2019 IL App (3d) 170376-U

Order filed March 8, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT NO. 204 and JOLIET TOWNSHIP HIGH SCHOOL DISTRICT NO. 204, a body politic, Plaintiffs-Appellants, v. WILL COUNTY REGIONAL BOARD OF SCHOOL TRUSTEES, a/k/a Will County Regional Office of Education; WILL COUNTY EDUCATIONAL SERVICE REGION, REGIONAL SCHOOL BOARD; WILL COUNTY REGIONAL BOARD OF EDUCATION; SHAWN WALSH; MARY CARROLL; RICH DOMBROWSKI; NANCY TERLEP BARTELS; GARY H. HOFFMAN; DENISE RUTTER; VERONICA BOLLERO; and COMMITTEE OF TEN, a/k/a petitioners DAVID A. KNOTT, JANELLE L. BASTIAN, AARON M. ELSTNER, TINA M. LEEN, JENNIFER L. LARSON, JOHN A. BROSIUS III, THOMAS R. PAJULA, SARAH L. PANDOLFI, KELLY A. DUVALL and CHRISTINA JOY, Defendants	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois. Appeal No. 3-17-0376 Circuit No. 14-MR-2475

(Committee of Ten, a/k/a petitioners David A. Knott, Janelle L. Bastian, Aaron M. Elstner, Tina M. Leen, Jennifer L. Larson, John A. Brosius III, Thomas R. Pajula, Sarah L. Pandolfi, Kelly A. Duvall and Christina Joy, Defendants-Appellees).	)	Honorable John C. Anderson, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Carter concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: School district is entitled to conduct discovery and have the circuit court fully adjudicate its EEOA claim as an independent cause of action separate from the district's claim for administrative review of the Board's decision to grant petition for detachment.

¶ 2 Residents of a subdivision filed a petition with the Will County Regional Board of School Trustees (Board) to detach their property from Joliet Township School District No. 204 (Joliet Township) and annex it to Lincoln-Way Community High School District No. 210 (Lincoln-Way). The Board voted in favor of the petition. Joliet Township filed a complaint in circuit court seeking administrative review of the Board's decision and alleging a violation of the Equal Education Opportunities Act of 1974 (EEOA) (20 U.S.C. § 1701 *et seq*. (2012)). The Board opposed Joliet Township's request for discovery under the EEOA claim, and the trial court certified a question for review pursuant to Illinois Supreme Court Rule 308(a) (eff. Jan. 1, 2016). We answer the certified question in the affirmative and remand for further proceedings.

¶ 3 In July of 2013, several residents of the territory referred to as Neufairfield Subdivision filed a petition for detachment and annexation with the Board seeking to detach their property from Joliet Township and annex it to Lincoln-Way. The petitioners, otherwise known as the "Committee of Ten," filed the petition under section 7-1 of the Illinois School Code (School

Code) (105 ILCS 5/7-1 (West 2012)). After conducting a hearing, the Board granted the petition.

¶ 4 On October 15, 2015, Joliet Township filed a three count complaint seeking review of the Board's decision. Count I requested administrative review of the Board's decision to grant the petition under article 7 of the School Code, and count II requested a writ of *certiorari* regarding the Board's composition and procedure under article 6. Count III alleged a violation of the EEOA, asserting that the federal act prohibited the Board from granting a petition for detachment that would result in a greater degree of segregation among the remaining students in the district.

¶ 5 The trial court dismissed count II with prejudice, and plaintiffs appealed. We affirmed that decision, and the case was remanded for further proceedings. *Board of Education of Joliet Township High School District No. 204 v. Will County Regional Board of School Trustees*, 2016 IL App (3d) 150494-U (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 On remand, the Committee of Ten and the Board filed a motion to set a briefing schedule and hearing. Joliet Township opposed the motion and asked for time to conduct discovery on its claim that the Board's decision violated the EEOA. Defendants responded by arguing that discovery was not available under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2014)). The trial court denied defendants' motion, without prejudice, and certified the following question for interlocutory review under Rule 308(a) (eff. Jan. 1, 2016):

> "Are the Plaintiffs entitled to conduct discovery, present evidence, develop a factual record, and have the circuit court fully adjudicate their EEOA claim as an independent cause of action under its original jurisdiction separate from the claims for administrative review of the decision to grant Defendants' Petition for detachment/annexation?"

¶ 7 Joliet Township filed a timely application for leave to appeal the question, and we granted the application.

¶ 8 ANALYSIS

¶ 9 I. The School Code and the EEOA

¶ 10 The certified question relates to the Committee of Ten's petition for detachment filed under section 7-1 of the School Code and the subsequent complaint filed by Joliet Township in circuit court challenging the Board's decision to grant the petition and raising an additional claim based on the EEOA.

