MATTHEW J. PLATKIN, Attorney General of New Jersey, and SUNDEEP IYER, Director, New Jersey Division on Civil Rights Plaintiffs, v. HANOVER TOWNHSHIP BOARD OF EDUCATION, and HANOVER TOWNSHIP PUBLIC SCHOOLS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO.: MRS-C-042-23 Civil Action

DEFENDANTS' BRIEF IN SUPPORT OF OPPOSITION TO ORDER TO SHOW CAUSE

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PRELIMINARY STATEMENT

This brief is submitted on behalf of Defendants Hanover Township Board of Education (the "Board") and Hanover Township Public Schools (collectively, the "Defendants") in opposition to the Order to Show Cause ("OTSC") filed by Plaintiffs, the Attorney General of New Jersey and the Director of the New Jersey Division of Civil Rights ("Plaintiffs").

Plaintiffs' application for temporary restraints and interlocutory injunction must be denied because it fails to satisfy any of the necessary requisites for such relief by clear and convincing evidence. Specifically, Plaintiffs have utterly failed to establish the following by clear and convincing evidence: (1) a well-settled legal right; (2) a likelihood of success on the merits; (3) a substantial, imminent, irreparable harm; (4) that the denial of temporary restraints would cause Plaintiffs hardship that greatly outweighs the hardship to Defendants by imposition of the restraints; and (5) that the public interest will not be harmed by the grant of Plaintiffs' application.

STATEMENT OF FACTS

The Board operates a kindergarten to eighth grade school district. On May 16, 2023, the Board adopted Policy 8463 entitled "Parental Notice of Material Circumstances" (the

"Policy") (Plaintiffs' Exhibit B). The next day, Plaintiffs filed this OTSC as well as a complaint with the Division of Civil Rights challenging the Policy (Plaintiffs' Exhibit A).

POINT I

PLAINTIFFS' APPLICATION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT ADDUCED CLEAR AND CONVINCING EVIDENCE OF A WELL-SETTLED RIGHT.

A. Plaintiffs Cannot Satisfy the High Standard for Injunctive Relief.

Our courts recognize that injunctive relief represents a significant intrusion into the affairs of the parties. Waste Mgmt. of New Jersey, Inc. v. Union County Utilities Auth., 399 N.J. Super. 508, 538 (App. Div. 2008). Thus, they have held that injunctive relief is an extraordinary remedy to be used sparingly and to be granted only in the clearest of factual circumstances and for the most compelling of equities. Mays v. Penza, 179 N.J. Super. 175, 180 (Law Div. 1980). Accordingly, a party seeking such relief must satisfy a "particularly heavy burden." Guaman v. Velez, 421 N.J. Super. 239, 247-248 (App. Div. 2011).

Plaintiffs do not satisfy the established requisites to obtain the extraordinary remedy of immediate, injunctive relief. In order to obtain such relief, Plaintiffs must establish, by clear and convincing evidence, all of the following factors prescribed by Crowe v. De Gioia, 90 N.J. 126 (1982) and its

progeny: (1) Plaintiffs' claim is based on a well-settled legal right; (2) Plaintiffs have a reasonable probability of success on the merits; (3) Plaintiffs will suffer irreparable harm if the relief is denied; and (4) the harm to Plaintiffs, if the injunction is denied, will be greater than the harm to the opposing party if the injunction is granted. Crowe, 90 N.J. at 132-134. *See also* Guaman, *supra*, 421 N.J. Super. at 247-248 (a successful applicant must demonstrate all Crowe factors by clear and convincing evidence); Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012) (same); Dolan v. De Capua, 16 N.J. 599, 614 (1955) (injunctive relief is not granted absent clear and convincing proof).

In addition, Plaintiffs must also show "that the public interest will not be harmed." Waste Mgmt., *supra*, 399 N.J. Super at 520 *citing* Crowe, 90 N.J at 132-134; Brown, *supra*, 424 N.J. Super. at 183; J.H. Renarde, Inc. v. Sims, 312 N.J. Super. 195, 203 (Ch. Div. 1998).

An injunction cannot issue where, as here, the applicant does not demonstrate, by clear and convincing evidence, that all of the above listed factors favor the grant of such relief. J.H. Renarde, *supra*, 312 N.J. Super. at 197; Zoning Bd. of Adjustment of Sparta Tp. v. Service Elec. Cable Television of New Jersey, Inc., 198 N.J. Super. 370, 379 (App. Div. 1985).

