

IN THE CIRCUIT COURT FOR THE SIXTEEN JUDICIAL CIRCUIT  
KENDALL COUNTY, ILLINOIS

2021CH000043

STATE OF ILLINOIS )  
COUNTY OF KENDALL )SS.

GEN. NO. \_\_\_\_\_

PARKVIEW CHRISTIAN ACADEMY, INC., an Illinois  
Not-For-Profit Corporation

ILLINOIS STATE BOARD OF EDUCATION and DR. CARMEN I.  
AYALA, in Her Official Capacity as State Superintendent of Education

PLAINTIFF (S)

DEFENDANT(S)

Ptff. Atty. Carlo D. Colosimo Code 6272080 SERVE THIS DEFENDANT AT:  
Address: 11000 E. US Rt. 34 Suite 6 NAME: Illinois State Board of Education  
City Plano, IL 60545 Phone 630-552-8100 ADDRESS: 100 North First Street  
Add. Ptff. \_\_\_\_\_ Code \_\_\_\_\_ CITY & STATE Springfield, IL 62777

SUMMONS

To the above named defendant(s) . . . :

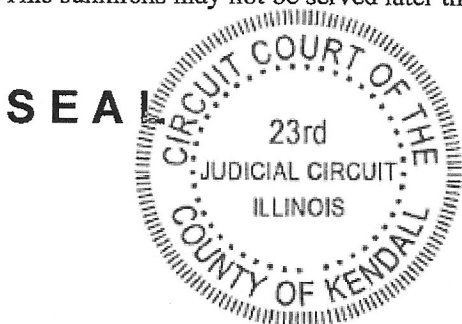
A. You are hereby summoned and required to appear before this court at  
(court location) \_\_\_\_\_ at \_\_\_\_\_ m. On \_\_\_\_\_, 20\_\_\_\_  
to answer the complaint in this case, a copy of which is hereto attached. If you W to do so, a judgment by default may be taken  
against you for the relief asked in the complaint.

B. You am hereby summoned and required to file an answer in this case or otherwise rile your appearance, m the office of  
the Clerk of this court. within 30 days after service of this summons, exclusive of the day of service. If you fail to do so,  
judgment or decree by default may be taken against you for the relief prayed in the complaint.

TO THE SHERIFF OR OTHER PROCESS SERVER.

This summons must be returned by the officer or other person to whom it was given for service, with indorsement  
thereon of service and fees, if any, immediately after service. In the event that paragraph A of this summons is applicable, this  
summons may not be served less than dime days before the day of appearance. If service cannot be made, this summons shall  
be returned so indorsed.

This summons may not be served later than 30 days after its date if paragraph B is applicable.



WITNESS, 9/8/2021, 20\_\_\_\_  
Matthew D. Prochaska  
Clerk of Court

DATE OF SERVICE: \_\_\_\_\_, 20\_\_\_\_  
(To be inserted by process server on copy left with defendant or other person.)

**IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT  
KENDALL COUNTY, ILLINOIS**

**PARKVIEW CHRISTIAN ACADEMY,  
INC., an Illinois Not-For-Profit Corporation.**

**Plaintiff,**

**v.**

**ILLINOIS STATE BOARD OF  
EDUCATION and DR. CARMEN I.  
AYALA, in Her Official Capacity as State  
Superintendent of Education**

**Defendants.**

**Case No. 2021CH000043**

**VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, Parkview Christian Academy, Inc., an Illinois not-for-profit corporation (“Parkview”), by and through its attorney Carlo D. Colosimo, and states the following as its Complaint:

**PARTIES**

1. Parkview is an Illinois not-for-profit corporation providing faith-based private education to students in pre-school through high school in Yorkville, Kendall County, Illinois.
2. The Illinois State Board of Education (“ISBE”) is established pursuant to Article X, § 2 of the Illinois Constitution to set educational policies and guidelines for public and nonpublic preschool through twelfth grade schools in Illinois. Ill. Const. 1970. art. X, § 2.
3. Dr. Carmen I. Ayala (“Dr. Ayala” or the “State Superintendent”) is the State Superintendent of Education. In her role as State Superintendent, Dr. Ayala serves as ISBE’s chief executive officer and may act on ISBE’s behalf only when ISBE delegates such authority. 105 ILCS 5/1A-4. ISBE and the State Superintendent are referred to collectively as the Defendants.

NOTICE

Pursuant to Supreme Court Rule 218, this case is hereby set for a Case Management Conference on 12/7/2021 at 9 am in courtroom 115. Failure to appear may result in the case being dismissed or an order of default being entered.

Clerk of the Circuit Court

4. The Court has jurisdiction to hear cases involving declaratory and injunctive relief. Plaintiff is not obligated to exhaust the administrative process in this case because it is directly attacking Defendants' administrative rules on their face, placing the attack in the jurisdiction of this Court. "Where an administrative assertion of authority to hear or determine certain matters is challenged on its face as not authorized by the enabling legislation, such a facial attack does not implicate the exhaustion doctrine and exhaustion is not required." *County of Knox ex rel. Masterson v. Highlands, LLC*, 188 Ill. 2d 546, 552 (1999); *see also Goral v. Dart*, 2020 IL 6164365 ¶ 41; *Bd. of Educ. of Hawthorne Sch. Dist. No. 17, Marengo v. Eckman*, 103 Ill. App. 3d 1127, 1130 (2d Dist.1982) ("Since the Board is attacking the validity of one of the Department's rules, the present action is within the jurisdiction of the Court.").