¶ 11 Section 7-1 of the Illinois School Code allows for the detachment of land from one district and annexation to another where the affected area lies entirely within one educational service region. 105 ILCS 5/7-1(a) (West 2012). Such a petition can be filed by the boards of each district, the majority of the register voter in each district, or by two-thirds of the registered voters in any territory proposed to be detached or annexed. 105 ILCS 5/7-1(a) (West 2012). In this case, two-thirds of the registered voters in Neufairfield Subdivision signed a petition for detachment from Joliet Township High School District No. 204, which the Board granted.

¶ 12 The EEOA is a federal statute that prohibits a state from denying "equal educational opportunity to an individual on account of his or her race, color, sex, or national origin." 20 U.S.C. 1703 (2012). The EEOA enumerates several activities that constitute discrimination, including the assignment of a student to a school within the district in which he or she resides other than the one closest to his or her residence "if the assignment results in a greater degree of segregation." 20 U.S.C. 1703(c) (2012). The act also prohibits the transfer of students to another district if the effect is to increase segregation. 20 U.S.C. 1703(e) (2012).

¶ 13 Joliet Township argues that the EEOA claim is an independent claim, separate from its request for administrative review, over which the circuit court has original jurisdiction, citing *Board of Education, Joliet Township High School District No. 204 v. Board of Education Lincoln Way Community High School District No. 210*, 231 Ill. 2d 184, 201 (2008). In response, defendants argue that the case law relied upon by plaintiffs is inapplicable because that case involved section 7-2(b) of the School Code (105 ILCS 5/7-2(b) (West 2012)), which limited the Board's scope of review in petitions for detachment/annexation. Here, defendants argue that section 7-1 of the School Code does not contain such restrictive language and, therefore, plaintiffs were required to bring the EEOA claim, along with the administrative law claims, as an appeal from the administrative proceeding.

¶ 14 II. Standard of Review

¶ 15 This appeal comes to us in the form of a certified question pursuant to Rule 308, and a certified question carries important consequences for the scope of our analysis. In such appeals, "our jurisdiction is limited to considering the question certified and we cannot address issues outside that area." *Hudkins v. Egan*, 364 Ill. App. 3d 587, 590 (2006); see also *Spears v. Association of Illinois Electric Cooperatives*, 2013 IL App (4th) 120289, ¶ 15 (scope of review in an interlocutory appeal brought under Rule 308 is limited to the certified question). Analyzing issues beyond the certified question would be to expand our own jurisdiction, which we cannot do; that is a privilege that belongs solely to our supreme court. *People v. Jones*, 213 Ill. 2d 498, 507 (2004) (appellate court does not possess the supervisory powers enjoyed by the supreme court). "With rare exceptions, we do not expand the question under review to answer other, unasked questions." *Giangiulio v. Ingalls Memorial Hospital*, 365 Ill. App. 3d 823, 829 (2006).

We review a certified question pursuant to Rule 308 *de novo.* *Spears*, 2013 IL App (4th) 120289, ¶ 15.

¶ 16 III. Answering the Certified Question

¶ 17 With that standard in mind, we must observe the limits of our jurisdiction by confining our analysis to the certified question presented. That limitation renders irrelevant much of the parties arguments on appeal, which are directed toward the Board's scope of review under section 7-1 versus 7-2(b) of the School Code and the viability of an EEOA claim in an administrative proceeding. Those issues are not articulated in our certified question. The certified question asks only, and we consider only, whether Joliet Township is "entitled to conduct discovery *** and have the circuit court fully adjudicate [its] EEOA claim as an independent cause of action under [the circuit court's] original jurisdiction ***."

¶ 18 In *Board of Education, Joliet Township High School District No. 204 v. Board of Education Lincoln Way Community High School District No. 210*, 373 Ill. App. 3d 563 (2007), this court considered a case concerning detachment between the same two school districts involved in the present matter. In that case, as here, the racial composition of the two school districts was an issue. On appeal, the question was whether the EEOA required educational agencies to consider its prohibitions against segregation in determining whether to grant a petition for detachment/annexation. *Board of Education*, 373 Ill. App. 3d at 569-70. There, the petitioners sought detachment under section 7-2. Section 7-2(b) of the School Code contained a clause limiting the Board's scope of review. 105 ILCS 5/7-2(b) (West 2006). We determined that the Board properly refused to consider the petitioner's claim that section 7-2(b) of the School Code violated the EEOA because the Board's powers were limited to the administrative review powers granted to it by statute. Therefore, it could not consider a constitutional issue

such as the issue raised in the EEOA claim. *Id.* at 570. We went on to conclude, however, that the statute was preempted by the EEOA and remanded to the Board for further proceedings. *Id.* at 573.

