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

SPECIAL EDUCATION SERVICES, an Illinois not for profit corporation, d/b/a MENTA ACADEMY LASALLE, MENTA ACADEMY CENTRALIA, and MENTA ACADEMY SPRINGFIELD,

Plaintiff,

v.

ILLINOIS STATE BOARD OF EDUCATION,

Defendant.

Case No. 23 CH 08823

Judge Celia Gamrath

Calendar 6

TEMPORARY RESTRAINING ORDER

This matter came on Plaintiff's, Special Education Services ("SES") d/b/a Menta Academy LaSalle ("Menta LaSalle"), Menta Academy Springfield ("Menta Springfield") and Menta Academy Centralia ("Menta Centralia") (collectively "Plaintiff" or "SES"), Emergency Motion for Temporary Restraining Order and Writ of Mandamus ("Motion") against Defendant, the Illinois State Board of Education ("ISBE"). As stated in open court after the hearing held on October 20, 2023, the court grants the Motion in part by issuing a narrowly tailored temporary restraining order to remain in effect only until the court has an opportunity to rule on a motion for preliminary injunction after an evidentiary hearing.

BACKGROUND

This case arises from the actions by ISBE in denying the application of three new special education programs owned and operated by SES and deeming them "not approved" facilities on October 13, 2023. SES's Verified Complaint and Motion raise a fair question that the three special education programs were approved by ISBE orally and in writing. ISBE allegedly approved each

program following the final onsite visit of the programs and by issuing Private Facility Code and RCDTS numbers to all three programs, which allegedly only occurs if a program is approved by ISBE. ISBE also approved the school calendars and rates and listed the three programs as approved on its public website.

ISBE alleges the three programs were never approved, not because of any deficiencies, but rather, because a formal letter was never issued to SES with the stamp of approval. When ISBE discovered SES had enrolled students and opened the doors to the three programs, it sent SES a letter ordering the immediate shut down and requiring SES to notify the school districts and parents that the programs were not approved. This would leave approximately 124 special needs students and the referring school districts from where they came without any alternative arrangements and denying them the education placements SES provides. ISBE also issued a public press release to the entire special education community in Illinois stating that the three programs had not received ISBE approval and had not received PCRB rates sufficient to receive students.

SUMMARY RULING

The court finds an emergency is presented given the ordering of an immediate shut down of the SES programs and displacement and disruption of approximately 124 students with special needs who enrolled in the SES programs because the local public-school districts could not provide the services the children need. Further, and for the reasons below, the court finds a narrowly tailored temporary restraining order is necessary to preserve the status quo and protect the clearly ascertainable right of SES to carry on its special education programs, which serve the unique special education needs of the communities and approximately 124 special needs children.

ANALYSIS

A temporary restraining order should issue where SES establishes that: (a) it has a protectable right; (b) it will suffer irreparable harm if injunctive relief is not granted; (c) its remedy at law is inadequate; and (d) there is a likelihood of success on the merits. *Kahle Printing Co. v. Mount Morris Bookbinders Union Local 65-B*, 63 Ill. 2d 514, 523-24 (1976). SES is not required to prove a case entitling it to relief on the merits; rather, SES need only show that it raises a "fair question" about the existence of its rights to preserve the status quo. *Buzz Barton & Assoc., Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985).

The status quo here is that each special education program at Menta LaSalle, Menta Centralia, and Menta Springfield are open and operating and have approximately 124 students enrolled in their programs. For many of these students, SES's special education programs may be their only opportunity to get an education, particularly in the rural areas serviced by these three programs. It would be an injustice to immediately displace these students while the court determines whether in fact SES's programs were "approved" and whether ISBE violated SES's rights in revoking such approval and ordering the immediate shut down of their programs despite SES having undergone a rigorous approval process by ISBE, receiving rates and approval of the school calendars from ISBE, and being told orally by ISBE that the programs were approved. Given the public interest and unique facts and circumstances, emergency relief is necessary to preserve the status quo until the court has an opportunity to rule on a motion for preliminary injunction after an evidentiary hearing.

A. SES has a Legally Protectable Right in Need of Protection

SES has a legally protectable interest in carrying on its special education programs, serving the unique special education needs of the three communities in Illinois, and in not being denied that right unjustly or absent compliance with the Illinois School Code. Although ISBE did not issue a formal approval letter to SES, SES has convinced the court at this early stage, without the benefit of a Verified Answer on file, that all three programs had undergone a rigorous approval process by ISBE. They received rates and approval codes and were told orally by ISBE that the programs were approved. In substance, there was nothing more to do to achieve approval, save for the issuance of the formal form letter.

Section 401.10(d) of the Illinois School Code provides that when a nonpublic special education program is "approved" to service students with disabilities, "[t]he provider operating the facility shall be notified in writing of the date of program approval." The program's "[i]nitial approval shall end on the last day of the program's approved calendar for the school year in question, unless approval is changed pursuant to Section 401.30." *Id*. § 401.10(d)(l). Further, Section 401.30(c) provides that the ISBE cannot change a program's approval status unless it "exhibits substantial and/or recurrent instances of noncompliance, showing that the provider is consistently unable to meet the approval requirements[.]" Retracting a program's approval status requires providing at least ten (10) days' prior written notice. *Id*. at 401.30(c).