Moreover, the purpose of a preliminary injunction is to maintain the parties in substantially the same condition as they were when the litigation began, *i.e.*, the *status quo*. Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 639 (App. Div. 1997). *See also* Crowe, 90 N.J at 135 (preliminary injunctive relief should be no broader than necessary to preserve the *status quo* pending a plenary hearing on the merits). Plaintiffs, however, seek to disrupt the *status quo* by eviscerating a duly enacted Policy and infringing the Constitutional rights of parents in the upbringing of their children.

B. Plaintiffs Do Not Adduce a Well-Settled Right to Keep Parents Uninformed Of Critical Matters Involving their Children.

(i) Plaintiffs Adduce No Well-Settled Right

Significantly, Plaintiffs omit one of the fundamental requisites for injunctive relief, namely, a well-settled legal right. *See* Ispahani v. Allied Domecq Retailing USA, 320 N.J. Super. 494, 498 (App. Div. 1999). It is well-established that "temporary relief should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133. Thus, "an interlocutory injunction should not issue when a legal question upon which the case turns is not free from doubt." J.H. Renarde, 312 N.J. Super. at 201 *citing* Accident Index Bureau, Inc. v. Male, 95 N.J. Super. 39, 50 (App. Div.

1967) ("An interlocutory injunction should not issue if plaintiff's asserted rights are not clear as a matter of law").

Notably, Plaintiffs adduce no statute or binding case law prohibiting the Policy - because there is none. Rather, Plaintiffs rely entirely upon New Jersey Department of Education guidance which is not binding and which actually contemplates disclosure of a students' transgender status "as allowed by law." (Plaintiffs' Exhibit D, §4). Plaintiffs do not identify any well-settled legal right to affirmatively maintain that parents not only can, but must be uninformed about significant issues affecting their children of which school staff members are aware; thereby excluding parents from the fundamental right of participation in the rearing and upbringing of their children.

Incredibly, Plaintiffs would have school staff keep parents wholly uniformed about potentially significant issues affecting their children's well-being, thereby precluding parents from providing parental support and guidance and securing potentially necessary services (such as therapy and counseling) to fulfill needs that schools are not equipped to address on a plenary basis. In fact, Plaintiffs' position presumes some amorphous ill-intent on behalf of all parents; namely, that parents are ill-equipped and/or incapable of acting in the best interest of

their children. This presumption runs contrary to the law's presumption that fit parents act in the best interests of their children. Troxell v. Granville, 530 U.S. 57, 68 (2000).

In their brief, Plaintiffs cite selected excerpts from the New Jersey Department of Education's Transgender Guidance in an apparent attempt to justify their position that "[s]chool districts shall keep confidential a current, new, or prospective student's transgender status." Michael Cert., Ex. D. Again, this is non-binding guidance; not law.

Plaintiffs, however, chose not to cite the following sentence from the very same Department of Education's Transgender Guidance for the simple reason that it undermines their legally infirm argument. Specifically, the Department of Education Guidance states that "[t]here is no affirmative duty for any school district personnel to notify a student's parent or guardian of the student's gender identity or expression." Id. Moreover, Plaintiffs also fail to note the sentence which provides that "[s]chool personnel may not disclose information that may reveal a student's transgender status **except as allowed by law**." Id. (emphasis added). Both of these sentences drafted and disseminated by the New Jersey Department of Education do not prohibit disclosure to parents of such information. The only plausible explanation for Plaintiffs' failure to highlight

these two sentences is that the well-settled law in this Country and in this State stands in stark contrast to Plaintiffs' specious position.

Specifically, the United States Supreme Court has consistently recognized that "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Stanley v. Illinois, 405 U.S. 645, 651 (1972). Indeed, "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." Troxel, 530 U.S. 57, 68-69 (2000).