¶ 19 The Illinois Supreme Court disagreed with our finding of preemption. See *Board of Education*, 231 Ill. 2d at 193. In reversing the decision of this court, the supreme court evaluated the general applicability of the EEOA and ruled that an EEOA claim may be pursued as an independent cause of action in the circuit court. *Id.* at 204. The court held that it is the circuit courts of Illinois, not an educational agency, that have an obligation to review and enforce an EEOA claim that arises due to a detachment proceeding. *Id*. at 201-02. Citing *Gomez v. Illinois State Board of Education*, 811 F.2d 1030 (7th Cir. 1987), the supreme court found that the EEOA expressly contemplates that relief from discriminatory actions shall be obtained from the courts. *Id*. at 202. And it distinguished an EEOA claim from one for administrative review:

> "Therefore, the current case constitutes a 'justiciable matter' under the Illinois Constitution's grant of original jurisdiction to the circuit courts. In addition to the case falling within the circuit court's original jurisdiction, this case may also be handled as an independent action because the traditional rules of forfeiture do not apply**."** *Id.* at 205.

¶ 20 Addressing an EEOA claim as an independent action under the circuit court's original jurisdiction is not without precedent. See *Board of Education of Rich Township High School District No. 227 v. Brown*, 311 Ill. App. 3d 478, 491 (1999) (holding that a constitutional challenge to the School Code was not outside the scope of the circuit court's original jurisdiction). As the court in *Board of Education of Rich Township* noted, the scope of an administrative agency's authority in a detachment proceeding may not extend to ancillary

constitutional issues. *Id*. Thus, on review, the trial court may develop the record necessary to decide a constitutional challenge under an exercise of the circuit court's original jurisdiction.

¶ 21 Our supreme court's ruling in *Board of Education* requires us to answer the certified question in the affirmative. Given that the EEOA claim is an independent cause of action, Joliet Township should be allowed to conduct discovery as would be proper in any other independent action. See *Board of Education*, 231 Ill. 2d at 205.

¶ 22 Moreover, Joliet Township is not barred from obtaining discovery on its EEOA claim simply because the district chose to consolidate the claim with an action for administrative review. A plaintiff may bring an EEOA claim in circuit court with or without including a count for administrative review. *Board of Education*, 231 Ill. 2d at 198-200 (noting that nothing in the EEOA specifically requires EEOA claims to be decided by the Board rather than by a circuit court). Ruling otherwise would likely cause unjust scenarios where discovery regarding EEOA claims would be prevented without justification. Discovery may be barred whenever an EEOA claim is pleaded in addition to a count for administrative review. Yet, failing to include an EEOA claim in a complaint that also seeks review of an administrative decision could result in forfeiture of the constitutional argument. See *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 396-97 (2002) (claims may be forfeited for failure to raise them at the first opportunity). The language in *Board of Education* and *Board of Education of Rich Township* concerning the independent nature of an EEOA claim and the circuit court's original jurisdiction precludes such a ruling.

¶ 23 Although we have addressed the certified question and answered it affirmatively, we feel compelled to respond to the dissent's claim that Joliet Township forfeited its EEOA claim by failing to raise it on administrative review. Generally, any issue that is not raised before the

administrative agency, even a constitutional one, is forfeited by the party who failed to raise the issue. *Carpetland U.S.A. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 396-97. Ordinary forfeiture rules, however, do not apply where the administrative review law prevents the development of the record with regard to the constitutional claim or the issue raised is beyond the scope of the administrative agency's decision. *Board of Education*, 231 Ill. 2d at 205-06. In this case, a comparison of the EEOA and the Illinois School Code demonstrates that a full adjudication of an EEOA claim can be beyond the scope of an administrative decision to grant or deny a detachment petition.

¶ 24 The EEOA prohibits a state from denying "equal educational opportunity to an individual on account of his or her race, color, sex, or national origin." 20 U.S.C. §1703 (2012). It specifically forbids certain discriminatory acts, including the assignment of a student to a school within the district in which he or she resides other than the one closest to his or her residence "if the assignment results in a greater degree of segregation." 20 U.S.C. §1703(c) (2012). The EEOA also proscribes the transfer of students from one school to another if "the purpose and effect of such transfer is to increase the segregation of students." 20 U.S.C. §1703(e) (2012). By contrast, when a detachment petition is filed the School Code directs the Board to hear evidence as to "the school needs and conditions of the territor[ies]" and "the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education." 105 ILCS 5/7-6(i) (West 2012). The Board is also instructed to "take into consideration the division of funds and assets which will result from the change of boundaries" and determine "whether it is in the best interests of the schools of the area and the educational welfare of the pupils" to grant the petition. *Id.*

¶ 25 Contrary to the dissent's assertion, whether the detachment "results in a greater degree of segregation" and whether the effect is to "increase the segregation of students" are not mentioned as criteria for changing the boundaries in section 7-6 of the School Code. See 20 U.S.C. §1703(e) (2012). The dissent states that the School Code "explicitly" directs the Board to deny a detachment petition if the petition would increase the segregation of minority students. *Infra* ¶ 41. We assume the dissent is referring to subsection (i)(4), which mentions consideration of the percentage of minority students. Section 7-6(i)(4) states:

> "(4) The regional board of school trustees may not grant a petition if doing so will increase the percentage of minority or low-income students or English learners by more than 3% at the attendance center where students in the detaching territory currently attend, provided that if the percentage of any one of those groups also decreases at that attendance center, the regional board may grant the petition upon consideration of other factors under this Section and this Article." 105 ILCS 5/7-6(i)(4) (eff. Jan. 1, 2016).