5. This is an action for declaratory and injunctive relief arising from the unlawful revocation of Parkview's nonpublic school recognition status by ISBE.

#### **FACTUAL BACKGROUND**

6. On August 24, 2021, the State Superintendent notified Parkview that pursuant to 23 Illinois Administrative Code § 425.60 ISBE was removing Parkview's status as a recognized nonpublic school, effective immediately. *See Exhibit A.*

7. The State Superintendent's August 24, 2021 letter states that as a result of being non-recognized, Parkview is (1) unable to take advantage of the Invest in Kids Act tax scholarship program subject to the regulations set forth by the Illinois Department of Revenue and (2) ineligible to participate in Illinois High School Association ("IHSA") and Illinois Elementary School Association ("IESA") sanctioned sports. *See Exhibit A.*

8. In another letter to a nonpublic school whose nonpublic recognition status was revoked, the State Superintendent stated that the school could no longer confer ISBE recognized diplomas. *See Exhibit B.*

9. As of August 31, 2021, ISBE has placed 47 public schools on probationary status, rather than revoking their recognition status effective immediately, for the same reason that Parkview's nonpublic recognition status was revoked, effective immediately.<sup>1</sup> *See Exhibit C.*

10. Because Parkview was non-recognized, it has relinquished: (1) the ability to identify as a recognized nonpublic school so graduating students may indicate it as such on their college admission applications; (2) the ability to identify as a recognized nonpublic school to attract prospective students; (3) participation in the Invest in Kids tax scholarship program; and (4) the ability to confer diplomas as a recognized nonpublic school.

11. Further, because Parkview lost IHSA eligibility when it was non-recognized, as of August 31 it has relinquished the opportunity to participate in, including but not limited to, the following: (1) 15 regular season volleyball contests, one invitational tournament, and the IHSA State tournament; (2) five cross county meets and the IHSA State tournament; and (3) 10 golf matches and the IHSA State tournament.

12. Section 2-3.25o of the *School Code* establishes ISBE's authority to allow all nonpublic schools in Illinois to voluntarily seek nonpublic school recognition status. 105 ILCS 5/2-3.25o. Recognition status is achieved through compliance with administrative guidelines and review procedures as prescribed by ISBE in 23 Illinois Administrative Code Part 425.

**ISBE'S RULES VIOLATE THE ENABLING STATUTE'S EXPRESS LIMITATION OF POWERS THAT MAY BE DELEGATED TO THE STATE SUPERINTENDENT**

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<sup>1</sup> Also as of August 31, 2021, 13 nonpublic schools have had their recognition status removed.

13. Section 1A-4(B) of the *School Code* authorizes ISBE to delegate authority to the State Superintendent, except that ISBE may not delegate authority to “(1) nonrecognize school districts, (2) withhold state payments as a penalty, or (3) make final decisions under the contested case provisions of the Illinois Administrative Procedure Act unless otherwise provided by law.” 105 ILCS 5/1A-4(B).

14. Section 1-30 of the *Administrative Procedure Act* defines “contested case” as “an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.” 5 ILCS 100/1-30.

15. 23 Illinois Administrative Code § 475.250 states that a hearing officer in any contested case or formal hearing must meet the requirements of 23 Illinois Administrative Code § 475.50.

16. 23 Illinois Administrative Code § 475.50 requires that a hearing officer be an attorney licensed to practice law in Illinois. 23 Ill. Admin. Code § 475.50(b).

17. On information and belief, the State Superintendent is not an attorney licensed to practice law in Illinois.

18. 23 Illinois Administrative Code § 425.70 provides an abbreviated appeal process for nonpublic schools to challenge a “planned” recognition status change by virtue of a hearing before the State Superintendent or a designee.

19. According to ISBE’s rule, the State Superintendent has final decision-making authority in this appeal process. 23 Ill. Admin. Code § 425.70(b).

20. According to 23 Illinois Administrative Code § 425.60, the State Superintendent is authorized to immediately non-recognize a nonpublic school “in instances in which the State Superintendent determines there is an emergency situation present at a school.” 23 Ill. Admin. Code § 425.60.

21. The powers granted to the State Superintendent in 23 Illinois Administrative Code § 425.60 are limited by and “subject to the provisions of Section 425.70.”

22. Section 425.60 and Section 425.70 both purport to delegate final decision making power to the State Superintendent.

23. Both rules, Sections 425.60 and Section 425.70 exceed the powers granted to ISBE under its enabling act, which expressly prohibits ISBE from delegating final decision making power to the State Superintendent in contested cases including cases involving contested “planned” recognition status changes. 105 ILCS 5/1A-4(B).

**ISBE’S RULES REQUIRE THAT A NONPUBLIC SCHOOL RETAIN ITS  
RECOGNITION STATUS UNTIL A FINAL DECISION  
IS MADE IN THE APPEAL PROCESS**

24. Even if ISBE’s rules were a valid exercise of power under its enabling act, which they are not, according to ISBE’s own rules, the State Superintendent cannot unilaterally change a non-public school’s recognition status without first notifying the school of the “planned status change” and affording the school an opportunity for an evidentiary hearing under the appeal process. 23 Ill. Admin. Code § 425.60; 23 Ill. Admin. Code § 425.70.