(ii) The Policy Accords with Parental Constitutional Rights

In contrast to Plaintiffs' application, courts nationwide, including the United States Supreme Court and the New Jersey Supreme Court, uniformly recognize parents' fundamental Constitutional right to direct their children's upbringing -- *against* which state interference with family matters are not condoned. *See* Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (noting that this Court's decisions "have respected the private

realm of family life which the state cannot enter"). "[P]arents have a substantial constitutional right … to direct and control the upbringing and development of their minor children." Halderman, by Halderman v. Pennhurst State Sch. & Hosp., 707 F.2d 702, 709 (3d Cir. 1983).

The Third Circuit also recognizes that "[t]he right of parents to raise their children without undue state interference is well established" and "[c]hoices about marriage, family life, and the upbringing of children are among associational rights th[e] [Supreme] Court has ranked as of basic importance in our society, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." Gruenke v. Seip, 225 F.3d 290, 303 (3d Cir. 2000) *citing* M.L.B. v. S.L.J., 519 U.S. 102 (1996). "Federal jurisprudence, reaffirmed over nearly a century, recognizes that the Due Process Clause of the Fourteenth Amendment protects the 'right [] ... to direct the education and upbringing of one's children.'" Major v. Maguire, 224 N.J. 1, 14 (2016) *citing* Washington v. Glucksberg, 521 U.S. 702, 720 (1997) and Wisconsin v. Yoder, 406 U.S. 205, 232–233 (1972).

Similarly, the New Jersey Supreme Court recognizes parental autonomy deriving from the "fundamental right of parents to raise their children as they see fit." Moriarty v. Bradt, 177

N.J. 84, 103, 115 (2003). Our State's highest court holds that "the entitlement to autonomous family privacy includes the fundamental right of parents to make decisions regarding custody, parenting time, health, education, and other child-welfare issues between themselves, without state interference." Fawzy v. Fawzy, 199 N.J. 456, 476 (2009).

Our Appellate Division elaborated on that right as follows:

> We begin with a review of the principles applicable to the right of a parent to make decisions, both philosophical and mundane, regarding his or her child. "Our law recognizes the family as a bastion of autonomous privacy in which parents, presumed to act in the best interests of their children, are afforded self-determination over how those children are raised." In re D.C., 203 *N.J.* 545, 551, 4 *A.*3d 1004 (2010). A parent's right to parental autonomy is recognized as "a fundamental liberty interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution" that is "rooted in the right to privacy." Moriarty, *supra,* 177 *N.J.* at 101, 827 *A.*2d 203; *see also* N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 38, 11 *A.*3d 844 (2011); Watkins v. Nelson, 163 N.J. 235, 245, 748 *A.*2d 558 (2000); V.C., *supra,* 163 N.J. at 218, 748 *A.*2d 539.

Tortorice v. Vanartsdalen, 422 N.J. Super. 242, 248 (App. Div. 2011).

The Fourteenth Amendment's Due Process Clause has a substantive component which "provides heightened protection against government interference with certain fundamental rights and liberty interests" including the right "to direct the education and upbringing of one's children…" Glucksberg, 521

U.S. at 720. This right encompasses parents' "fundamental right to make decisions concerning the rearing of" their children including "decisions concerning the care, custody and control of" their children. Troxel, 530 U.S. at 68, 72 (upholding mother's right to decide the frequency of her child's visits with grandparents despite claims that such visits were in her child's best interests). In Troxel, the Supreme Court explained the entrenched Constitutional parental right as follows:

> The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in Meyer v. Nebraska, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in Pierce v. Society of Sisters, 268 U.S. 510, 534-535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in Pierce that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Id., at 535, 45 S.Ct. 571. We returned to the subject in Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. ….
>
> In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e.g.*, Stanley v. Illinois, 405 U.S.

> 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); Wisconsin v. Yoder, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); Quilloin v. Walcott, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); Parham v. J. R., 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); Glucksberg, *supra*, at 720, 117 S.Ct. 2258 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t] ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

Troxel, 530 U.S. at 65-66.

Thus, our jurisprudence mandates "state deference to parental control over children" because "it is the parents'

responsibility to inculcate 'moral standards, religious beliefs, and elements of good citizenship.'" Gruenke, 225 F.3d at 307 *citing* Yoder, 406 U.S. at 233. Plaintiffs' application, however, is contrary to this required Constitutional deference as it would deprive parents, and more specifically parents of LGBTQ+ students, of information critical to the parents' ability to actively guide and foster their children's moral and psycho-social development.