We find no explicit language in subsection (i)(4) that requires the Board to deny the petition based on *segregation*. The provision directs the board to deny a petition if doing so will increase the percentage of minority students by more than 3%. But it also states that the Board may *grant* the petition if the percentage of low-income students or English learners decreases. This is not a mandate to deny a petition based on segregation.

¶ 26 Regardless, the language to which the dissent refers was not included in section 7-6 when the Committee of Ten filed its petition for detachment in 2012. At that time, section 7-6(i) simply read:

> "The regional board of school trustees, or regional boards of school trustees in cases of a joint hearing shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, and shall take into consideration the division of funds and assets which will result from the change of boundaries and shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted, and in case non-high school territory is contained in the petition the normal high school attendance pattern of the children shall be taken into consideration. ***." 105 ILCS 5/7-6 (West 2012).

¶ 27 Nothing in the 2012 statute under which Joliet Township filed its petition directed the Board to consider evidence as to "the percentage of minority or low-income students," nor did it contain language instructing the Board to consider "the effect detachment will have on those needs and conditions." See infra ¶ 36 (dissent's citation to section 7-6 of the School Code). Even when Joliet Township filed its complaint for administrative review in October of 2015, the statute remained as written in 2012. The dissent quotes two provisions of 7-6 and claims that the language it cites is from the 2012 statute. However, the language the dissent cites was not included in section 7-6(i) of the School Code until it was amended by Public Act 99-475 in 2015, which became effective on January 1, 2016.

¶ 28 As we have maintained, Joliet Township properly asserted an EEOA segregation claim in its complaint before the circuit court because it did not have an opportunity to fully adjudicate that claim in the administrative proceedings. An administrative agency directive to "consider the

needs and conditions of the territory" (105 ILCS 5/7-6(i) (West 2012)) does not identify an evaluation and prohibition of segregation (see 20 U.S.C. §1703 (2012)). Thus, the School Code does not fully encompass the breadth of an EEOA claim, nor does it allow the petitioner to adequately develop such a claim. Here, because the issue of segregation was beyond the scope of the Board's statutory decision-making authority, there can be no forfeiture. See *Board of Education*, 231 Ill. 2d at 205-06 (exclusivity of the administrative review law does not apply where the issue being raised cannot be developed before the administrative agency); see also *Chestnut v. Lodge*, 34 Ill. 2d 567, 571 (1966) ("The Administrative Review Act is a salutary act to provide a simple single review from specified administrative decisions, but it was not intended to be a trap for the unwary to establish a bar to relief.").

¶ 29 CONCLUSION

¶ 30 We answer the certified question in the affirmative and remand the cause to the circuit court for further proceedings.

¶ 31 Certified question answered; cause remanded.

¶ 32 JUSTICE HOLDRIDGE, dissenting.

¶ 33 I dissent. In my view, Joliet Township may not raise a claim under the federal Equal Educational Opportunities Act of 1974 (EEOA) (20 U.S.C. § 1701 *et seq.*) (2012)) in the circuit court, for two reasons. First, Joliet Township failed to exhaust available administrative remedies by failing to raise its EEOA claim before the Board. Accordingly, Joliet Township may not bring an independent EEOA claim in the circuit court separate from its claim for administrative review of the Board's decision. Moreover, by failing to raise its EEOA claim during the Board proceedings, Joliet Township forfeited any such claim on administrative review of the Board's decision. Because Joliet Township may not bring an EEOA claim in the circuit court (either as a

new, independent action or on administrative review of the Board's decision), it cannot obtain discovery on any such claim. The circuit court's review in this case is limited to the record presented before the Board, which does not include an EEOA claim. I would therefore answer the certified question presented in the negative.

¶ 34 ¶ Under the doctrine of exhaustion of administrative remedies, a party aggrieved by an administrative decision ordinarily "cannot seek judicial review without first pursuing all available administrative remedies." *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 551 (1999); see also *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308 (1989). The exhaustion doctrine includes administrative review in the circuit court. *County of Knox*, 188 Ill. 2d at 551. Accordingly, "[w]here the Administrative Review Law is applicable and provides a remedy, a circuit court may not redress a party's grievance through any other type of action." *Id.* "The court's power to resolve factual and legal issues arising from an agency's decision must be exercised within its review of the agency's decision and not in a separate proceeding." *Id.* "Any other conclusion would enable party to litigate separately every alleged error committed by an agency in the course of the administrative proceedings." *Arvia v. Madigan*, 209 Ill. 2d 520, 532 (2004), quoting *Dubin v. Personnel Board*, 128 Ill. 2d 490, 499 (1989); see also *Midland Hotel Corp. v. Director of Employment Security*, 282 Ill. App. 3d 312, 316 (1996) (affirming dismissal of class action complaint as improper collateral attack on final agency decision where the agency's decision was reviewable under the Administrative Review Act).