25. The August 24, 2021 letter notifying Parkview of the purportedly immediate revocation of recognition did not notify Parkview of a “planned change in recognition status” as required under 23 Illinois Administrative Code § 425.60 and 23 Illinois Administrative Code §

425.70. Instead, the letter notified Parkview that ISBE already had revoked Parkview's recognition status, effective immediately. *See Exhibit A.*

26. According to ISBE's rule, if a nonpublic school requests a hearing, the State Superintendent can then change a nonpublic school's recognition status after the evidentiary hearing and that decision constitutes a "final administrative decision." 23 Ill. Admin. Code § 425.70(b).

27. 23 Illinois Administrative Code § 475.240 requires that all hearings in contested cases must be initiated by issuance of a "written Notice of Opportunity for Hearing" to the parties with a right to the hearing. The Notice of Opportunity for Hearing must contain: (1) the legal authority and jurisdiction under which the hearing is to be held; (2) a specific reference to the statutes and rules involved; (3) a short and plain statement of the matters asserted; (4) the address to which the recipient can request the hearing; and (5) a statement that if the recipient fails to request a hearing within the requisite timeframe it will "result in the *recommended* action immediately taking effect as provided in the Notice." 23 Ill. Admin. Code § 475.240(b).

28. The August 24, 2021 letter notifying Parkview of the immediate revocation of recognition did not provide a written Notice of Opportunity for Hearing as required under 23 Illinois Administrative Code § 475.240. *See Exhibit A.*

**ISBE'S RULES VIOLATE THE ENABLING STATUTE'S EXPRESS MANDATE THAT ISBE MAY NOT PASS RECOGNITION RULES FOR PRIVATE SCHOOLS THAT ARE MORE BURDENSOME THAN RULES FOR PUBLIC SCHOOLS**

29. ISBE's enabling statute prohibits ISBE from adopting rules for recognition procedures for nonpublic schools that are "more burdensome" than those applied to public schools. 105 ILCS 5/2-3.25o(c).

30. 23 Illinois Administrative Code § 425.60 purports to authorize the State Superintendent to change a nonpublic school's recognition status "at any time to reflect information confirmed during compliance monitoring or by any other means." Furthermore, the rule provides that nonpublic schools must be placed on probation prior to revocation of recognition status, "[e]xcept in instances in which the State Superintendent determines there is an emergency situation present at a school." 23 Ill. Admin. Code § 425.60.

31. In contrast to the rules for nonpublic school recognition, the public school rules state that ISBE may not revoke a public school's recognition status without first placing the school on probation. Most notably, there is no emergency exception in the public school recognition regulations. 23 Ill. Admin. Code § 1.20(j). *See* Exhibit D.

32. In the absence of an "emergency situation," the rules state the proper course of action is to place a nonpublic school on probationary status, which the rules authorize the State Superintendent to do if the "school has significant areas of noncompliance that can be anticipated to require extended time for correction." 23 Ill. Admin. Code § 425.50(c)(3); *see also* 23 Ill. Admin. Code § 425.60.

33. When nonpublic schools are placed on probationary status, ISBE representatives must conduct a conference with the school to discuss recognition deficiencies. Additionally, the nonpublic school may only submit a corrective action plan if requested by ISBE representatives within 60 days to the State Superintendent. 23 Ill. Admin. Code § 425.50(e).

34. If a corrective action plan is requested by ISBE, the State Superintendent must review and respond to the plan within 15 days in regard to whether or not the plan is approved. 23 Ill. Admin. Code § 425.50 (f). However, in the event that no plan is submitted (even if none is



requested) within 60 days of the conference with ISBE, the nonpublic school's recognition status is withdrawn. 23 Ill. Admin. Code § 425.50(g).

35. In contrast, public schools on probationary status are always required to submit a corrective action plan to the State Superintendent within 60 days of their conference with ISBE representatives. *See* 23 Ill. Admin. Code § 1.20(e). The State Superintendent may then consult with the regional superintendent of schools to determine whether or not it is approvable. *See* 23 Ill. Admin. Code § 1.20(f). If a public school's plan is not approvable or if the public school outright fails to submit the required corrective action plan within 60 days of the conference, the public school's status is changed to non-recognized. 23 Ill. Admin. Code § 1.20(g). If a public school is non-recognized after the probationary period, the public school has the opportunity to request a conference with ISBE within 15 days. 23 Ill. Admin. Code § 1.20(i). If that final conference does not resolve the issues, then the State Superintendent must offer a Notice of Opportunity for Hearing within 15 days. 23 Ill. Admin. Code § 1.20(i)(1). The public school may then request an appeal hearing conducted according to "the State Board's rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475)," with a final decision being handed down by ISBE. 23 Ill. Admin. Code § 1.20(i)(1). *See* Exhibit D.

36. 23 Illinois Administrative Code § 425.70 provides a significantly abbreviated appeal process for nonpublic schools to challenge a "planned" recognition status change by virtue of a hearing before the State Superintendent or a designee. *See* Exhibit D.

37. A nonpublic school must appeal the "planned" change to nonrecognition status by submitting a written statement of appeal to the State Superintendent within 14 days after notification. 23 Ill. Admin. Code § 425.70.

38. The State Superintendent must then convene a hearing on the appeal within 30 days of receipt where representatives of the nonpublic school have the right to present evidence demonstrating compliance with recognition requirements. 23 Ill. Admin. Code § 425.70(a).

39. ISBE's rule purports to authorize the State Superintendent to make the final determination on appeal. 23 Ill. Admin. Code § 425.70(b).

