**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT**
**EFFINGHAM COUNTY, ILLINOIS**

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| BOARD OF EDUCATION OF THE RED HILL CUSD 10, BOARD OF EDUCATION OF THE COWDEN-HERRICK COMMUNITY UNIT SCHOOL DISTRICT 3A, BOARD OF EDUCATION OF THE BEECHER CITY CUSD 20 | ) | |
| Plaintiffs, | ) | Case No. 21-MR-_____ |
| v. | ) | |
| ILLINOIS STATE BOARD OF EDUCATION and DR. CARMEN I. AYALA, in Her Official Capacity as State Superintendent of Education | ) | |
| Defendants. | ) | |

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

NOW COMES, BOARD OF EDUCATION OF THE RED HILL CUSD 10 ("Red Hill"), BOARD OF EDUCATION OF THE COWDEN-HERRICK COMMUNITY UNIT SCHOOL DISTRICT 3A ("Cowden-Herrick"), BOARD OF EDUCATION OF THE BEECHER CITY CUSD 20 ("Beecher City"), (collectively referred to as the "Districts"), by and through their attorneys Thomas G. DeVore, and the Silver Lake Group, Ltd o, and pursuant to 735 ILCS 5/11-101 and 5/11-102, presents its Memorandum of Law in Support of its Emergency Motion for a Temporary Restraining Order ("TRO") and Preliminary Injunction against the Defendants, ILLINOIS STATE BOARD OF EDUCATION (hereinafter referred to as "ISBE"), and DR. CARMEN I. AYALA (hereinafter referred to as "Ayala") in her official capacity

In support of its Motion and this Memorandum, the Districts incorporate by reference herein its Complaint for Declaratory Judgment and Injunctive Relief.

## STATEMENT OF FACTS

The Districts restate and incorporate by reference the Factual Background section of its Complaint for Declaratory Judgment and Injunctive Relief, as well as the exhibits referenced therein, as its Statement of Facts.

## ARGUMENT

A temporary restraining order is an emergency remedy intended to maintain the status quo, which is the "last, actual, peaceable uncontested status that preceded the pending controversy." *Makindu v. Illinois High School Ass'n.* 2015 IL App (2d) 141201 ¶ 45. A party satisfies the standard for obtaining a temporary restraining order if its motion, pleadings, and supporting affidavits establish that: (1) they possess a clear and ascertainable right that is in need of protection; (2) they will suffer irreparable injury if injunctive relief is not granted; (3) there is no adequate remedy at law for the injury they are going to suffer; and (4) they are likely to succeed on the merits of their claim. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006); *Bradford v. Wynstone Property Owners' Ass'n*, 355 Ill. App. 3d 736, 739 (2nd Dist. 2005). To obtain the injunction, the party must "raise a fair question as to each element required to obtain the injunction." *Makindu*, 2015 IL App (2d) 141201 at ¶ 31.

### I. Plaintiff Possesses A Clear Right In Need Of Protection

Here, the legislature made it clear that public schools, like the Districts, have a statutory right to fully recognized status, and to enjoy all the benefits thereof, as long as they are in compliance with lawfully adopted recognition standards adopted by ISBE as authorized by the Illinois School Code. By virtue of the Defendants' violation of this right, the Districts are being deprived, or threatened with deprivation, with loss of this status and the benefits that come with school recognition if they fail to comply with an executive mandate issued by the Governor.

Furthermore, as to Cowden-Herrick and Beecher City, they possess a statutory right, which is further protected by rule, to pursue an appeal of the change in their recognition status. The Defendants also violate this right by refusing their request for an appeal.

## II. The Districts and their Communities Will Suffer Irreparable Injury

The Districts and many of the students and families and prospective students and families who rely on its recognition status will be irreparably harmed if the Defendants are not enjoined from arbitrarily altering public school recognition status immediately. "To demonstrate irreparable injury, the moving party need not show an injury that is beyond repair or compensation in damages, but rather need show only transgressions of a continuing nature." *Victor Township Drainage Dist. 1 v. Lundeen Family Farm P'ship*, 2014 IL App (2d) 140009 ¶ 50. The injury to a plaintiff "must be in the form of plaintiff's legal rights being sacrificed if plaintiff is forced to await a decision on the merits." *Hough v. Weber*, 202 Ill. App. 3d 674, 686 (2nd Dist. 1990).

Irreparable harm to the Districts and its students includes: (1) loss of state funding necessary to provide for the students education; and (2) the ineligibility to participate in IHSA and IESA sanctioned sports events which for many students may be there only opportunity to obtain a higher education. The Districts community as a whole further suffers given these heavy handed tactics have resulted in the complete loss of the extracurricular programs of the students which bring life and event to those communities.

The loss of recognition status means that student athletes are not permitted to compete in interscholastic events in which they would otherwise be entitled. The loss of opportunity for exposure to collegiate scouts for the purpose of attaining admission to colleges and universities and athletic scholarships is not easily quantifiable and continues with each loss of opportunities

to compete. Additionally, the loss of recognized status may deter families from moving into these communities and eventually enrolling in the Districts, leading to a loss population, which could lead to less overall resources to provide a quality education to both current and prospective students. Most notably, the threatened loss of funding to a school district would be catastrophic to these communities.