¶ 35 The detachment petition at issue in this case was brought pursuant to the Illinois School Code (School Code) (105 ILCS 5/7-1 *et seq.* (West 2012)). The School Code explicitly adopts the Administrative Review Law, making it the only available method of review for a final

administrative decision rendered by the Board. When the Board decided the detachment petition at issue in this case, Section 7-7 of the School Code provided that, in detachment proceedings brought under the School Code, the Board's decision "shall be deemed an 'administrative decision' as defined in Section 3-101 of the Code of Civil Procedure." 105 ILCS 5/7-7 (West 2012).[1] It further provided that a petitioner, resident, or board of education "of any affected district" "may file a complaint for a judicial review of such decision in accordance with the Administrative Review Law and the rules adopted pursuant thereto." *Id.* Because review of the Board's decision is governed by the Administrative Review Law, any challenge to the Board's decision, including Joliet Township's claim under the EEOA, would have to be raised before the Board and could be addressed by a circuit court only on administrative review of the Board's final decision. *County of Knox*, 188 Ill. 2d at 551. That did not occur in this case. Accordingly, Joliet Township has failed to exhaust available administrative remedies, and it may not collaterally challenge the Board's decision by bringing a new and independent EEOA claim before the circuit court. *Id.*; see also see also *Midland Hotel Corp.*, 282 Ill. App. 3d at 316.

¶ 36 Nor may Joliet Township raise its EEOA claim for the first time in an administrative appeal of the Board's decision. "Ordinarily, any issue that is not raised before the administrative agency, even constitutional issues that the agency lacks the authority to decide, will be forfeited by the party failing to raise the issue." *Board of Education, Joliet Township High School District No. 204 v. Board of Education, Lincoln Way Community High School District No. 210*, 231 Ill. 2d 184, 205 (2008); see also *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 397 (2002) (holding that a constitutional claim was forfeited "for

[1] Section 3–101 defines "administrative decision" as "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." 735 ILCS 5/3–101 (West 2012).

failure to raise it at the first opportunity"). This rule of forfeiture has led our supreme court to admonish litigants to "assert a constitutional challenge on the record before the administrative tribunal, because administrative review is confined to the proof offered before the agency." *Carpetland U.S.A., Inc.*, 201 Ill. 2d at 397; see also *Texaco–Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278 (1998).

¶ 37 As the majority notes, in *Board of Education*, our supreme court held that an EEOA claim was within the original jurisdiction of the circuit court and could be brought in the circuit court despite the fact that the claim was not previously raised before the Board during the administrative detachment proceedings. *Board of Education*, 231 Ill. 2d at 203-07. However, *Joliet Township* is distinguishable and does not resolve the question presented in the instant case. The detachment petition at issue in *Joliet Township* was brought pursuant to section 7-2b of the School Code. 105 ILCS 5/7-2b (West 2012). That section sets forth certain specific limitations and conditions governing the detachment and annexation of non-coterminous territory from an elementary or high school district, and it expressly provides that the Board "shall have no authority or discretion to hear any evidence or consider any issues except those that may be necessary to determine whether the limitations and conditions of this Section have been met." *Id.* As our supreme court has noted, section 7-2b "operates as a complete bar to the Board's *** receiving evidence of anything outside of section 7-2b's requirements," including evidence of an EEOA violation. *Joliet Township*, 231 Ill. 2d at 205-06. Accordingly, when a detachment petition is brought under section 7-2b, an EEOA claim is "beyond the scope of the Board's administrative decision" and may not be raised before the Board. *Id.* at 206. Such a claim is therefore also "beyond the scope of the administrative review law." *Id.*

¶ 38 The detachment petition at issue in this case was filed pursuant to sections 7-1 and 7-6 of the School Code, not section 7-2b. Unlike section 7-2b, sections 7-1 and 7-6 do not restrict the scope of the Board's review or bar it from considering evidence relevant to an EEOA claim. At the time the Committee of Ten filed its detachment petition, Section 7-6 provided that, when a detachment provision is filed under section 7-1 (as here), the Board

> "shall hear evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts affected to meet the standards of recognition as prescribed by the State Board of Education, and shall take into consideration the division of funds and assets which will result from the change of boundaries and shall determine whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted." 105 ILCS 5/7-6(i) (West 2012).

¶ 39 Courts interpreting these statutory provisions have held that detachment provisions brought pursuant to sections 7-1 and 7-6 should be granted when the overall benefit to the annexing district and the detachment area clearly outweighs the resulting detriment to the losing district and the surrounding community as a whole. *Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 146 Ill. 2d 347, 356 (1992) (collecting cases). In deciding whether this "overall benefit" criterion has been satisfied, the Board, and the courts reviewing the Board's decision on administrative review, are to consider various factors, including differences between school facilities and curricula, the distances from the petitioners' homes to the respective schools, the effect detachment would have on the ability of either district to meet state standards of recognition, and the impact of the proposed boundary change on the tax revenues of both districts. *Carver*, 146 Ill. 2d at 356. The Board may also consider the students' extracurricular

participation in social, religious and commercial activities and whether the petitioning area is identified with the school district and the community to which annexation is requested. *Board of Education of Golf School District No. 67 v. Regional Board of School Trustees of Cook County*, 89 Ill. 2d 392, 397-98 (1982).