40. Under the rules applicable to public schools, a public school has the later of 30 days after receipt of notification or by September 1 of the calendar year in which the notification of a change to recognition level is received to submit a written appeal request. 23 Ill. Admin. Code 1.95(a).

41. A public school has the right to request a conference with ISBE to informally resolve the issues raised within the appeal, which tolls the rest of the timelines in the public school appeals process. 23 Ill. Admin. Code 1.95(a), (b).

42. If no informal resolution conference is requested or the conference is unsuccessful, then ISBE must give a notice of hearing not less than 21 days before the scheduled hearing date. 23 Ill. Admin. Code 1.95(c).

43. A public school has the right to representation by legal counsel during the appeal process, to submit a written brief within 7 days after receipt of the notice for a hearing, and the right to request an oral argument. 23 Ill. Admin. Code 1.95(d), (f).

44. The public school appeal hearing is before the ISBE Appeals Advisory Committee, which makes a recommendation to the State Superintendent within 30 days of the hearing. 23 Ill. Admin. Code 1.95(h). The State Superintendent then makes a recommendation to ISBE, who must make the final determination. 23 Ill. Admin. Code 1.95(i).

**COUNT I**

**DECLARATORY JUDGMENT**

**23 ILLINOIS ADMINISTRATIVE CODE § 425.60 AND § 425.70 ARE VOID BECAUSE  
THE STATE SUPERINTENDENT CANNOT BE GIVEN THE AUTHORITY TO MAKE  
FINAL ADMINISTRATIVE DECISIONS**

45. Parkview repeats and realleges Paragraphs 1-44 for this Paragraph 45, as if fully restated herein.

46. 23 Illinois Administrative Code § 425.60 and § 425.70 are void because they provide the State Superintendent authority to make a final administrative decision in violation of Section 1A-4 of the *School Code*.

47. By making a final decision on a nonpublic school's appeal of a planned change in recognition status under 23 Illinois Administrative Code § 425.70, the State Superintendent is making a final decision under the contested case provisions of the Illinois *Administrative Procedure Act*. 5 ILCS 100/1-30.

48. Similar to Section 425.70, Section 425.60 purports to delegate final decision making authority on a nonpublic school's recognition status. Both rules work together to purportedly delegate final decision making authority to the State Superintendent.

49. There is no statutory authorization in the *School Code* or elsewhere providing the State Superintendent authority to make a final administrative decision as it pertains to nonpublic school recognition status.

50. Allowing the State Superintendent to make the final administrative decision in this instance renders the requirements of Section 1A-4 of the *School Code* meaningless.

51. Additionally, the State Superintendent does not meet the qualifications of a "hearing officer" for a contested case under 23 Illinois Administrative Code § 475.50 because she is not an attorney.

52. Parkview has a tangible interest in determining whether § 425.60 and § 425.70 violates Section 1A-4(B) of the *School Code*.

53. The State Superintendent and ISBE have an opposing interest to determine whether Section 425.60 and Section 425.70 violate Section 1A-4(B) of the *School Code*.

54. An actual controversy exists between the parties as to whether Section 425.60 and Section 425.70 are void for exceeding ISBE's statutory powers.

**WHEREFORE**, Parkview prays that this Court enter a declaratory judgment finding (1) Section 425.60 and Section 425.70 of the Illinois Administrative Code are void (23 Ill. Adm. Code § 425.60 and § 425.70); and (2) that only ISBE may make a final determination to non-recognize nonpublic schools. In addition, Parkview prays that this Court enter a preliminary and permanent injunction against Defendants (1) requiring Defendants to reinstate Parkview's recognition status; and (2) enjoining the Defendants from taking any action to alter Parkview's recognition status until (a) ISBE adopts recognition rules within its statutory powers; and (b) Defendants afford Parkview the necessary notice and opportunity to be heard at an evidentiary hearing; and (c) ISBE, not the State Superintendent, issues a final decision subject to administrative review.

## **COUNT II**

### **DECLARATORY JUDGMENT**

**PURSUANT TO 23 ILLINOIS ADMINISTRATIVE CODE § 425.70 AND § 475.240, A  
NONPUBLIC SCHOOL RETAINS ITS RECOGNITION STATUS UNTIL THE  
NONPUBLIC SCHOOL IS PROVIDED PROPER NOTICE OF A PLANNED CHANGE  
IN STATUS, NOTICE AND OPPORTUNITY FOR A HEARING, AND THE APPEAL  
PROCESS IS COMPLETED**

55. Parkview repeats and realleges Paragraphs 1-54 for this Paragraph 55, as if fully restated herein.

56. The nonpublic school appeals process states that any challenge under 23 Illinois Administrative Code § 425.70 is to a “planned status change” or “planned recognition status change.”

57. 23 Illinois Administrative Code § 475.240(b)(5) states that the required issuance of a Notice of Opportunity for a Hearing to a party in a contested case must contain a statement that a failure to request an appeal hearing within the regulatory timeframe “shall result in the *recommended* action immediately taking effect as provided in the Notice.” (emphasis added).

58. The use of this language prevents the full revocation of recognition status from taking effect until after the appeals process is exhausted.

59. As such, 23 Illinois Administrative Code § 425.70 and § 475.240(b)(5) mandate that any change to Parkview’s status is not final and is only “planned” or “recommended” until after exhaustion of the appeal process.

