned hearing officer on the school closures, found that some neighboring schools have long histories of gang rivalries.<sup>40</sup> Such gang activity may result in violence directed at parents and children. One expert has found that closures have already begun to aggravate gang conflicts.<sup>41</sup>

The majority of the closing schools are in South Side and West Side neighborhoods with high levels of gang activity. In fact, "nearly half of the 1,054 youths murdered in Chicago during the past five years were killed within census tracts where schools are closing." Many students walk to school, Making street safety a paramount concern given the gang lines they must traverse. The Chicago Board of Education maintains that it consulted maps of gang lines during the closure process to minimize the impact of gang activity. But according to the *Chicago Reporter*, a highly respected local journal that reports on race discrimination and related issues, "[o]n a map, it seems what CPS is doing is straightforward enough. The receiving schools are all near those that are closing. But in neighborhoods like Englewood, crossing from one block to another can mean entering enemy turf." In these areas, children are regularly forced into gang or clique affiliation along neighborhood lines, even if they have no desire to be part of any gang-related activities.

Even students that resist gang recruitment face danger – a student living on a certain street automatically "represents his street and, to some degree, its gang." As a result, many students encounter gang activity and violence simply by virtue of where they live or go to school. A change in just one block of a commute can result in entering enemy turf and invite gang-related violence. 50

Since 2001, the Chicago school district has closed approximately 100 schools.<sup>51</sup> Prior school closures in Chicago that forced students to transfer to schools outside their immediate neighborhood resulted in spikes in violence in elementary and high schools.<sup>52</sup> A tragic example

<sup>&</sup>lt;sup>39</sup> Fran Spielman and Tina Sfondeles, *Mayor Isn't Promising to Follow Hearing Officers' School-Closing Recommendations*, CHI. SUN-TIMES (May 8, 2013), http://www.suntimes.com/news/cityhall/19978282-418/cps-parents-want-mayor-to-walk-new-routes-reconsider-school-closings.html.

<sup>41</sup> Michael Tarm, Expert: Chicago School Closings Will Endanger Kids, AP (July 18, 2013),

http://abcnews.go.com/US/wireStory/expert-chicago-school-closings-endanger-kids-19693926.

42 Elliott Ramos, *In Chicago, Gangs Abound, but Where Are They?*, WBEZ91.5 (Sept. 24, 2012), http://www.wbez.org/programs/afternoon-shift/2012-09-24/chicago-gangs-abound-where-are-they-102612.

nttp://www.wbez.org/programs/atternoon-snit/2012-09-24/cnicago-gangs-abound-where-are-tney-102612.

43 James Reddick, *Chicago Public Schools Closings Point Up the Dangers of Geography*, CHI. Now (Apr. 30, 2013),

http://www.chicagonow.com/chicago-muckrakers/2013/04/chicago-public-school-closings-point-up-the-dangers-of-geography/. 44 CPS Safe Passage Program Guide, CPS.EDU,

http://www.cps.edu/Programs/Wellness\_and\_transportation/SafetyandSecurity/SafePassage/Pages/Safepassage.aspx; http://www.cps.edu/Programs/Wellness\_and\_transportation/SafetyandSecurity/SafePassage/Documents/SafePassageGuide.pdf.

<sup>&</sup>lt;sup>45</sup> Kim Janssen, *School Closings Mean Students Must Traverse New Gang Landscape, Prof Testifies*, CHI. SUN-TIMES (July 18, 2013), http://www.suntimes.com/news/education/21377422-418/story.html

<sup>&</sup>lt;sup>46</sup> Sara Burnett, *Chicago School Closings: Gang Boundaries Consulted by District Amid Student Safety Concerns*, THE HUFFINGTON POST (Apr. 15, 2013), http://www.huffingtonpost.com/2013/04/15/chicago-school-closings-g\_n\_3087215.html. <sup>47</sup> James Reddick, *Deadly Dismissals*, CHI. REP. (July 1, 2013), http://www.chicagoreporter.com/news/2013/07/deadly-

<sup>&</sup>lt;sup>48</sup> Chicago Kids Say They're Assigned To Gangs, NPR (Feb. 21, 2013), http://www.npr.org/2013/02/21/172593743/chicago-kids-say-theyre-assigned-to-gangs.

<sup>&</sup>lt;sup>49</sup>James Reddick, *Deadly Dismissals*, CHI. REP. (July 1, 2013), http://www.chicagoreporter.com/news/2013/07/deadly-dismissals. <sup>50</sup> *Id*.

<sup>&</sup>lt;sup>51</sup>Steven Yaccino, *Protests Fail to Deter Chicago From Shutting 49 Schools*, N.Y. TIMES, May 22, 2013, at A20, available at http://www.nytimes.com/2013/05/23/education/despite-protests-chicago-closing-schools.html.

<sup>&</sup>lt;sup>52</sup> Pauline Lipman, Janet Smith, Eric Gutstein, and Lisa Dallacqua, *Examining CPS' Plan to Close, Turnaround, or Phase Out 17 Schools*, UNIVERSITY OF ILLINOIS-CHICAGO (Feb. 21, 2012), at 18, http://www.uic.edu/cuppa/voorheesctr/Publications/DD2012 Report 2 21 2012.pdf.

after Chicago school closings in 2009 is the case of honor roll student Derrion Albert who was beaten to death, on video, as part of a long-running neighborhood dispute between the various neighborhoods that were combined at Fenger High School.<sup>53</sup>

To prepare for the re-opening of schools in August, Chicago has set up a "safe passage" program in an attempt to shield children from gang violence on the way to their new schools. Within a month of the closure announcements, "city agencies tasked with helping children safely to new schools next year said they had already dealt with 11,000 requests for service along the school routes." The effectiveness of this program is questionable as it merely enlists community members to watch students on their way to school. 56

In other large cities, school closures resulted in the "doubling of the likelihood of dropping out of school, increased school violence, lowered likelihood of enrolling in summer school programs in the summer following school closure, higher rates of school-to-school mobility, disrupted peer relationships, and weaker relationships with adults."

Closing neighborhood schools may increase violence and crime in communities impacted by school closures. According to the Woodstock Institute, a Chicago public policy research organization, if buildings of the closed schools are not maintained or sold, the abandoned buildings may result in "negative impacts in terms of attracting crime or affecting property values or neighborhood stability." <sup>58</sup>

### D. Quality of Education: Class sizes will increase and most students will not move to better schools.

School closures in Chicago will displace over 30,000 students from kindergarten through eighth grade who must transfer to other Chicago public schools. As a result, class sizes will increase in receiving schools, as admitted by school officials. From research on prior school closings, Chicagoland Researchers and Advocates for Transformative Education (CReATE) found that "closings often lead to increased class sizes and overcrowding in receiving schools."

<sup>&</sup>lt;sup>53</sup> School Closings Root of Chicago Teen Violence?, AP (Oct. 6, 2009), http://www.nbcnews.com/id/33200246/ns/us\_news-education/t/school-closings-root-chicago-teen-violence/#.Uauiz0CpySo.
<sup>54</sup> CPS Seeks Community Partners to Expand Safe Passage to All Welcoming Schools This Fall, CPS PRESS RELEASE (Mar. 27,

<sup>&</sup>lt;sup>54</sup> CPS Seeks Community Partners to Expand Safe Passage to All Welcoming Schools This Fall, CPS PRESS RELEASE (Mar. 27 2013), http://www.cps.edu/News/Press releases/Pages/3 27 2013 PR1.aspx.