¶ 40 Further, in determining whether a proposed detachment promotes the educational welfare of the pupils and is in the best interests of the affected schools, the Board may consider the racial impact of the detachment, *i.e.*, whether detachment would increase or decrease racial integration and racial diversity in the affected schools. *Board of Education of Marquardt School District No. 15 v. Regional Board of School Trustees of Du Page County*, 2012 IL App (2d) 110360, ¶ 28 (reversing school board's grant of detachment petition and finding that the petitioners had failed to prove that the proposed detachment would advance the educational welfare of the students and be in the best interests of the affected school districts where, *inter alia*, "detaching the territory would have the effect of allowing affluent Caucasian homeowners to change school boundaries so that their children would attend less integrated school districts");[2] *Burnett v. Massac Community Unit District No. 1 of Massac County*, 96 Ill. App. 3d 616, 623 (1981) (affirming grant of detachment petition where, *inter alia*, the proposed detachment would double the

[2] In the proceedings before the School Board in *Board of Education of Marquardt School District No. 15*, the parties presented evidence of the percentages of Caucasian, African-American, and Hispanic families that resided in the proposed detaching territory and in each of the school districts that would be affected by the proposed detachment. *Id.* The record also contained evidence of the average home values in the proposed detaching territory and in each of the relevant school districts (and in various subdivisions thereof). *Id.* The appellate court relied heavily on this evidence in reversing the School Board's grant of the detachment provision. Each of the schools at issue "offered academic curricula and facilities of comparable quality." *Id.* ¶ 27. Moreover, the proposed detachment would have had only a minimal impact on tax revenues (it would have caused the existing school districts' tax levies to drop by less than two percent), and it would have had "no impact" on the existing schools' ability to meet State standards of recognition. *Id.* Nevertheless, our appellate court held that the petitioners had failed to meet their burden of proving that detachment was in the best interest of the affected schools and their students, at least in part because the proposed detachment would have increased racial segregation and decreased socioeconomic diversity. *Id.* ¶ 28

minority population in the annexing district and where the additional African-American students at the high school in the annexing district would "encourage further involvement of the current minority students in the affairs of [that school] by making them feel less a part of a small, isolated community, and more a part of the entire high school community"); *Fromm v. Will County Board of School Trustees*, 41 Ill. App. 3d 1045, 1049 (1976) (affirming denial of detachment petition where, *inter alia*, the high school from which the petitioners sought to detach had a "diverse racial and social environment");[3] see also *Board of Education*, 231 Ill. 2d at 217-18 (stating that "consideration of the racial impact of a school district boundary change is relevant to a detachment and annexation proceeding 'to ensure that a dual school system based upon race, national origin, or color does not result.' " (Freeman, J., specially concurring) (quoting C. Russo & R. Mawdsley, Education Law § 1.04[3], at 1–19, 1–20 (2008)); see generally *In re Petition for Authorization to Conduct a Referendum on the Withdrawal of North Haledon School District from the Passaic County Manchester Regional High School District*, 181 N.J. 161, 181–82 (2004); *Union Title Co. v. State Board of Education*, 555 N.E.2d 931, 934 n.5 (Ohio 1990).

¶ 41 Thus, unlike section 7-2b, sections 7-1 and 7-6 authorize the Board to consider evidence relevant to the types of factual and legal issues presented by an EEOA claim and to decide such a claim in the first instance. This renders our supreme court's holding in *Board of Education* inapposite in this case. Unlike the section 7-2b claim brought in *Board of Education*, the detachment claim at issue in this case was brought under statutory provisions that do not bar the Board from considering EEOA claims. Joliet Township has not cited any authority suggesting

[3] *Board of Education of Marquardt School District No. 15* applied the same version of section 5/7-6(i) at issue in this case. *Burnett* and *Fromm* each applied an earlier version of the statute that included the same evidentiary standards and was substantively identical in all other material respects to the version at issue here.

that the Board could not have addressed its EEOA claim or considered evidence of any potential discriminatory or segregative effect of the proposed detachment. To the contrary, Joliet Township acknowledges in its reply brief that it presented some such evidence to the Board. Moreover, in *Board of Education*, our supreme court recognized that, in cases that do not involve section 7-2b, administrative agencies have jurisdiction to decide EEOA claims. Although it noted that "the courts of Illinois have an obligation to review and enforce the EEOA" and other federal laws (*Board of Education*, 231 Ill. 2d at 201-02), our supreme court acknowledged that "[t]his does not exclude the possibility that a federal claim is initially considered and decided by an administrative tribunal and comes before the court only under an exercise of the court's statutory power for administrative review" (*id.* at 202 n.6)). Accordingly, Joliet Township was required to exhaust its administrative remedies by litigating its EEOA claim before the Board in the first instance and by seeking administrative review of the Board's decision. Having failed to do so, it may not bring its EEOA claim as an independent action in the circuit court.