60. The letter notifying Parkview of the removal of recognition did not contain a written Notice of Opportunity for Hearing required by 23 Illinois Administrative Code § 475.240.

61. The letter notifying Parkview of the removal of recognition did not contain notice of a “planned recognition status change” as required by 23 Illinois Administrative Code § 425.70.

62. Parkview has a tangible interest in determining whether the language of § 425.70 prevents a change in recognition status until after it receives proper notice of a planned change in status, proper notice of an opportunity for an evidentiary hearing, and the completion of the appeal process.

63. The State Superintendent and ISBE have an opposing interest to determine whether the language of Section 425.70 prevents a change in recognition status until after the appeal process.

64. An actual controversy exists between the parties as to whether the language of Section 425.70 prevents a change in recognition status until after the notice, hearing, and appeal process is completed.

**WHEREFORE**, Parkview prays that this Court enter a declaratory judgment finding (1) Section 425.70 prevents a change in Parkview's recognition status until after the appeal process is completed; and (2) that if Section 425.70 is declared void for other reasons, Parkview still has the right to retain its recognition status until an appeal process that is no more burdensome than that for the public schools is completed. In addition, Parkview prays that this Court enter a preliminary and permanent injunction against Defendants (1) requiring Defendants to reinstate Parkview's recognition status; and (2) enjoining the Defendants from taking any action to alter Parkview's recognition status until (a) ISBE adopts recognition rules within its statutory powers; and (b) Defendants afford Parkview the necessary notice and opportunity to be heard at an evidentiary hearing; and (c) ISBE, not the State Superintendent, issues a final decision subject to administrative review; or, alternatively, (3) requiring the Defendants to reinstate Parkview's recognition status and requiring the Defendants to follow the necessary notice and opportunity to be heard at an evidentiary hearing prior to making a final determination to alter recognition status.

**COUNT III**

**DECLARATORY JUDGMENT**

**23 ILLINOIS ADMINISTRATIVE CODE § 425.60 OF THE ILLINOIS  
ADMINISTRATIVE CODE IS VOID BECAUSE IT IS MORE BURDENSOME THAN  
PUBLIC SCHOOL RECOGNITION RULES**

65. Parkview repeats and realleges Paragraphs 1-64 for this Paragraph 65, as if fully restated herein.

66. The fact that 23 Illinois Administrative Code § 425.60 provides for the immediate revocation of recognition status in an "emergency situation" directly contradicts the legislature's

direction that the rules promulgated by ISBE in regard to nonpublic school recognition procedures be no more burdensome than those imposed on public schools. 23 Ill. Admin. Code § 425.60; 105 ILCS 5/2-3.25o(c).

67. In contrast to Parkview, who immediately lost all benefits of recognition status on August 24, 2021, all public schools determined to have not followed the public health guidance were placed on probation with the opportunity to confer with representatives of ISBE and take corrective action without immediately losing *all* benefits associated with public school recognition status.

68. Public schools placed on probationary status have the procedural benefit of a conference with representatives of ISBE to discuss compliance issues prior to complete revocation of recognition. *See* 23 Ill. Admin. Code § 1.20(e).

69. Parkview has a tangible interest in determining whether Section 425.60 violates Section 2-3.25o(c) of the *School Code* because the determination impacts Parkview's ability to access the benefits of nonpublic school recognition status during the pendency of the probationary and appellate process.

70. The State Superintendent and ISBE have an opposing interest to determine whether the State Superintendent has the authority to revoke a nonpublic school's recognition status effective immediately and to forego the probationary process.

71. An actual controversy exists between the parties as to whether Section 425.60 contravenes ISBE's statutory rulemaking authority.

**WHEREFORE**, Parkview prays that this Court enter a declaratory judgment finding (1) that Section 425.60 is void as a matter of law, as it violates Section 2-3.25o(e) of the *School Code* because the regulation is more burdensome than the public school recognition rules; and (2) that

Parkview has the right to be placed on probationary status prior to revocation of its recognition status; and (3) that the State Superintendent must follow the probationary process laid out in 23 Illinois Administrative Code § 425.50 prior to revoking a nonpublic school's recognition, to the extent it is not more burdensome than the probationary process afforded to public schools. In addition, Parkview prays that this Court grant a preliminary and permanent injunction (1) requiring the Defendants to reinstate Parkview's recognition status; and (2) enjoining the Defendants from altering Parkview's recognition status until (a) ISBE adopts recognition rules that are within its statutory powers and are not more burdensome than those for public schools; and (b) Defendants afford Parkview the necessary notice and opportunity to be heard at an evidentiary hearing; and (b) ISBE, not the State Superintendent, issues a final decision subject to administrative review.

#### **COUNT IV**

#### **DECLARATORY JUDGMENT**

#### **23 ILLINOIS ADMINISTRATIVE CODE § 425.70 IS VOID BECAUSE IT IS MORE BURDENSOME THAN PUBLIC SCHOOL RECOGNITION RULES**

72. Parkview repeats and realleges Paragraphs 1-71 for this Paragraph 72, as if fully restated herein.

73. 23 Illinois Administrative Code § 425.70 is void because it is more burdensome on nonpublic schools in retaining their recognition status than the public school recognition rules.

74. 23 Illinois Administrative Code § 425.70 is an abbreviated appeal process during which the State Superintendent is the fact-finder and the sole decision maker with final decision-making authority.

75. A nonpublic school must submit a written notice of appeal within 14 days of notification of change in recognition status, whereas a public school has 30 days. *See* 23 Ill. Admin. Code § 425.70; 23 Ill. Admin. Code § 1.95(a).