<sup>55</sup> Lauren Fitzpatrick, 11,000 Requests for Service Received Along CPS 'Safe Passage' Routes, CHI. SUN-TIMES (June 14, 2013), http://www.suntimes.com/news/education/20739983-418/11000-requests-for-service-received-along-cps-safe-passage-routes.html.

<sup>&</sup>lt;sup>56</sup> Sarah Karp, *CPS Won't Take Recommendations Against Closings*, CATALYST CHI. (May 7, 2013), http://www.catalystchicago.org/notebook/2013/05/07/21041/cps-wont-take-recommendations-against-closings.

<sup>&</sup>lt;sup>57</sup> Stephanie Farmer, Isaura Pulido, Pamela J. Konkol, Kate Phillippo, David Stovall and Mike Klonsky, *CReATE Research Brief on School Closures*, CHICAGOLAND RESEARCHERS AND ADVOCS. FOR TRANSFORMATIVE EDUC. (Mar. 2013), at 1-2, http://www.createchicago.org/2013/03/create-releases-research-brief-on.html.

<sup>&</sup>lt;sup>58</sup> Natalie Moore, *School Closures Only Add to Blight in Some Chicago Neighborhoods*, WBEZ91.5 (May 23, 2013), http://www.wbez.org/news/school-closures-only-add-blight-some-chicago-neighborhoods-107345.

<sup>&</sup>lt;sup>59</sup> Noreen S. Ahmed-Ullah and Bob Secter, *CPS to Close 61 Buildings, Affecting 30,000 Kids*, CHI. TRIB. (Mar. 22, 2013), http://articles.chicagotribune.com/2013-03-22/news/ct-met-cps-school-closings-0322-20130322\_1\_school-buildings-elementary-schools.tdd-babbitz

<sup>&</sup>lt;sup>60</sup> Linda Lutton, *50,421 Chicago kids in Homerooms Over the Class Size Limit*, WBEZ91.5 (May 16, 2013), http://www.wbez.org/news/education/50421-chicago-kids-homerooms-over-class-size-limit-107196.

<sup>&</sup>lt;sup>61</sup> Stephanie Farmer, Isaura Pulido, Pamela J. Konkol, Kate Phillippo, David Stovall and Mike Klonsky, *CReATE Research Brief on School Closures*, CHICAGOLAND RESEARCHERS AND ADVOCS. FOR TRANSFORMATIVE EDUC. (Mar. 2013), at 1, http://www.createchicago.org/2013/03/create-releases-research-brief-on.html; *See also* Sarah Karp, *For the Record: Class Sizes, Closing Schools*, CATALYST CHI. (May 15, 2013), http://www.catalyst-chicago.org/notebook/2013/05/15/21058/record-class-sizes-closing-schools.

Such increases have been shown to have a negative impact on both transferred students and those in receiving schools. <sup>62</sup>

The Chicago Board of Education argued that schools that were closed were underutilized because there were too few students per class.<sup>63</sup> The Chicago Board of Education published standards that put the ideal class size at 30 per classroom.<sup>64</sup> Arguably, even 30 students per teacher create a challenging learning environment for students.<sup>65</sup> Chicago has the 14th highest class size average across the elementary grades (K-8) compared to other school districts in the State of Illinois.<sup>66</sup>

Moreover, even under the Chicago Board of Education's own standards, the school closures and transfers will move many students into classrooms in receiving schools that are above mandated class sizes.<sup>67</sup> For example, Mollison Elementary School is considered underutilized because there are only 13 students per classroom. When students from nearby Overton Elementary School transfer to Mollison, however, it will balloon to more than 37 students per class (which is greater than the mandated size set by the Chicago Board of Education).<sup>68</sup> McCutcheon Elementary will also become overcrowded when it receives new students from a closed school nearby.<sup>69</sup> Although a school targeted for closing may have "underutilized classrooms," when students are moved to receiving schools, classrooms in those schools may become larger than the standards set by the Chicago Board of Education. Additionally, "CPS officials have admitted the [utilization] formula does not take reduced special education class size requirements into account in the formula." Therefore, an "underutilized classroom" may, in fact, be a special education room that "can have no more than eight students per teacher or 13 if there are two teachers" due to Illinois state law. This effect is compounded by the fact that schools in Chicago already have larger classroom sizes than schools in other parts of the state of Illinois.

Many groups and parents assert that these increases in class sizes will negatively impact learning outcomes for many students.<sup>72</sup> Studies show that smaller classroom sizes positively impact learning outcomes for students, particularly low-income and African American

<sup>&</sup>lt;sup>62</sup> See generally Pauline Lipman and Alecia S. Person, Students As Collateral Damage?: A Preliminary Study of Renaissance 2010 School Closings in the Midsouth, http://www.uic.edu/educ/ceje/articles/midsouth%20initial%20report%201-31-07.pdf.

<sup>63</sup> Chuck Sudo, CPS To Close About 50 Schools; List Could Be Released Today, CHICAGOIST (Mar. 21, 2013),

http://chicagoist.com/2013/03/21/cps\_to\_close\_up\_to\_50\_schools\_list.php.

<sup>&</sup>lt;sup>64</sup> Chicago Public Schools Space Utilization Standards, www.cps.Edu (Dec. 28, 2011),

http://www.cps.edu/About CPS/Policies and guidelines/Documents/SpaceUtilizationStandards.pdf.

<sup>&</sup>lt;sup>65</sup> Stephanie Gadlin, *CPS Target of 30 to 40 Students in a Classroom is a Dangerous Benchmark for Utilization 'Crisis'*, CHI. TEACHERS UNION (Mar. 7, 2013), http://www.ctunet.com/media/press-releases/cps-target-of-30-to-40-students-in-a-classroom-is-

a. <sup>66</sup> CTU Analysis Shows Chicago's School Class Sizes are Among the Highest in the State, CTUNET.COM, http://www.ctunet.com/quest-center/research/position-papers/class-sizes.

<sup>&</sup>lt;sup>67</sup> Tanveer Ali, *CPS School Closings: Plan Would Push Some Schools Over Capacity, Data Shows*, DNAINFO CHI. (Apr. 22, 2013), http://www.dnainfo.com/chicago/20130422/chicago/cps-closings-would-push-some-schools-over-capacity-data-shows.

<sup>&</sup>lt;sup>69</sup> Patrick Boylan, *Trumbull Closing Will Cause More Utilization Issues*, THE WELLES PARK BULLDOG (Apr. 26, 2013), http://www.wellesparkbulldog.com/news/trumbull-closing-will-cause-more-utilization-issues.

<sup>&</sup>lt;sup>70</sup> Becky Vevea and Linda Lutton, *Fact Check: Chicago School Closings*, WBEZ91.5 (May 16, 2013), http://www.wbez.org/news/fact-check-chicago-school-closings-107216.