¶ 42 In *Board of Education*, our supreme court declined to require Joliet Township to exhaust its administrative remedies before filing its EEOA claim in the circuit court. However, this ruling was based on the fact that section 7-2b, which governed the detachment petition in *Board of Education*, barred the Board from considering an EEOA claim. *Id.* at 205 ("the exclusivity of the administrative review law does not apply where *** the issue being raised [*i.e.*, the EEOA claim] cannot be introduced before the administrative agency" pursuant to section 7-2b). As noted, because section 7-2b does not apply in this case, the Board had jurisdiction to address Joliet Township's EEOA claim in the first instance. Thus, *Board of Education*'s refusal to impose an exhaustion requirement does not apply here.

¶ 43 For the same reason, our supreme court's ruling in *Board of Education* that Joliet Township did not forfeit its EEOA claim by failing to raise it before the Board has no application in this case. Although our supreme court acknowledged the general rule that claims are forfeited if not brought before the Board at the "first opportunity," it held that "the ordinary forfeiture rules d[id] not apply" in the case before it "because section 7-2b prohibits the development of a record with regard to an EEOA violation before the administrative agency." *Id.* at 205. Thus, our supreme court held that there "[could] be no forfeiture" in that case because "there was no 'first opportunity' to present the issue" before the Board. *Id.* Here, by contrast, Joliet Township could have raised its EEOA claim and developed a record on that claim before the Board. Its failure to do so forfeits the claim on administrative review, because the circuit court's review in an administrative appeal is limited to the record presented before the Board. For this additional reason, the defendant may not obtain discovery and introduce new evidence in the circuit court that was not previously presented to the Board.

¶ 44 The majority contends that forfeiture does not apply in this case because the School Code "does not fully encompass the breadth of an EEOA claim" based on school segregation, "nor does it allow the petitioner to adequately develop such a claim." *Supra* ¶ 28; see also *supra* ¶¶ 23-27. Contrary to the majority's argument, however, the Board may deny a detachment petition under sections 7-1 and 7-6 of the School Code where granting the petition would increase the segregation of minority students. See *Board of Education of Marquardt School District No. 15*, 2012 IL App (2d) 110360, ¶ 28; *Burnett*, 96 Ill. App. 3d at 623; *Fromm*, 41 Ill. App. 3d at 1049; see also *supra* ¶ 40. Joliet Township admitted that it presented evidence of the potential discriminatory or segregative effect of the proposed detachment before the Board in this case. Moreover, the Illinois Supreme Court decision upon which the majority relies acknowledges that

an EEOA claim "may be initially considered *and decided* by an administrative tribunal" like the Board. (Emphasis added.) *Board of Education*, 231 Ill. 2d at 202 n.6.

¶ 45 But even assuming for the sake of argument that Joliet Township could not "fully" develop or adjudicate its EEOA claim before the Board (which I do not believe to be the case), that fact would not preclude the application of forfeiture or the exhaustion requirement. Our supreme court has made clear that issues not raised before an administrative agency are subject to forfeiture, "even constitutional issues *that the agency lacks the authority to decide*." (Emphasis added.) *Board of Education*, 231 Ill. 2d at 205; see also *Carpetland U.S.A., Inc.*, 201 Ill. 2d at 397. Thus, unless some statute or other source of law stripped the Board of jurisdiction to decide the EEOA claim at issue or barred it from considering any evidence relevant to the claim (like section 7-2b of the School Code does for detachment petitions brought pursuant to that section), the EEOA claim had to be raised before the Board in the first instance, even if the Board was unable to fully adjudicate the claim. Here, the Board had jurisdiction to decide the Board's EEOA claim and nothing prevented the Board from admitting and considering evidence relevant to the claim. (In fact, the Board admitted evidence of the potential discriminatory or segregative effect of the proposed detachment and it presumably considered that evidence.) Accordingly, Joliet Township was required to raise its EEOA claim before the Board. Its failure to do bars it from raising that claim in the circuit court.

¶ 46 As the majority correctly notes, *Board of Education* establishes that circuit courts have original jurisdiction to decide EEOA claims. *Supra* at 20 (citing *Board of Education*, 231 Ill. 2d at 205). However, that fact does not decide the question presented. Subject to an exception not relevant here, Illinois courts have original jurisdiction over "all justiciable matters." Ill. Const. 1970, art. VI, § 9; see also *McCormick v. Robertson*, 2015 IL 118230, ¶ 16. Nevertheless, when

the Administrative Review Law applies, as here, parties may forfeit claims not brought before the administrative agency (*Board of Education*, 231 Ill. 2d at 205; see also *Carpetland U.S.A., Inc.*, 201 Ill. 2d at 397), and they are required to exhaust their administrative remedies before challenging the agency's decision via an independent action brought before a circuit court (*County of Knox*, 188 Ill. 2d at 551; see also *Midland Hotel Corp.*, 282 Ill. App. 3d at 316). The fact that a circuit court has original jurisdiction to hear an EEOA claim does not establish that such a claim may be brought before the circuit court under the circumstances presented in this case.[4]