76. Additionally, the public school recognition appeals process provides for an informal resolution opportunity, a notice of an opportunity for a hearing before an impartial committee, a robust and thorough briefing and argument process, and a final administrative decision rendered by ISBE, rather than the State Superintendent. *See* 23 Ill. Admin. Code § 1.95.

77. Because nonpublic schools do not have the benefit of the aforementioned procedural safeguards offered to public schools, it is substantially more difficult to defend its actions prior to losing the benefits of recognition status, i.e., the process for nonpublic schools is more burdensome.

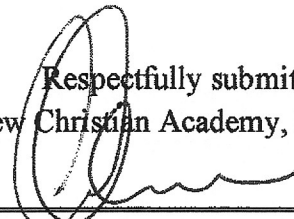
78. Parkview has a tangible interest in determining whether Section 425.70 violates Section 2-3.25o(c) of the *School Code*.

79. The State Superintendent and ISBE have an opposing interest to determine whether Section 425.70 violates Section 2-3.25o(c) of the *School Code*.

80. An actual controversy exists between the parties as to whether Section 425.70 is void.

**WHEREFORE**, Parkview prays that this Court enter a declaratory judgment finding (1) Section 425.70 is void; and (2) that nonpublic schools are entitled to a recognition status appeals process that is no more burdensome than the process afforded to public schools pursuant to 23 Illinois Administrative Code §1.20 and §1.95. In addition, Parkview prays that this Court grant a preliminary and permanent injunction (1) requiring the Defendants to reinstate Parkview's recognition status; and (2) enjoining the Defendants from altering Parkview's recognition status until (a) ISBE adopts recognition rules that are within its statutory powers and are not more burdensome than those for public schools; and (b) Defendants afford Parkview the necessary

notice and opportunity to be heard at an evidentiary hearing; and (c) ISBE, not the State Superintendent, issues a final decision subject to administrative review.

Respectfully submitted,  
Parkview Christian Academy, Inc.  
By:   
\_\_\_\_\_  
Carlo D. Colosimo, Esq.  
Attorney for Plaintiff

Date: September 8, 2021

Carlo Colosimo, No. 6272080  
Colosimo, Ewing and Smith, LLC  
11000 E. US Highway 34, Suite 6  
Plano, Illinois 60545  
Phone: 630-552-8100  
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Email: [carlo@ceslaw.com](mailto:carlo@ceslaw.com)

VERIFICATION BY CERTIFICATION

Under penalty of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: 09/01/2021



Jed Davis  
President of the Board of Directors  
of Parkview Christian Academy, Inc.

731031\_3



# Illinois State Board of Education

100 W. Randolph St., Suite 14-300 • Chicago, Illinois 60601  
www.isbe.net

**Darren Reisberg**  
*Chair of the Board*

**Dr. Carmen I. Ayala**  
*State Superintendent of Education*

August 24, 2021

**Sent Via Electronic Mail**

Parkview Christian Academy  
201 W Center St Yorkville, IL 60560-1320  
Ray Epperson  
repperson@parkviewchristian.net

Dear Ray Epperson,

Please be advised that on 8/23 staff from the Illinois State Board of Education (ISBE) verified via information provided by email directly from the school that Parkview Christian Academy will not comply with the universal masking requirements set forth in [Executive Order 2021-18](#). These requirements apply to all public and nonpublic schools serving students in any of the grades preK through 12, without exception.

Pursuant to ISBE's authority under 23 Illinois Administrative Code 425.60, ISBE is removing your school's status as a recognized nonpublic school, effective immediately. As a result of being non-recognized, your school is now subject to at least the following consequences:

1. Your school, families, and students will be unable to participate in the Invest in Kids Act tax scholarship program subject to the regulations set by the Illinois Department of Revenue.
2. Your school will become ineligible to participate in Illinois High School Association (IHSA) and Illinois Elementary School Association (IESA) sanctioned sports subject to the regulations set by IHSA/IESA.

We do not take this action lightly. The purpose of the universal indoor masking requirement is to ensure that all students can safely attend school in-person this fall. We know that consistent and correct mask use is the simplest, most effective way to keep students safely in school, where they can learn and grow to their fullest potential. And masks work best when everyone wears one. Therefore, ISBE must take every action possible under its authority to ensure compliance in all schools with the Executive Order.

Should you have questions about this letter, please contact Derreck Langwith at [dlangwit@isbe.net](mailto:dlangwit@isbe.net).

Sincerely,

A handwritten signature in black ink that reads "Carmen I. Ayala".

Dr. Carmen I. Ayala  
State Superintendent of Education

cc: The Honorable Chris Mehochko, CMehochko@roe24.org



# Illinois State Board of Education

100 W. Randolph St., Suite 14-300 • Chicago, Illinois 60601  
www.isbe.net

**Darren Reisberg**  
*Chair of the Board*

**Dr. Carmen I. Ayala**  
*State Superintendent of Education*

[REDACTED]

**Sent Via Electronic Mail**

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Nonpublic Recognition Status of:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]:

[REDACTED] on August 11, 2021, you declined to affirm that your schools will comply with the universal masking requirements set forth in [Executive Order 2021-18](#). [REDACTED] you also stated that your school will not comply with the requirements in the Order. These requirements apply to all public and nonpublic schools serving students in any of the grades preK through 12, without exception.