<sup>&</sup>lt;sup>72</sup> Bob Secter, Noreen S. Ahmed-Ullah and Alex Richards, *School Closing Critics Question CPS' 'Ideal' Class Size of 30 Students*, CHI. TRIB. (Mar. 6, 2013), http://articles.chicagotribune.com/2013-03-06/news/ct-met-cps-school-closing-class-size-20130306 1 class-size-state-records-high-schools/2.

children.<sup>73</sup> Unfortunately, these are the vast majority of children that will be affected by the school closures. Additionally, education experts also regard smaller schools as providing better educational opportunities, particularly for low-income students, as principals can be more familiar with each individual student and – together with teachers and parents – create a sense of community, which fosters learning.<sup>74</sup>

While Chicago authorities claim students from underperforming schools will be moved to better performing schools, few of the transferred students will move to schools that are better performing. On the contrary, these school closures will move many students from the lowest-level closed schools to the lowest-level receiving schools. The only schools where positive improvements have been shown to occur for displaced students are top quartile schools. In fact, in prior Chicago school closings, 80% of students from closed elementary schools simply shifted from a school in the bottom half in terms of certain educational indicators to another school in the bottom half. Only 6% of displaced students enrolled at a top quartile receiving school and it is only the top quartile receiving schools that show improvements in displaced student learning. In this round of school closings, only in three cases will students from the lowest performing schools be moving to top quartile "receiving schools." There is no doubt that class sizes will increase as a result of the school closings and most students are unlikely to improve their educational outcomes. This may negatively impact the quality of education for many students.

# E. The manner in which decisions regarding the school closures were made denied parents, community members, and teachers the ability to participate in an important public policy decision.

Although the Chicago Board of Education held many public meetings with respect to the school closings, participation in some hearings was compromised by discriminatory rules on participation. Additionally, a large majority of opinions opposed the school closings and were ignored. This is true of the public meetings convened by the Board of Education as well as the hearings before appointed judges. The right to participate lacks any meaning if the public's opinion is ignored.

<sup>&</sup>lt;sup>73</sup> Council of Economic Advisors, the Domestic Policy Council, and the National Economic Council, *Investing in Our Future: Returning Teachers to the Classroom*, EXECUTIVE OFFICE OF THE PRESIDENT (Aug. 2012),

http://www.whitehouse.gov/sites/default/files/Investing\_in\_Our\_Future\_Report.pdf.

74 Jordan Hylden, *What's So Big About Small Schools? The Case for Small Schools: Nationwide and in North Dakota*, at 3-7, http://www.hks.harvard.edu/pepg/PDF/Papers/PEPG05-05Hylden.pdf.

<sup>&</sup>lt;sup>75</sup> Becky Vevea and Linda Lutton, *Fact Check: Chicago School Closings*, WBEZ91.5 (May 16, 2013), http://www.wbez.org/news/fact-check-chicago-school-closings-107216.

<sup>&</sup>lt;sup>76</sup> Linda Lutton, Few Chicago School Closings Will Move Kids to Top-Performing Schools, WBEZ91.5 (May 19, 2013), http://www.wbez.org/news/few-chicago-school-closings-will-move-kids-top-performing-schools-107261.

<sup>&</sup>lt;sup>77</sup> Marisa de la Torre and Julia Gwynne, *When Schools Close: Effects on Displaced Students in Chicago Public Schools*, THE U. CHI. CONSORTIUM ON CHI. SCH. RES. (Oct. 2009), at 15-16,

http://ccsr.uchicago.edu/sites/default/files/publications/CCSRSchoolClosings-Final.pdf. 78 Id

<sup>&</sup>lt;sup>79</sup> Becky Vevea and Linda Lutton, *Fact Check: Chicago School Closings*, WBEZ91.5 (May 16, 2013), http://www.wbez.org/news/fact-check-chicago-school-closings-107216.

<sup>&</sup>lt;sup>80</sup> George N. Schmidt, *Kafka on Clark Street*, SUBSTANCE NEWS (June 4, 2013), http://www.substancenews.net/articles.php?page=4318.

 $<sup>^{81}</sup>$  *Id*.

Over 20,000 students, parents, and teachers voiced opposition in over 30 community sessions before the April school-closing list was issued.<sup>82</sup> More than 9,000 attended meetings organized by the Chicago Board of Education in neighborhoods and public hearings by appointed judicial officers. 83 Parents and community residents have held public demonstrations, including the occupation of a school, to protest the lack of transparency and access to decisionmaking in the determination of the closures, <sup>84</sup> to protest racial discrimination against African American students, 85 to contest the need for deep budget cuts, 86 to object to the increased class sizes that will result, 87 and to voice their concern regarding danger to children forced to enroll in schools outside their neighborhoods.<sup>88</sup>

These large turnouts occurred despite reported instances of a lack of advance notice<sup>89</sup> and limitations placed on participation.<sup>90</sup> The Chicago Board of Education, for the first time in its history, restricted the number of individuals "permitted to sign up to speak and bring issues before the Board's monthly meetings." Public participation was limited to two hours at each meeting with each individual limited to two minutes of speaking time. 92 The option to participate was limited to those who could register online and meetings were filled on a firstcome, first served basis. People are also permitted to call or sign up for speaking slots in person. As a result, participation was limited for "poor and working class citizens who do not own their own personal computers, or who are not able to access a computer at precisely 8:00 a.m. on the day of registration." Thus, despite limitations in access, many residents expressed their opposition to the school closings, but those views were ignored and the school closings were finalized notwithstanding the opposition.

An independent panel of experts, retired federal and state judges (hearing officers) appointed by the Board of Education, made explicit recommendations against ten of the slated closures and had reservations about several others.<sup>94</sup> The officers found many of the closing

<sup>82</sup> Noreen S. Ahmed-Ullah, At Chicago School Closing Hearings, Crowds Fade, CHI. TRIB. (Apr. 25, 2013), http://articles.chicagotribune.com/2013-04-25/news/ct-met-cps-closing-hearings-20130426 1 schools-chief-barbara-byrdbennett-final-list-two-community-meetings.

Aaron Cynic, Families Occupy Lafayette Elementary School To Fight First Wave of Closures, CHICAGOIST (June 20, 2013), http://chicagoist.com/2013/06/20/families occupy elementary school t.php.

Research Parents Of Schools Set To Close Want Kids Enrolled At Pritzker On North Side, CBS CHI. (May 30, 2013), http://chicago.cbslocal.com/2013/05/30/parents-of-schools-set-to-close-want-kids-enrolled-on-north-side/.

<sup>&</sup>lt;sup>86</sup> Noreen S. Ahmed-Ullah and Rick Pearson, CPS Leader Predicts Happier Ties with Teachers Union, CHI. TRIB. (June 18, teachers-union-union-president-karen-lewis.

<sup>&</sup>lt;sup>87</sup> Diane Ravitch, Major Rally Today in Chicago to Protest Budget Cuts, DIANERAVITCH.NET (June 21, 2013), http://dianeravitch.net/2013/06/21/major-rally-today-in-chicago-to-protest-budget-cuts/.

<sup>&</sup>lt;sup>88</sup> Judy Keen, Chicago School Closings Ignite Furor and Fears, USA TODAY (Mar. 29, 2013), http://www.usatoday.co m/story/news/nation/2013/03/28/fears-of-gang-fights-cloud-chicago-school-closings/2029411/.

<sup>&</sup>lt;sup>89</sup> Noreen S. Ahmed-Ullah, At Chicago School Closing Hearings, Crowds Fade, CHI. TRIB. (Apr. 25, 2013), http://articles.chicagotribune.com/2013-04-25/news/ct-met-cps-closing-hearings-20130426 1 schools-chief-barbara-byrdbennett-final-list-two-community-meetings.