¶ 47 In sum, in the instant case, the Committee of Ten filed a detachment petition before the Board under sections 7-1 and 7-6 of the School Code. Nothing in those sections precluded Joliet Township from arguing before the Board that granting the detachment at issue would violate the EEOA. Nor did those sections bar Joliet Township from presenting evidence in support of its EEOA claim in the detachment proceeding before the Board. Accordingly, this case is distinguishable from *Board of Education*, 231 Ill. 2d 184, and *Brown*, 311 Ill. App. 3d 478, the

4 The majority cites *Board of Education of Rich Township High School District No. 227 v. Brown*, 311 Ill. App. 3d 478, 491 (1999) as support for its conclusion that the EEOA claim at issue in this case may be brought as "an independent action under the circuit court's original jurisdiction." *Supra* ¶ 21. However, like *Board of Education*, *Brown* is distinguishable in material respects and has no application here. In *Brown*, our appellate court held that a claim not raised before the Board during administrative detachment proceedings could be brought in the circuit court. However, as in *Board of Education*, the detachment petition in *Brown* was brought under section 7-2b of the Illinois School Code. For that reason alone, the Board lacked jurisdiction to address the claim raised in that case, which addressed matters outside of the statutory limitations and conditions of section 7-2b. Moreover, the claim at issue in *Brown* was a facial challenge to the constitutionality of section 7-2b (the enabling statute that conferred jurisdiction on the Board to decide the detachment petition at issue in that case). Administrative agencies lack jurisdiction to decide facial constitutional challenges to their enabling statutes. See, *e.g.*, *Brown*, 311 Ill. App. 3d at 490 ("an administrative agency must accept as constitutional the statute over which it has jurisdiction"). Accordingly, claims asserting such facial constitutional challenges must be brought in the circuit court and are not subject to exhaustion of administrative remedies or forfeiture for failing to raise them before the agency. *Castaneda*, 132 Ill. 2d at 308-09; *Brown*, 311 Ill. App. 3d at 489. In this case, by contrast, the detachment proceedings were not brought under section 7-2b of the School Code, and the EEOA claim at issue does not involve a facial constitutional challenge to any section of the School Code. Thus, the Board had jurisdiction to address Joliet Township's EEOA claim, and that claim was subject to exhaustion and forfeiture. *Brown* is inapposite.

cases upon which the majority principally relies. Each of those cases involved detachment provisions brought under a different section of the School Code (section 7-2b) which bars the Board from considering an EEOA claim or from hearing any evidence in support of such a claim. Because Joliet Township could have brought its EEOA claim before the Board in this case, the ordinary rules of forfeiture and exhaustion of administrative remedies apply. Having failed to raise its EEOA claim before the Board, Joliet Township may not bring the claim as an independent action before the circuit court and obtain discovery on the claim. I would therefore answer the certified question in the negative.

¶ 48 One final point bears mentioning. The majority maintains that "the viability of an EEOA claim in an administrative proceeding" (and, by implication, any analysis of issues relating to forfeiture or to the exhaustion of administrative remedies) is "irrelevant" because our appellate jurisdiction in this matter is limited to deciding the certified question and "[t]hose issues are not articulated in our certified question." *Supra* ¶ 17. According to the majority, the question certified in this case "asks only, and we [may] consider only, whether Joliet Township is 'entitled to conduct discovery *** and have the circuit court fully adjudicate [its] EEOA claim as an independent cause of action under the [circuit court's] original jurisdiction.' " *Id.* However, we cannot decide whether the circuit court may adjudicate Joliet Township's EEOA claim under its original jurisdiction in this case without first deciding whether Joliet Township forfeited the claim or failed to exhaust administrative remedies by failing to raise the claim before the Board. The latter questions are entailed by, and not merely ancillary to, the certified question. Although an appellate court deciding an interlocutory appeal under Supreme Court Rule 308 lacks jurisdiction to "address issues outside th[e] area" of the certified question (*Hudkins v. Egan*, 364 Ill. App. 3d 587, 590 (2006)), courts may address legal issues that bear directly upon the certified

question (see, *e.g.*, *McKnelly v. Whiteco Hospitality Corp.*, 131 Ill. App. 3d 338, 339 (1985) (addressing a threshold legal issue not expressly articulated in the certified question where the resolution of that issue bore directly on the certified question and could have obviated the need to address the issue articulated in the certified question); see also *United Airlines, Inc., v. City of Chicago*, 2011 Ill. App. 3d (1st) 102299, ¶ 20 (addressing legal issues that could be dispositive of the certified question even though the certified question did not specifically raise those issues)). Thus, in my view, it is both necessary and appropriate for us to address the issues of exhaustion and forfeiture in answering the certified question.