Pursuant to ISBE's authority under 23 Illinois Administrative Code 425.60, ISBE is removing your school's status as a recognized nonpublic school, effective immediately. As a result of being non-recognized, your school is now subject to at least the following consequences:

1. Seniors who graduate from a non-recognized school will receive a diploma that is not recognized by ISBE. This action is irreversible should the school later regain its recognition status, and these students will forever have a degree from a non-recognized school.
2. Your school, families, and students will be unable to participate in the Invest in Kids Act tax scholarship program subject to the regulations set by the Illinois Department of Revenue.
3. Your school will become ineligible to participate in Illinois High School Association (IHSA) and Illinois Elementary School Association (IESA) sanctioned sports subject to the regulations set by IHSA/IESA.

We do not take this action lightly. The purpose of the universal indoor masking requirement is to ensure that all students can safely attend school in-person this fall. We know that consistent and correct mask use is the simplest, most effective way to keep students safely in school, where they can learn and grow

to their fullest potential. And masks work best when everyone wears one. Therefore, ISBE must take every action possible under its authority to ensure compliance in all schools with the Executive Order.

Should you have questions about this letter, please contact Derreck Langwith at [dlangwit@isbe.net](mailto:dlangwit@isbe.net).

Sincerely,



Dr. Carmen I. Ayala  
State Superintendent of Education

cc:

[Redacted]  
[Redacted]  
[Redacted]

County	Entity	2020 Enrollment	Public/Nonpublic	Recognition Status Change	Date Letter Sent	Notes
DuPage	Timothy Christian Middle School	753	Nonpublic	Nonrecognized	8/11/2021	The school's recognition was restored on 8/13/2021. As of that date, the school is recognized again.
DuPage	Timothy Christian High School	357	Nonpublic	Nonrecognized	8/11/2021	The school's recognition was restored on 8/13/2021. As of that date, the school is recognized again.
Clinton	Cady's CUSD 1	974	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Franklin	Benton CUSD 47	1,178	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Fulton	Spoon River Valley CUSD 4	287	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Hancock	Warsaw CUSD 316	380	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Marion	Patoka CUSD #100	246	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Randolph	Red Bud CUSD 192	1,028	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Winnebago	Gurand CUSD 322	615	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Clay	North Clay CUSD 25	589	Public	On Probation	8/12/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Franklin	Evling Northern CUSD 115	214	Public	On Probation	8/13/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Henderson	West Central CUSD 235	753	Public	On Probation	8/13/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Mason	Meridian CUSD 15	1,019	Public	On Probation	8/13/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Williamson	Unity Christian School	215	Nonpublic	Nonrecognized	8/13/2021	The school's recognition was restored on 8/23/2021. As of that date, the school is recognized again.
Wayne	Wayne City CUSD 100	533	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Wayne	North Wayne CUSD 200	375	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Hancock	La Harpe CSD 347	213	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Jefferson	Field CSD 3	283	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Effingham	Beecher City CUSD 20	928	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Edwards	Edwards County CUSD 1	884	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Livingston	Flanagan-Cornell Dist 74	345	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Knox	Abingdon-Avon CUSD 279	964	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Peoria	Brimfield CUSD 309	668	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Adams	Central CUSD 3	851	Public	On Probation	8/16/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Fayette	Vandalia CUSD 209	1,450	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Livingston	Cornell CSD 426	103	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Livingston	Gales CSD 435	146	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Clay	Floa CUSD 35	1,247	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Jefferson	Woodlawn Unit School District 209	511	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Crawford	Oblong CUSD 4	594	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Marion	South Central CUSD 401	664	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Hamilton	Hamilton Co CUSD 18	1,146	Public	On Probation	8/17/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Shelby	Shelbyville CUSD 4	1,190	Public	On Probation	8/18/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Effingham	Dierick CUSD 30	878	Public	On Probation	8/18/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Hancock	Blind West H.S. Dist 307	301	Public	On Probation	8/18/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Fayette	Ramsey CUSD 204	434	Public	On Probation	8/18/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Brown	Brown County CUSD 1	735	Public	On Probation	8/18/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
DuPage	Berthany Lutheran School	219	Nonpublic	Nonrecognized	8/18/2021	The school's recognition was restored on 8/20/2021. As of that date, the school is recognized again.
Coles	St Johns Lutheran Parochial Sch	285	Nonpublic	Nonrecognized	8/18/2021	The school's recognition was restored on 8/25/2021. As of that date, the school is recognized again.
WILL	Unity Christian School	238	Nonpublic	Nonrecognized	8/18/2021	The school's recognition was restored on 8/20/2021. As of that date, the school is recognized again.
DuPage	Lutheran School of St. Luke	102	Nonpublic	Nonrecognized	8/18/2021	The school's recognition was restored on 8/25/2021. As of that date, the school is recognized again.
White	Norris City-Ormsburg-Duffield CUSD 3	697	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Crawford	Husseyville CUSD 1	305	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Shelby	Cowden-Herrick Community Unit School District 3A	326	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Effingham	Keokuk CUSD 50	1,048	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Effingham	Altamont CUSD 10	646	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Clark	Marionville CUSD #C-3	380	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Fayette	St Elmo CUSD #202	428	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Hancock	Nauvoo-Columbia CSD 375	242	Public	On Probation	8/19/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Effingham	Altamont Lutheran Interparish School	171	Nonpublic	Nonrecognized	8/19/2021	The school's recognition was restored on 8/23/2021. As of that date, the school is recognized again.
Lawrence	Red Hill CUSD 10	581	Public	On Probation	8/20/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Warren	United CUSD 304	917	Public	On Probation	8/20/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Marion	Ida CSD 7	221	Public	On Probation	8/20/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Adams	St. James Lutheran	134	Nonpublic	Nonrecognized	8/23/2021	The school's recognition was restored on 8/23/2021. As of that date, the school is recognized again.
Kendall	Paradise Christian Academy	322	Nonpublic	Nonrecognized	8/24/2021	The school's recognition was restored on 8/23/2021. As of that date, the school is recognized again.
Fayette	Vandalia Christian Academy	60	Nonpublic	Nonrecognized	8/25/2021	The school's recognition was restored on 8/23/2021. As of that date, the school is recognized again.
Rockdale	St. Anne CSD 256	318	Public	On Probation	8/25/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.
Cook	Christian Liberty Academy	437	Nonpublic	Nonrecognized	8/26/2021	The school's recognition was restored on 8/23/2021. As of that date, the school is recognized again.
Fayette	Brownstown CUSD 201	363	Public	On Probation	8/27/2021	District voted to comply and provided verification. ISBE restored the district's recognition status to "Fully Recognized" on 8/23.