In Gruenke, 225 F.3d at 307, the Third Circuit determined that the "parents … sufficiently alleged a constitutional violation" where a swim coach who suspected their daughter/student was pregnant did not advise the parents thereof but instead asked the student to take a pregnancy test and discussed the matter with the school counselor. The Court expressed "considerable doubt about the[] right" of school counselors "to withhold information of this nature from the parents." Id. The same concerns arise in this case where Plaintiffs target a Policy that defers to fundamental, familial rights of Constitutional dimension.

POINT II

PLAINTIFFS' APPLICATION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT ADDUCED CLEAR AND CONVINCING EVIDENCE OF A REASONABLE PROBABILITY OF SUCCESS.

Additionally, Plaintiffs fail to make a preliminary showing of a reasonable probability of ultimate success on the merits

because the material facts underlying their application are controverted. In order to make a preliminary showing of a reasonable probability of ultimate success on the merits, Plaintiffs must show that the material facts underlying their application are uncontroverted. Crowe, 90 N.J. at 133; Subcarrier, *supra*, 299 N.J. Super. at 638; Waste Mgmt., 399 N.J. Super. at 528 ("The time-honored approach in ascertaining whether a party has demonstrated a reasonable likelihood of success requires a determination of whether the material facts are in dispute"). Thus, a preliminary injunction should not issue where, as here, material facts are controverted. Subcarrier, 299 N.J. Super. at 638.

Significantly, Plaintiffs' application is based upon a complete mischaracterization of the Policy, which is squarely refuted by the Policy's plain language. Plaintiffs contend that the Policy "treats LGBTQ+ students differently from their peers" because it "requires parental notification … for only such students" (Pb2) and "requires school staff members to inform parents about only those students who are 'transitioning'" (Pb12). To the contrary, the Policy requires that parents be informed of "**any facts or circumstances** that may have a material impact on the student's physical and/or mental health, safety and/or social/emotional well-being" and includes a non-

exclusive, broad range of examples ranging from peer pressure, anxiety, intimidation and familial/cultural challenges to "sexual activity, sexuality, sexual orientation, transitioning, gender identity or expression…" (Plaintiffs' Exhibit B).

Thus, the Policy's very terms negate disparate treatment inasmuch as LGBTQ+ students are treated in the exact same manner as any other student facing "any facts or circumstances that may have a material impact on the student's physical and/or mental health, safety and/or social/emotional well-being…" (Plaintiffs' Exhibit B). *See* Doe v. Princeton Univ., 790 Fed. Appx. 379, 383 (3d Cir. Oct. 25, 2019) (to show disparate treatment on the basis of sex, a plaintiff may show that similarly situated individuals of the other sex experienced different treatment).

Moreover, Plaintiffs' application actually penalizes parents of LGBTQ+ students inasmuch as it would deprive only those parents of information regarding "facts or circumstances that may have a material impact on" their child's "physical and/or mental health, safety and/or social/emotional well-being" while parents of non-LGBTQ+ children would not be similarly deprived.

Similarly, Plaintiffs have not presented a clear and convincing showing of the Policy's alleged disparate impact on

LGBTQ+ students inasmuch as their sole evidential basis for the harms that they claim will befall LGBTQ+ students if this policy is implemented is a series of generalized articles (Plaintiffs' Exhibits F - J) rather than any concrete, particularized evidence of the Policy's disparate impact. In fact, these articles, which purport to represent competent evidence, all appear to be from well-known LGBTQ+ advocacy and lobbying groups rather than neutral academic or medical studies. Given the short time frame involved at this stage of the proceedings, a full review of the accuracy – or lack thereof – of the claims contained in these articles is not feasible, but for the moment should not be entitled to a presumption of credibility.

Defendants recognize that if the policy is ultimately implemented in a manner that clearly reflects that it is being applied in wholly different circumstances depending on membership in a protected class, such as a student's sexual orientation, that might be relevant to some future legal action as an "as-applied" challenge to the Policy. But that is not what Plaintiffs are seeking to accomplish here. Rather, Plaintiffs have brought a facial challenge asking this Court to rule that no school board can ever establish a policy that states a parent should be informed about critical sexual or gender issues involving their children when they are brought to

the school's attention, even when trained and licensed education professionals believe that these issues are having a material impact on a child's physical and/or mental health, safety, and/or emotional well-being. This is a fairly astonishing and totally unprecedented proposition.