<sup>90</sup> George N. Schmidt, Kafka on Clark Street, SUBSTANCE NEWS (June 4, 2013), http://www.substancenews.net/articles.php?page=4318.

<sup>&</sup>lt;sup>91</sup> *Id*. <sup>92</sup> *Id*.

<sup>&</sup>lt;sup>94</sup> Becky Schlikerman and Tina Sfondeles, Hearing Officers Oppose 10 Planned CPS Closures, Have Reservations About Others, CHI. SUN-TIMES (May 7, 2013), http://www.suntimes.com/news/education/19951788-418/hearing-officers-oppose-14-plannedcps-closures.html.

decisions "were insensitive to children, particularly special needs students." In particular, the hearing officers expressed concern regarding the transition plan and safety program, as well as the needs of special needs children. Former Cook County Circuit Court Judge Carl McCormick described the plan as a "promise of an omelet with a crisp waffle then what is delivered are broken eggs, whose contents are oozing out and a burnt pancake." Mayor Emanuel resisted promising to follow the recommendations of the hearing officers. The Board of Education, contrary to *both* public opinion *and* reservations expressed by the independent hearing officers, took only four schools off the list and proceeded to close 49 schools.

Additionally, unlike the vast majority of public school districts across the country, the mayoral appointment structure of the Chicago Board of Education removes it from direct accountability to the public. Chicago is the only school district of almost 900 in Illinois where the mayor has the power to appoint the members of the Board of Education. Across the United States, 96% of school boards are elected. Thus, the entire system is accountable to the Mayor of Chicago rather than the local constituencies they are entrusted to serve. Indeed, the State Legislature previously expressed concern about the lack of democratic participation in Chicago school decisions. It adopted a statute that became effective in 2011 intended to ensure that school facility-related decisions are made with the input of the community and reflect educationally sound and fiscally responsible criteria."

#### F. Financial considerations do not justify the school closures.

Mayor Emanuel and the Chicago Board of Education claim the school closures are necessary to "address the district's \$1 billion deficit, make better use of resources, and improve education." The cost-savings from the school closings may have been overstated by the Chicago city government. Shortly after announcing the 2013 school closures, the Chicago Board of Education acknowledged that it overestimated the cost savings from the closures, dropping the initial figure of \$560 million to \$438 million over 10 years. According to a report by The Pew Charitable Trusts, the savings may prove to be even lower because savings estimates assume the

http://www.uic.edu/educ/ceje/articles/Printed%20school%20board%20report.pdf.

<sup>&</sup>lt;sup>95</sup> Noreen S. Ahmed-Ullah and John Byrne, *Fewer than 5 CPS Schools Expected to be Spared*, CHI. TRIB. (May 21, 2013), http://articles.chicagotribune.com/2013-05-21/news/ct-met-school-closing-march-0521-20130521\_1\_closings-list-schools-chief-barbara-byrd-bennett-president-david-vitale.

<sup>&</sup>lt;sup>97</sup> Bob Secter and Noreen S. Ahmed-Ullah, *Hearing Officers Oppose 13 of Closings Planned by CPS*, CHI. TRIB. (May 8, 2013), http://articles.chicagotribune.com/2013-05-08/news/chi-chicago-public-schools-closings-20130507\_1\_hearing-officers-closures-closing-schools

<sup>&</sup>lt;sup>98</sup> Emanuel Won't Promise to Follow Hearing Officers' Recommendations on School Closings, CBS CHI. (May 9, 2013), http://chicago.cbslocal.com/2013/05/09/emanuel-wont-promise-to-follow-hearing-officers-recommendations-on-school-closings/.

closings/. 99 Steven Yaccino, *Protests Fail to Deter Chicago From Shutting 49 Schools*, N.Y. TIMES, May 22, 2013, at A20, available at http://www.nytimes.com/2013/05/23/education/despite-protests-chicago-closing-schools.html.

<sup>&</sup>lt;sup>100</sup> Pauline Lipman and Eric Gutstein, Should Chicago Have an Elected Representative School Board? A Look at the Evidence, UNIVERSITY OF ILLINOIS AT CHICAGO (Feb. 2011), at 9,

<sup>&</sup>lt;sup>101</sup> *Id* at 8.

 $<sup>^{102}</sup>$  *Id* at 5.

<sup>&</sup>lt;sup>103</sup> 105 Ill. Comp. Stat. Ann. 5/34-18.43 (West).

<sup>&</sup>lt;sup>104</sup> BJ Lutz & Michelle Relerford, *CPS to Shutter 54 Schools in Closure Plan*, NBC CHI. (Mar. 21, 2013), http://www.nbcchicago.com/blogs/ward-room/chicago-public-school-closures-199247301.html.

Tanveer Ali, CPS School Closings: Critics Again Tell Rahm to 'Walk the Walk', DNAINFO CHI. (May 8, 2013), http://www.dnainfo.com/chicago/20130508/chicago/cps-school-closings-critics-again-tell-rahm-walk-walk.

Board of Education can lease, sell, or repurpose the closed buildings.<sup>106</sup> The report found that, by the end of 2012, 24 school buildings in Chicago were still on the market, with some being vacant for a decade or more.<sup>107</sup> Abandoned school buildings that are not sold to private parties require the government to spend considerable sums for maintenance and to prevent the buildings from becoming sites for gang-activity.<sup>108</sup>

Other sources of funding are available to the City of Chicago to pay for quality public schools. Journalists and social scientists, as well as Chicago residents, have criticized the Mayor's failure to allocate tax increment financing (TIF) funds (a special discretionary revenue fund) to improve public schools in Chicago. The city possesses a tremendous amount of autonomy and flexibility in TIF fund allocation decisions that is largely unregulated and informal. The Mayor can propose projects without consulting [Chicago public schools], parents, or Local School Councils, as well as to port funds from one TIF district to another without consulting [Chicago public schools] or the Aldermen whose wards fall in the TIF districts. Last year, Chicago had over \$1.2 billion surplus TIF funds. Criticism increased dramatically after Mayor Emanuel announced a \$173 million basketball arena for DePaul University – a private, Catholic college – soon after the public school closings. Critics assert that the city's TIF investment of \$33 million in the DePaul project (as well as other TIF monies) could have been spent on education expenses or to address the budget concerns.

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<sup>&</sup>lt;sup>106</sup> Emily Dowdall and Susan Warner, *Shuttered Public Schools: The Struggle to Bring Old Buildings New Life*, THE PEW CHARITABLE TRUSTS (Feb. 11, 2013), at 16,

 $http://www.pewtrusts.org/uploadedFiles/www.pewtrustsorg/Reports/Philadelphia\_Research\_Initiative/Philadelphia-School-Closings.pdf.\\$ 

<sup>&</sup>lt;sup>107</sup> *Id.* at 4.

<sup>&</sup>lt;sup>108</sup> Gary Younge, *Chicago's South Siders Vow to Fight to the Last in Battle to Save Their Schools*, THE GUARDIAN (Apr. 9, 2013), http://www.guardian.co.uk/world/2013/apr/09/chicago-public-schools-teachers-closures.