<b>Public School Recognition Regulations</b>	<b>Nonpublic School Recognition Regulations</b>
<p><u>23 Illinois Administrative Code § 1.20(i)</u> Requires that public schools be placed on probation prior to nonrecognition under <i>any circumstances</i>.</p>	<p><u>23 Illinois Administrative Code § 425.60</u> Provides that the State Superintendent may immediately revoke recognition without placing a nonpublic school on probation if “the State Superintendent determines there is an emergency situation present at a school.”</p>
<p><u>23 Illinois Administrative Code § 1.95</u></p> <ol style="list-style-type: none"> <li>1. Provides that a public school’s appeal is considered by the Appeals Advisory Committee, which makes a recommendation to the State Superintendent, which makes a recommendation to ISBE, who is the final decision maker.</li> <li>2. Public school must submit written appeal within 30 days after receipt of notification of change in status or by September 1 of the year in which the notification occurs, whichever is later.</li> <li>3. Provides for informal resolution opportunity that tolls the requisite timeframes for appeal.</li> <li>4. Provides that ISBE must offer a written notice of a scheduled hearing following the opportunity for informal resolution. The hearing must be no less than 21 days after notice is offered.</li> <li>5. Provides that the public school may be represented by an attorney at all proceedings.</li> <li>6. Provides the opportunity to file written briefs prior to the hearing.</li> <li>7. Provides for an oral argument opportunity at the hearing.</li> </ol>	<p><u>23 Illinois Administrative Code § 425.70</u></p> <ol style="list-style-type: none"> <li>1. Provides that the State Superintendent conducts the hearing and makes the final determination on the appeal.</li> <li>2. Nonpublic school must submit written appeal within 14 days of notification of planned change in status.</li> </ol>
<p><u>23 Illinois Administrative Code § 1.20 (probationary process)</u></p> <ol style="list-style-type: none"> <li>1. The State Superintendent must schedule a conference with the district that is placed on probation. 1.20(e)</li> <li>2. Following the conference the nonpublic school is <i>required</i> to submit a corrective action plan within 60 days of the</li> </ol>	<p><u>23 Illinois Administrative Code § 425.50 (probationary process)</u></p> <ol style="list-style-type: none"> <li>1. ISBE representatives must conduct a conference with the nonpublic school placed on probation. 425.50(e)</li> <li>2. Following the conference, only <i>if requested by ISBE</i>, the nonpublic school must submit a corrective action plan.</li> </ol>

Exhibit D



<p>conference to <i>both</i> the regional superintendent of schools and the State Superintendent. 1.20(e)</p> <ol style="list-style-type: none"> <li>3. The State Superintendent must respond to the plan within 15 days after receipt and may consult with regional superintendent of schools regarding its approvability. 1.20(f)</li> <li>4. If no approvable plan is submitted within 60 days, the State Superintendent must notify the public school that its status is changed to "nonrecognized." 1.20(g)</li> <li>5. If a corrective action plan is in effect and the State Superintendent determines that it is not being implemented, the school's status must be changed to nonrecognized. 1.20(h)</li> <li>6. A district that is nonrecognized may request a conference with ISBE representatives within 15 days of notification. 1.20(i)</li> <li>7. If the issues leading to nonrecognition are not resolved, the State Superintendent must furnish the district a Notice of Opportunity for Hearing. 1.20(i)(1).</li> <li>8. The district may submit an appeal adopted by board resolution within 15 days after receipt of the notice. 1.20(i)(1).</li> <li>9. The district will be given a hearing in accordance with the State Board's rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475). A final decision shall be rendered by the State Board. 1.20(i)(2).</li> </ol>	<p>425.50(e)</p> <ol style="list-style-type: none"> <li>3. The State Superintendent must respond to the plan within 15 days after receipt. 425.50(f)</li> <li>4. If no approvable plan is submitted within 60 days (regardless of if one was requested), the State Superintendent must notify the public school that recognition status may be withdrawn, subject to appeal. 425.50(g)</li> <li>5. If a corrective action plan is in effect and the State Superintendent determines that it is not being implemented, the nonpublic school's recognition status may be withdrawn. 425.50(h)</li> </ol>
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Exhibit D