Here, the pleadings and affidavits submitted by SES allege that ISBE orally represented to SES that its Menta LaSalle, Menta Centralia, and Menta Springfield programs were approved at the conclusion of the final onsite inspection. ISBE assigned each of them their respective PFC and RCDTS numbers in writing, which SES claims suffices for written approval. ISBE also allowed the PCRB (a department of ISBE) to issue approved rates and suggested on its website that the

three programs were approved. Although ISBE never issued a formal form approval letter, it appears SES satisfies all the requirements for approval. At this stage, the court is disinclined to put form over substance absent evidence that the form letter ISBE's counsel referred to at the oral argument is a necessary step in the approval process. Rather, the court finds SES has a protectable right in its alleged approved status and ensuring the codified process and procedure ISBE must follow to change such approved status is strictly adhered to.

B. SES will Face Irreparable Harm in the Absence of Injunctive Relief

SES, as well as approximately 124 students, their families, and school districts, will suffer irreparable harm if ISBE's insistence that the programs shut down immediately is not enjoined. Here, irreparable harm is established by summarily shutting down three special education programs without notice and sending home approximately 124 students who have specialized needs that only the SES programs can provide, and upon which the referring school districts rely upon. Moreover, because SES has established a protectable interest, irreparable injury is presumed. *Agrimerica, Inc. v. Mathes*, 170 Ill. App. 3d 1025, 1034 (1st Dist. 1998); *Village of Westmont v. Lenihan*, 301 Ill. App. 3d 1050, 1059-60 (2d Dist. 1998).

C. SES has no Adequate Remedy at Law

"For there to be an adequate remedy at law which will deprive equity of its power to grant injunctive relief, the remedy 'must be clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.'" *Nat'l Account Sys., Inc. v. Anderson*, 82 Ill. App. 3d 233,236 (1st Dist. 1980). The court finds SES has no adequate remedy at law to prevent the irreparable harm caused by ISBE's immediate shutdown of the programs and lack of placement for the children currently enrolled and counting on attending the SES programs.

D. SES has Shown a Reasonable Likelihood of Success on the Merits

SES has shown a reasonable likelihood of success on the merits at least as to Count I of its Verified Complaint, which seeks a declaratory judgment. In demonstrating this, SES need only raise a fair question as to the existence of the right claimed; absolute certainty of its ultimate success is not necessary. *Buzz Barton*, 108 Ill. 2d at 382. Here, SES has raised a fair question that the three programs were approved and that ISBE failed to follow its own rules in changing the approval status and summarily issuing a denial of its application for the three programs and immediate shutdown of facilities.

E. A Balancing of the Equities Favors Granting SES's Motion

Since SES has raised a fair question regarding the elements for a temporary restraining order, the court must now balance the hardships between the parties. As stated in open court, the balancing analysis favors the imposition of a narrowly tailored temporary restraining order to protect the interests of SES as well as the students and school districts. Although the school districts, children, and families are not parties to this suit, in balancing the equities, the court may (and has) consider the effect of granting or denying the temporary restraining order on the public. *Kalbfleisch v. Columbia Cmty. Unit School Dist. Unit No. 4*, 396 Ill.App.3d 1105, 1119 (5th Dist. 2009). The balancing of the equities clearly favors SES and the public, given the unique and specific circumstances of this case.

As stated above, save for the formal form approval letter, it appears all substantive elements of approval were met. This is not a situation where SES went rogue and enrolled students without a good faith basis and belief the programs had been approved. The facts set forth above and as fully explained in SES's Verified Complaint, Motion, and affidavits demonstrate the reasons SES

believed the programs were approved (*e.g.*, rate and code approval, approval of the calendar, oral representations, website). A limited temporary restraining order is necessary to maintain the status quo and protect all stakeholders.

F. Bond is Waived

Finally, as stated in open court, SES is not required to post an injunction bond. SES is a nonprofit entity. ISBE will suffer no foreseeable harm that can be compensated with a bond should it prevail on the merits. Moreover, the public interest in ensuring that disabled Illinois students have access to the programs in which they are enrolled warrants waiving an injunction bond.

IT IS ORDERED: A temporary restraining order is issued in favor of Special Education Services d/b/a Menta Academy LaSalle, Menta Academy Springfield, and Menta Academy Centralia ("SES") and against ISBE without bond as follows:

a) The court enjoins ISBE's immediate shutdown of the programs at Menta LaSalle, Menta Centralia, and Menta Springfield, and allows them to continue to operate as though their status was approved.

b) SES and Menta LaSalle, Menta Centralia, and Menta Springfield shall not enroll any new students in their programs during the pendency of this proceeding absent agreement of the parties or court order.

c) This order is without prejudice to the rights of ISBE to follow and comply with the rules and regulations set forth in the Illinois School Code as it relates to approval status or deficiencies (if any) of the three programs.

d) Should problems or concerns arise that are different from the main issue raised in this litigation (enrolling students without formal approval), ISBE may follow the proper procedures and rules under the Illinois Administrative Code, including section 401.30(c) of Chapter 23.

e) This order is not to be deemed tacit approval for reimbursement for these programs either to SES or to the school districts. To this end, SES shall send this order to all participating school districts and other relevant stakeholders, advising of the possibility that there may be no reimbursement depending on the outcome of this case.

f) This order is without prejudice to the right of any student or their family or participating school districts to disenroll a student from one of the three SES programs and seek alternate accommodations or placement.

g) Status on the pleadings and setting an expedited discovery schedule and a date for a preliminary injunction hearing is set for October 27, 2023, at 8:45 AM via ZOOM.

Judge Celia G. Gamrath

OCT 23 2023

Circuit Court-2031

ENTERED:

Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division

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