A Primer on Tax Increment Financing, The Board of Regents of the University of Illinois at Chicago, http://www.uic.edu/cuppa/voorheesctr/tif/public\_html/tif101.html; Stephanie Farmer, Tax Increment Financing and Chicago Public Schools Construction Projects, Chicagoland Researchers and Advocs. For Transformative Educ. (June 2012), http://www.chicagobusiness.com/assets/downloads/rooseveltreport.pdf; Ben Joravsky and Mike Dumke, Shedding Light on the Shadow Budget, Chi. Reader (Dec. 10, 2009), http://www.chicagoreader.com/chicago/shadow-budget-tif/Content?oid=1251320; Chuck Sudo, Emanuel Blames CPS Budget Woes On Pensions, Conveniently Ignores TIFs, Chicagoist (June 26, 2013), http://chicagoist.com/2013/06/26/emanuel\_blames\_cps\_budget\_woes\_on\_p.php;;

<sup>&</sup>lt;sup>110</sup> A Primer on Tax Increment Financing, THE BOARD OF REGENTS OF THE UNIVERSITY OF ILLINOIS AT CHICAGO, http://www.uic.edu/cuppa/voorheesctr/tif/public html/tif101.html.

Factsheet on Tax Increment Financing (TIF), CHICAGOLAND RESEARCHERS AND ADVOCS. FOR TRANSFORMATIVE EDUC., http://www.createchicago.org/p/fact-sheets-and-research-briefings.html.

<sup>112</sup> Valerie F. Leonard, *Five Reasons Why Chicago Should Have an Elected School Board*, CATALYST CHI. (Oct. 22, 2012), http://www.catalyst-chicago.org/news/2012/10/22/20522/five-reasons-why-chicago-should-have-elected-school-board.
113 Ben Strauss, *Critics Say Chicago Shouldn't Aid DePaul Arena With Schools Closing*, N.Y. TIMES, June 23, 2013, at D8, available at http://www.nytimes.com/2013/06/24/sports/ncaabasketball/critics-say-chicago-shouldnt-aid-depaul-arena-with-schools-being-shut-down.html.
114 *Id*.

#### 3. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAWS

The Universal Declaration of Human Rights effectively binds the United States as customary international law.<sup>115</sup> The United States of America has ratified the UN International Covenant on Civil and Political Rights<sup>116</sup> and the UN International Convention on the Elimination of All Forms of Racial Discrimination.<sup>117</sup> The United States of America has signed the Convention on the Rights of the Child,<sup>118</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>119</sup> and the Convention on the Rights of Persons with Disabilities.<sup>120</sup> Under the Vienna Convention, even with respect to treaties the United States has signed but not ratified, it is bound not to defeat its "object and purpose."<sup>121</sup> Moreover, the Chicago City Council specifically adopted the Convention on the Rights of Child and directed all city agencies that work on issues impacting children to "advance policies and practices that are in harmony with the principles on the Convention of the Rights of the Child."<sup>122</sup>

#### A. The right to equality and non-discrimination in education

#### 1. Discrimination against minorities

The United States is bound by numerous international conventions that require equality and prohibit discrimination on any ground, including race. Specifically, the United States is a State Party to the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR states that:

All persons are equal before the law and are entitled without any discrimination, to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any

<sup>&</sup>lt;sup>115</sup> Antônio Augusto Cançado Trindade, *Universal Declaration of Human Rights*, AUDIOVISUAL LIBR. OF INT'L L. (2008) ("The international community as a whole, moved by the universal juridical conscience, conferred upon the Universal Declaration the dimension that it has today, recognized in the international case law, incorporated in the domain of customary international law, and gave expression to some general principles of law universally recognized.").

<sup>116</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 (current signatory and ratification status available at

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-4&chapter=4&lang=en).

<sup>117</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, S. Exec. Doc. C, 95-2 (1978), 660 U.N.T.S. 195 (current signatory and ratification status available at

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-2&chapter=4&lang=en).

<sup>&</sup>lt;sup>118</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-11&chapter=4&lang=en).

<sup>&</sup>lt;sup>119</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 (current signatory and ratification status available at

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-3&chapter=4&lang=en).

<sup>120</sup> Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Jan. 24, 2007) (current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-15&chapter=4&lang=en).

Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

City of Chicago Resolution Adopting the Convention on the Rights of the Child, February 11, 2009, available at http://www.njjn.org/uploads/digital-library/City-of-Chicago-Resolution-UN-Convention-on-Rights-of-Child-2.11.09.pdf.
 International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 (current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-4&chapter=4&lang=en).

ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. 124

This provision is autonomous, thus widening the scope of non-discrimination beyond only the rights in the ICCPR under Article 3. The United States is also a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 2 of ICERD condemns racial discrimination, obliging States Parties to eliminate discrimination in all forms, as follows:

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms... and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons... and to assure that all public authorities and public institutions, national and local, shall act in conformity with this obligation...(c) Each State Party shall take effective measures to review governmental, national, and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. 127

The Convention on the Rights of the Child (CRC) also prohibits governments from discriminating against children with respect to all rights set forth in the Convention. Article 2 of the CRC states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>128</sup>

The prohibition against discrimination applies to all laws and policies, including those with regard to education. The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the United States is a signatory, states in Article 2.2 that there should be no discrimination of any kind with respect to the rights in the Covenant, which includes the right to education:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind

<sup>&</sup>lt;sup>124</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171

<sup>&</sup>lt;sup>125</sup> O.P. Dhiman, *Understanding Human Rights: An Overview* 121 (2011) ("Article 26 contains a revolutionary and unique norm by providing an autonomous equality principle which is not dependent upon another right under the convention being infringed. This has the effect of widening the scope of the non-discrimination principle beyond the scope of ICCPR.").

<sup>&</sup>lt;sup>126</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, S. Exec. Doc. C, 95-2 (1978), 660 U.N.T.S. 195 (current signatory and ratification status available at

 $http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY\&mtdsg\_no=IV-2\&chapter=4\&lang=en).$ 

<sup>&</sup>lt;sup>127</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, S. Exec. Doc. C, 95-2 (1978), 660 U.N.T.S. 195.

<sup>&</sup>lt;sup>128</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

as to race, colour, sex, language, religions, political or other opinion, national or social origin, property, birth, or other status. 129

The closure of 49 public elementary schools in Chicago denies the right to equal protection and violates African American students' right to be free from racial discrimination because the closings disproportionately impact African American students. As discussed in Section 2.A above (Factual Background on School Closings), African American children are 42% of all students enrolled in public schools in Chicago but 80% of the children who will be impacted by the school closures. <sup>130</sup> In addition, 87% of the schools marked for closure were majority African American. 131

Law and policies that have a disproportionate impact on minorities can give rise to violations even if there is no intent to discriminate on the part of the government. For example, in D.H. and Others v. Czech Republic, the European Court of Human Rights held that the disproportionate assignment of Roma children in the Czech Republic to special schools amounted to a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights read in conjunction with Article 2 of Protocol 1 (right to education). The Court further elaborated that it was not necessary to prove discriminatory intent on behalf of the State to establish a disparate impact claim. 133

This disproportionate impact on African American students will have many negative consequences. First, African American children in Chicago will be at greater risk of violence in their home communities (see Section 3.B below). Second, African American children will disproportionately suffer the effects of a reduced quality of education (see Section 3.C below). The discriminatory impact on African American students of the school closures violates both the ICCPR and ICERD, both binding on the United States, and the CRC, which the Chicago City Council adopted.