## III. Plaintiff Has No Adequate Remedy At Law

There is no adequate remedy at law because the loss of the aforementioned benefits of recognition results in the continuous sacrifice of legal rights that cannot be cured retroactively once the issues are decided on the merits. *See Hough,* 202 Ill. App. at 686. An "adequate remedy at law is one which is clear, complete and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." *Cross Wood Products, Inc. v. Suter*, 97 Ill. App. 3d 282, 286 (1st Dist. 1981). Furthermore, where injuries are of a continuing nature, remedies at law are inadequate, and injunctions should be imposed. *See Fink v. Board of Trustees of Southern Illinois University*, 71 Ill. App. 2d 276, 281 (5th Dist. 1966).

No remedy available after trial will compensate these Districts or their students, or their prospective students, for the harm caused by the impairment of recognition status. The benefits foregone due to impairment of recognition status are not easily, if at all, quantifiable as a remedy at law. The loss of such benefits is particularly suited to the equitable remedy that only a Court can provide through a declaratory judgment and injunction.

## IV. Plaintiff Is Likely To Succeed On The Merits Of Its Claim

When addressing this motion, the Court should not attempt to decide issues of fact or the ultimate merits required at the final hearing, but instead should consider whether the Districts have raised a "fair question" as to the likelihood of success on the merits. *Murges v. Bowman,*

254 Ill. App. 3d 1071, 1083 (1st Dist. 1993). A plaintiff need only "raise a fair question as to the existence of the right which it claims and lead the court to believe that it will probably be entitled to the relief requested if the proof sustains [its] allegations." *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 903 (2nd Dist. 2009).

A. Procedurally the State Superintendent Cannot Alter Recognition Status Any Time She Chooses.

The State Superintendent's authority concerning the revocation of a public school's recognition status is found in 23 Ill. Admin. Code § 1.20(b). The rules are clear that Ayala only has authority to alter status during the annual renewal compliance process. In this cause, Ayala changed recognition status in August 2021 before the school year even started. The time frame for beginning the annual renewal process had not yet begun. While procedurally ISBE may have been able to take such action, it is clear they did not. To the extent Ayala argues she has the authority to make this determination on behalf of ISBE as the governing body, it would only serve to negate the meaningfulness of the separate and distinct provisions of the rules.

B. Procedurally an Appeal Must Be Allowed When a District is Lowered to On Probation from Fully Recognized.

ISBE has refused to allow Beecher City and Cowden-Herrick to appeal the decision to lower their status from fully-recognized to on probation. Without explanation ISBE states the right to appeal is only allowable once a district has been lowered all the way to non-recognized. The rules are clear and provide four separate and distinct recognition levels. 23 Ill. Admin. Code § 1.95 does not state an appeal is allowed only when a district is placed on non-recognized status. The rule says a district may request an appeal of its status level plain and simple. Beecher City and Cowden-Herrick requested an appeal of their new status level of on probation and it was denied. This is clearly a violation of procedural due process.

C. Substantively ISBE Does Not Have Authority to Alter Recognition Status for The Districts Failure to Comply with an Executive Order

When Ayala issued her notices of lowering the District's recognition status to "on probation", she failed to cite any duly adopted substantive standard in Title 23, or any section of the Illinois School Code, for which the Districts were allegedly deficient. The provision cited by Ayala is the remedy provision of what must occur if deficiencies exist. (*See* 23 Ill. Admin. Code § 1.20(b)(2)(A)). The reason she fails to cite a substantive provision is because there is no substantive provision in the Illinois School Code or Title 23 in which the Districts are deficient. Nothing within this legal framework provides recognition status can be altered due to a Districts failure to adhere to an executive order of the Office of Governor.

Each school or district that meets the requirements imposed by law, including the requirements established by the State Board pursuant to Section 2-3.25 of the Code and this Part, shall be fully recognized. The Court can look to 23 Ill. Admin. Code § 180 *et seq*. which deals with health, life and safety standards the Districts must comply. These standards all relate to the facilities themselves and are in no fashion relative to matters of public health in regard to infectious disease control.

The Governor's executive order, for whatever it is worth, it not law. Whether it has any ability to be enforced through some other legal mechanism is wholly irrelevant to this case at bar. The relevant legal question is whether Ayala and ISBE are authorized under the law to alter the recognition status of the Districts should they choose not to follow the direction of the Governor's executive guidance. It seems to reason the legislature itself does not believe Districts are currently obligated under the law to follow this health guidance as the law is written today. House Bill 2789, which passed the House of Representatives, is currently

pending, but languishing, in the Illinois Senate. This bill proposes to amend Illinois Law as follows:

A) Provided that Department of Public Health shall establish metrics and develop recommended guidelines (rather than establish metrics) for school districts and public institutions of higher education to use during the public health emergency.

B) Provides that the State Board of Education may revoke recognition for schools that fail to comply with public health requirements issued by the Illinois Department of Public Health when a public health emergency is declared by the Governor.

C) Prohibits a school board from passing any resolution that is in contravention of any requirement established by the Illinois Department of Public Health during a public health emergency.

D) Provides for rulemaking by the State Board of Education.

After this Honorable Court considers the current amendments being considered by the Illinois Legislature, which if passed would give ISBE the authority to accomplish exactly what is being complained of herein, there can be no doubt at this stage of these proceedings the Districts have shown a reasonable likelihood that Ayala and ISBE are violating the procedural and substantive due process rights of the Districts.

**WHEREFORE**, the Districts pray this Court grant a TRO and preliminary injunction enjoining the Defendants, to immediately reinstate Beecher City and Cowden-Herrick to fully recognized status, from in anyway impairing any of the Districts recognition status solely due to their failure to comply with executive order 2021-18, and staying the administrative process for any of the Districts effective immediately from this day until such time as this Court has considered and ruled upon the Complaint for Declaratory Judgment.

Respectfully submitted,

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