Additionally, several lawsuits have recently been filed in U.S. Federal Courts in Illinois seeking to enjoin the school closures on the basis that they violate domestic law. 134 One complaint alleges that "by repeatedly selecting African American students to bear the costs of the closings" the Board of Education is unlawfully subjecting African American children to discrimination because of race, in violation of Section 5 of the Illinois Civil Rights Act of 2003 (ICRA), 740 ILCS 23/5. A Federal court in Chicago, Illinois held a hearing during the week of July 15, 2013 to determine whether school closings be stopped pending resolution of the lawsuits. 136

<sup>136</sup> Jessica D'Onofrio and Sarah Schulte, Chicago Public Schools Closings Fight Moves to Federal Court With Injunction Hearing, ABC CHIC. (July 16, 2013), http://abclocal.go.com/wls/story?section=news/local&id=9173735.

<sup>129</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360

<sup>(1967), 993</sup> U.N.T.S. 3.

130 Alex Keefe, Emanuel: CPS School Closures 'Not Taken Lightly,' but Must be Done, WBEZ91.5 (Mar. 23, 2013), http://www.wbez.org/news/emanuel-cps-school-closures-not-taken-lightly-must-be-done-106253.

<sup>&</sup>lt;sup>132</sup> D.H. and Others v. Czech Republic, 57325/00 Eur. Ct. H.R. (2006), available at http://www.unhcr.org/refworld/docid/469e020e2.html.

Noreen S. Ahmed-Ullah, *Hearings Today on Lawsuits Against CPS School Closings*, CHI. TRIB. (July 16, 2013), http://articles.chicagotribune.com/2013-07-16/news/ct-met-cps-federal-hearing-20130715 1 closings-today-chicago-teachers-

<sup>135</sup> Complaint at 5, McDaniel v. Bd. of Educ. of the City of Chicago, No. 13-CV-03624, (N.D. Ill. May 14, 2013), available at http://blogs.edweek.org/edweek/District Dossier/School%20Closing%20ICRA%20Complaint%20Clean.pdf.

#### 2. Discrimination against children with disabilities

The right to equality and non-discrimination provisions mentioned in Section 2.A.1 above also protects children with disabilities. Other provisions that relate to children with disabilities in the educational context are also relevant. First, the United States has signed the Convention on the Rights of Child (CRC), which the Chicago City Council has specifically adopted. Article 23 of the CRC recognizes the right of disabled children to special care. Article 23(2) states specifically that:

States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.<sup>139</sup>

Second, President Obama signed the Convention on the Rights of Persons with Disabilities, which specifically requires "States Parties recognize the right of persons with disabilities to education." It further provides that "[p]ersons with disabilities are not excluded from the general education system on the basis of disability" and that "[r]easonable accommodation of the individual's requirements" be provided.

As described in Section 2.B above (Factual Background on School Closings), many schools slated for closure offer extensive services for students with special needs and it is not clear whether the receiving schools will offer the same kind of services required to sufficiently provide for these children. The larger class sizes may violate the requirements under local laws that mandate educational programs designed to meet the needs of each individual child.

Additionally, the lawsuits filed in the U.S. District Court for the Northern District of Illinois also raise objections to the school closures on the grounds that the closings will have a disproportionate impact on disabled students. One complaint alleges that the Board of Education is "carrying out a program of school closings that will do more harm to children with disabilities than it will to their non-disabled classmates."

#### B. The right to be free from violence and the right to life

International treaties guarantee all Americans the right to be free from violence, the right to life, and the right to accessible education. Article 6 of the ICCPR provides that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Article 19 of the CRC requires the United States government

<sup>&</sup>lt;sup>137</sup> City of Chicago Resolution Adopting the Convention on the Rights of the Child, February 11, 2009, available at http://www.njjn.org/uploads/digital-library/City-of-Chicago-Resolution-UN-Convention-on-Rights-of-Child-2.11.09.pdf. <sup>138</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>138</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T

<sup>140</sup> Convention on the Rights of Persons with Disabilities. art. 24(1). G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Jan. 24, 2007).
141 *Id.* at art. 24(2)(a).
142 *Id.* at art. 24(2)(c).

<sup>&</sup>lt;sup>143</sup> Complaint at 2, *McDaniel v. Bd. of Educ. of the City of Chicago*, No. 13-CV-03624, (N.D. Ill. May 14, 2013), available at http://blogs.edweek.org/edweek/District\_Dossier/School%20Closing%20ICRA%20Complaint%20Clean.pdf. <sup>144</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation." The United Nations committee that monitors compliance with the CRC recently stated in General Comment No. 13 that "[n]o violence against children is justifiable; all violence against children is preventable."

Additionally, Article 13 of the ICESCR requires state parties to "recognize the right of everyone to education." The Committee on Economic, Social, and Cultural Rights, a UN body that monitors implementation of the ICESCR, has stated in General Comment No. 13 that educational institutions must be accessible to everyone, without discrimination. This includes physical accessibility, which means that the educational facilities must be within safe physical reach or convenient geographic location. 149

The school closings jeopardize the right of children to be free from violence, their right to life, and right to accessible education. As discussed in Section 2.C (Factual Background on School Closings) the closing of 49 schools have occurred in communities where there is significant violence and now many students will have to travel through neighborhoods that may be unsafe and put their lives at risk. Other children will be in new schools with classmates who may threaten them because of assumed gang-affiliations based on the their place of residence. Some of these children may stop attending school due to violence or threats of violence. In disregard to the requirement of Article 28 of the CRC that requires the City of Chicago to reduce drop-out rates, the school closings are likely to increase them.

The CRC, adopted by Chicago's City Council, requires that the government take measures to prevent violence against children and the ICCPR guarantees each person the right to life. Contrary to this requirement, the Chicago Board of Education has placed children at increased risk of violence and death with the closing of nearly 10% of all Chicago Public Schools. The schools that students will be forced to attend will also be farther away and physically less accessible than their prior schools in contravention of the ICESCR.

#### C. The right to quality of education

The right to education is a foundational human right in the United States' democracy. Nearly every state constitution contains an education provision, <sup>150</sup> including the Illinois constitution. <sup>151</sup> The Universal Declaration of Human Rights (UDHR), although not a treaty, is considered to effectively bind all member states of the United National as customary international law. <sup>152</sup> Article 26 of the UDHR declares that "everyone has a right to

<sup>&</sup>lt;sup>145</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>&</sup>lt;sup>146</sup> Comm. on the Rights of the Child, *General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence (art. 19)*, ¶ 3, U.N. Doc. CRC/C/GC/13 (Apr. 18, 2001), available at http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13 en.pdf.

<sup>&</sup>lt;sup>147</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3

Comm. on Econ., Soc. & Cultural Rights, General Comment No. 13: The Right to Education (art. 13), ¶ 6 & ¶ 43, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999), available at

http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument.

 $<sup>^{149}</sup>$  *Id* at ¶ 6.

William E. Thro, To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation, 75 VA. L. REV. 1639, 1661 (1989).
 II. Const. art. 10.

<sup>&</sup>lt;sup>152</sup> Antônio Augusto Cançado Trindade, *Universal Declaration of Human Rights*, AUDIOVISUAL LIBR. OF INT'L L. (2008) ("The international community as a whole, moved by the universal juridical conscience, conferred upon the Universal Declaration the

education." The CRC, to which the United States is a signatory, protects the child's right to education in Articles 28 and 29. 154 It requires that countries that are party to it "recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity" and "take measures to encourage regular attendance at schools and the reduction of drop-out rates." 155 Although the United States has signed, but not ratified, the CRC, the Chicago City Council has adopted it and required all city agencies to comply with it. Additionally, ICESCR, to which the United States is a signatory, guarantees the right to education in Article 13. 156 It provides that countries that are party to the Covenant "recognize" the right of everyone to education." The United States has signed, but not ratified, the ICESCR. The United States, however, cannot engage in activities that would defeat the object and purpose of the ICESCR or CRC. 158

It is not enough for a government to simply provide a spot to each student in a school, but the education must also be of a certain, high quality. The UN Special Rapporteur on the Right to Education recently stated that quality of education is extremely important. <sup>159</sup> The UN committee that interprets the CRC asserted in General Comment No. 1 that there is "a qualitative dimension" to the right to education "which reflects the rights and inherent dignity of the child." Additionally, General Comment No. 13, adopted by the UN committee that monitors the ICESCR, requires that education be "acceptable." This means that "teaching methods ... have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students.",162 That committee has also stated that "education offered must be adequate in quality, relevant to the child and must promote the realization of the child's other rights." Illinois state law also stresses the quality of education: "Quality educational facilities are essential for fostering the maximum educational development of all persons through their educational experience from prekindergarten through high school."164

The actions of the Mayor of Chicago and the Chicago Board of Education put at risk the right to a quality education of the thousands of students who will be subjected to classes of larger sizes than previously existed. Students will not always be transferred to higher performing schools. A study conducted after a prior wave of school closings in Chicago found that the

dimension that it has today, recognized in the international case law, incorporated in the domain of customary international law, and gave expression to some general principles of law universally recognized.").

Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

<sup>&</sup>lt;sup>154</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (current signatory and ratification status available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-11&chapter=4&lang=en).

<sup>156</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 (current signatory and ratification status available at

http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=IV-3&chapter=4&lang=en).

Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

<sup>&</sup>lt;sup>159</sup> Report of the Special Rapporteur on the right to education, Kishore Singh, Human Rights Council (Twentieth session, May 2, 2012), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/133/55/PDF/G1213355.pdf?OpenElement.

Comm. on the Rights of the Child, General Comment No. 1: The Aims of Education (art. 29), ¶ 2, U.N. Doc. CRC/GC/2001/1 (Apr. 17, 2001), available at http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2001.1.En. <sup>161</sup> Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 13: The Right to Education (art. 13)*, ¶ 6, U.N. Doc.

E/C.12/1999/10 (Dec. 8, 1999), available at

http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument.

<sup>162</sup> Id.
163 Comm. on Econ., Soc. & Cultural Rights, General Comment No. 11: Plans of Action for Primary Education (art. 14), ¶ 6,

http://www.unhchr.ch/tbs/doc.nsf/0/59c6f685a5a919b8802567a50049d460? Open document.

<sup>&</sup>lt;sup>164</sup> 105 Ill. Comp. Stat. Ann. 5/34-18.43(a) (West).

transferred students did not improve their educational outcomes.<sup>165</sup> Additionally, as discussed in Section 2.D (Factual Background on School Closings), increased class size can have a detrimental impact on student learning, particularly for minority communities. Consequently, the school closings may negatively impact education quality.

Moreover, the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights, which are non-binding principles, require that once States provide a certain level of rights, they must not retrogress. Closing 10% of all public schools in Chicago is a retrogression of the right to education. As a result of the closings, class size in the schools receiving new students will increase, likely reducing the quality of education.

#### D. The right and opportunity to take part in the conduct of public affairs

Article 25 of the ICCPR provides that every citizen must have the opportunity to "take part in the conduct of public affairs." The Human Rights Committee, a UN body that interprets and monitors compliance with the ICCPR, stated in General Comment No. 25 that participation may be achieved by citizens "taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government." <sup>168</sup>

Illinois law also requires public participation and input in all decision-making regarding school closures. In response to a prior wave of school closings, the Illinois State Legislature amended the School Code, effective August 2011, to add provisions regarding democratic participation in school closing decisions:

School openings, school closings, school consolidations, school turnarounds, school phase-outs, school construction, school repairs, school modernizations, school boundary changes, and other related school facility decisions often have a profound impact on education in a community. In order to minimize the negative impact of school facility decisions on the community, these decisions should be implemented according to a clear system-wide criteria and with the significant involvement of local school councils, parents, educators, and the community in decision-making. 169

The Illinois legislature also established the Chicago Educational Facilities Task Force to monitor compliance with the new law. The Task Force issued a report regarding to the prior set of school closures in which it found that certain guidelines adopted by the Chicago Board of Education did not satisfy the requirements of Illinois State law. Commenting on the current

<sup>&</sup>lt;sup>165</sup> Marisa de la Torre and Julia Gwynne, *When Schools Close: Effects on Displaced Students in Chicago Public Schools*, The U. Chi. Consortium on Chi. Sch. Res. (Oct. 2009), at 18-26,

http://ccsr.uchicago.edu/sites/default/files/publications/CCSRSchoolClosings-Final.pdf.

Masstricht Guidelines on Violations of Economic, Social and Cultural Rights (Jan. 22-26, 1997), at Section 14(e), http://www1.umn.edu/humanrts/instree/Maastrichtguidelines .html.

<sup>&</sup>lt;sup>167</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171

<sup>&</sup>lt;sup>168</sup> International Covenant on Civil and Political Rights, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (art. 25)*, ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996), available at http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb.

Adopted by Public Act 096-0803 (effective Aug. 2011) and codified as 105 III. Comp. Stat. Ann. 5/34-18.43 (West).
 170 105 III. Comp. Stat. Ann. 5/34-18.43 (West).

<sup>&</sup>lt;sup>171</sup> Record of Action from the January 12, 2012 Meeting, CHI. EDUC. FACILITIES TASK FORCE, http://www.isbe.state.il.us/CEF/pdf/ceftf\_findings\_011212.pdf.

school closures, the Task Force found that "Chicago's most vulnerable students are at greatest risk" and that the relevant authorities have "failed to provide details for addressing support of special needs students." <sup>172</sup>

Although the Chicago Board of Education held hearings with community residents about the school closures, those without Internet access found it difficult to obtain speaking spots at the meetings. In these hearings, the overwhelming majority of parents objected to the school closures. Additionally, the independent hearing officers appointed by the school district who presided over other public hearings filed conclusions and recommendations that raised general objections and recommended against the closing of particular schools. A number of academic experts who studied the school closures also raised numerous objections to the plan. The Chicago Board of Education has not heeded the public's concerns; instead, it pushes forward with a massive set of widely opposed school closures. Democratic participation is further constricted in public school matters in Chicago, because unlike most other school districts around the country, where school board members are elected, the mayor of Chicago appoints all members to the Chicago Board of Education. The right to participate in decision-making regarding school closings is an empty promise if the opinions of the community are ignored.

#### E. The closings cannot be justified due to a lack of financial resources

Article 2 of the ICESCR allows state parties to implement the right to education subject to "maximum available resources." However, the obligations contained in the ICCPR, CERD, CRC and other treaties are not subject to this limitation. In other words, regardless of their level of financial resources, governments can never discriminate against people within its jurisdiction and must treat them equally and protect their right to life. Thus, Chicago cannot offer a budget deficit as a reason for the discriminatory impact of its policies or for exposing children to an increased risk of violence. On the other hand, to the extent the City of Chicago may argue that the quality of education can suffer due to a lack of funding, that argument does not hold either. When examined carefully, given the various other funding options available for funding public schools and the potential lack of savings attributable to the school closings, budget constraints are not a legitimate excuse to erode the quality and accessibility of education for Chicago's children (see Section 2.F (Factual Background on School Closings)).

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<sup>&</sup>lt;sup>172</sup> Chicago Educational Task Force, *Draft – Preliminary Findings of the ILGA CEFTF*, (May, 2013), http://www.isbe.state.il.us/CEF/pdf/ceftf-preliminary-findings-051713.pdf.

George N. Schmidt, *Kafka on Clark Street*, SUBSTANCE NEWS (June 4, 2013), http://www.substancenews.net/articles.php?page=4318.

<sup>&</sup>lt;sup>174</sup> Becky Schlikerman and Tina Sfondeles, *Hearing Officers Oppose 10 Planned CPS Closures, Have Reservations About Others*, CHI. Sun-Times (May 7, 2013), http://www.suntimes.com/news/education/19951788-418/hearing-officers-oppose-14-planned-cps-closures.html.

<sup>175</sup> See, e.g., Stephanie Farmer, Isaura Pulido, Pamela J. Konkol, Kate Phillippo, David Stovall and Mike Klonsky, *CReATE* 

<sup>&</sup>lt;sup>175</sup> See, e.g., Stephanie Farmer, Isaura Pulido, Pamela J. Konkol, Kate Phillippo, David Stovall and Mike Klonsky, *CReATE Research Brief on School Closures*, CHICAGOLAND RESEARCHERS AND ADVOCS. FOR TRANSFORMATIVE EDUC. (Mar. 2013), http://www.createchicago.org/2013/03/create-releases-research-brief-on.html; Michael Tarm, Expert: *Chicago School Closings Will Endanger Kids*, AP (July 18, 2013), http://abcnews.go.com/US/wireStory/expert-chicago-school-closings-endanger-kids-19693926.

<sup>&</sup>lt;sup>176</sup> Pauline Lipman and Eric Gutstein, *Should Chicago Have an Elected Representative School Board? A Look at the Evidence*, UNIVERSITY OF ILLINOIS AT CHICAGO (Feb. 2011), at 9,

http://www.uic.edu/educ/ceje/articles/Printed%20school%20board%20report.pdf.

<sup>&</sup>lt;sup>177</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

#### 4. CONCLUSION

The school closures by the City of Chicago, the third largest city in the United States, are the largest in the United States' history. The closures displace nearly 30,000 students in 49 schools over the course of a few months. Although many schools are considered "underutilized" in Chicago, the schools targeted for closure are overwhelmingly located in minority communities. African American students are disproportionately impacted by the closings. While making up about 40% of all students in the public schools, over 80% of impacted students are African American. Accounting for about 12% of the displaced students, disabled children will be hastily transferred without any guarantee that their needs will be met in their new schools. The neighborhoods where many schools are set to close are plagued with gang violence. Displaced students forced to travel through new areas to get to school will face an increased risk of violence and death. The quality of education will suffer as students are packed into larger classes. Precisely those students who need the most resources devoted to their education will be deprived of it. Lack of funding is not an adequate justification for this massive wave of closures when funds that could be utilized for public schools are being spent on other projects. The Chicago Board of Education has largely ignored the findings of an independent panel urging that certain schools remain open as well as the widespread protests by parents, students, and community members against the school closings.

Education is the hallmark of the United States' democracy. It is a right guaranteed by the Illinois state constitution as well as UN treaties that apply to United States government and the City of Chicago. The school closings implicate the right to education as well as the right to equality and non-discrimination, the right of children to be free from violence, and the right to participation in public affairs. The Midwest Coalition for Human Rights on behalf of itself and the undersigned organizations and individuals requests the United Nations investigate these human rights violations and take measures to prevent them.

#### RESPECTFULLY SUBMITTED BY:

#### Lead Coordinating Organization: The Midwest Coalition for Human Rights

The Midwest Coalition for Human Rights is a network of 56 organizations, service providers, and university Human Rights centers that work together to promote and protect human rights in the Midwest region of the United States. Coalition organizations research, advocate, educate, and take action as a strong regional voice on national and international human rights issues. The full member list of the coalition is available at http://www.midwesthumanrights.org/members.

#### Legal counsel: University of Chicago Law School's International Human Rights Clinic

The International Human Rights Clinic works with non-governmental organizations to design and implement human rights cases and projects. Students learn human rights lawyering skills by working on these cases and projects, all of which are supervised by the director of the Clinic. The Clinic uses international human rights laws and norms to draw attention to human rights violations, develop practical solutions to those problems using interdisciplinary methodologies, and promote accountability on the part of state and non-state actors.

#### *The following organizations:*

Center for the Human Rights of Children, Loyola University, Chicago

Chicago Anti-Eviction Campaign

Chicago Grassroots Curriculum Taskforce

Chicago Teachers Union, Human Rights Committee

CReATE (Chicagoland Researchers and Advocates for Transformative Education)

Human Rights Committee of the Chicago Teachers Union

Jewish Council on Urban Affairs, Chicago

National Conference of Black Lawyers

National Lawyers Guild, Chicago chapter

*The following parents, teachers, and community residents:* 

Marilyn Alam, Founder, Hyde Park Area Parents Group

Molly Armour, National Lawyers Guild, Chicago

William Ayers, Distinguished Professor, Dept. of Education, University of Illinois at Chicago (retired)

Barbara J. Baker, retired teacher

Timuel D. Black, Professor Emeritus, Chicago City Colleges

Ellyson Carter, Assistant Field Director, Action Now

Vickie Casanova, Trinity United Church of Christ, Chicago, Justice Watch Team

Lance Cohn, Chicago Teachers Union, Human Rights Committee

Willie JR Fleming, parent, Executive Director, Chicago Anti Eviction Campaign

Emily Fong, parent and HPCARES member

Stephanie Gadlin, Chicago Teachers Union

Marie Gasaway, grandparent, Action Now, Local School Council (LSC) member, Henson

Elementary School

Susan Gzesh, Senior Lecturer, University of Chicago Human Rights Program

Lettrice Jamison, parent

Katelyn Johnson, Action Now, Executive Director

Michael Klonsky, Ph.D., DePaul University, Chicago

Valerie F. Leonard, expert, Community and Organizational Development

Sherise McDaniel, parent, George Manierre School

Joey Mogul, People's Law Office

Isabel Nuñez, CReATE

Windy M. Pearson

Jan Susler, People's Law Office

Flint Taylor, People's Law Office

Tammie F. Vinson, Chicago Teachers Union, teacher

Standish Willis, National Conference of Black Lawyers

Michelle Young, parent, Action Now, LSC member, May Elementary School

The names of additional signatories to the letter of allegation can be found at

http://petitions.moveon.org/sign/united-nations-stop-human-2?source=c.url&r by=8470674