Our Courts have long recognized that "facial invalidation of a statute, regulation or governmental protocol 'is, manifestly, strong medicine' that 'has been employed ... sparingly and only as a last resort.'" Green Tp. Educ. Ass'n v. Rowe, 328 N.J. Super. 525 (App. Div. 2000) *quoting* Binkowski v. State, 322 N.J. Super. 359, 375 (App. Div. 1999). This is because there is a well-known presumption of validity to governmental action and our Courts wisely recognize that there are appropriate limits to judicial power. Here, given that there has been presented absolutely no competent evidence that the Policy has or will create any harm towards any student, the Court at this point has no rational basis to invalidate it in the manner sought by Plaintiffs. In that regard, Plaintiffs have mischaracterized the Policy to suggest that if Defendants believe that there is a risk to a student by making a disclosure, that "it does not expressly exempt school staff from their obligation under the Policy to notify parents of their child's sexual orientation, transitioning or gender identity or

expression." See Plaintiff's Brief, page 6. To be clear, if such a determination that such a risk may exist is made by, once again, licensed and trained education professionals, then rather than making a disclosure to the parent, Defendants will consult with the appropriate authorities about the appropriate next steps and whether or not parental disclosure is warranted.

Indeed, the Policy incorporates and reaffirms the statutory and regulatory duty to detect and report abuse and neglect to appropriate child welfare agencies and law enforcement. Specifically, the Policy provides that personnel remain subject to their statutory reporting obligations under N.J.S.A. 9:6-8.10, N.J.S.A. 18A:36-25, N.J.S.A. 18A:36-25.2 as well as their reporting obligations pursuant to District policy adopted pursuant to N.J.A.C. 6A:16-11.1 "or other applicable law."

N.J.S.A. 9:6-8.10 requires that "Any person having reasonable cause to believe that a child has been subjected to child abuse, including sexual abuse, or acts of child abuse [to] report the same immediately to the Division of Child Protection and Permanency …."

N.J.S.A. 18A:36-25 requires "All school districts … to establish policies designed to provide for the early detection of missing and abused children. These policies shall include provisions for the notification of the appropriate law

enforcement and child welfare authorities when a potential missing or abused child situation is detected." Similarly, N.J.S.A. 18A:36-25.2 requires investigation of a child's transfer to another school as well as a child's unexcused absence from school of five consecutive days and notification to the Division of Child Protection and Permanency of any suspected child abuse or neglect.

N.J.A.C. 6A:16-11.1 requires boards of education to promulgate policies for the early detection of missing, neglected or abused children and notification of appropriate law enforcement and child welfare agencies.

Plaintiffs appear to hypothesize, again without any competent evidence, and through offensive and baseless speculation, that Defendants enacted this policy without due concern for the well-being of LGBTQ+ students. But the truth is wholly the opposite – Defendants have rationally concluded that the well-being of students requires their parents to be fully and accurately informed of important developments in the lives of their children so that they have the opportunity to be involved in decisions of critical importance. Defendants recognize that reasonable minds could differ on their approach, and observe that this subject is a matter of ongoing debate taking place not just in New Jersey, but around the nation. But

what is crystal-clear is that Plaintiffs surely have not met the standard of providing clear and convincing evidence of a reasonable probability of success.

POINT III

PLAINTIFFS' APPLICATION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT ADDUCED CLEAR AND CONVINCING EVIDENCE OF SUBSTANTIAL, IMMEDIATE AND IRREPARABLE HARM.

"It is axiomatic that injunctive relief should not be entered except when necessary to prevent substantial, immediate and irreparable harm." Garden State Equality v. Dow, 433 N.J. Super. 347, 351 (Law Div. 2013) *citing* Subcarrier, 299 N.J. Super. at 638. *See also* B & S Ltd., Inc. v. Elephant & Castle Intern., Inc., 388 N.J. Super. 160, 167-168 (Ch. Div. 2006). Plaintiffs must prove imminent danger of irreparably injury. J.H. Renarde, 312 N.J. Super. at 203.

Plaintiffs have not adduced any clear and convincing evidence of substantial, immediate and irreparable harm that would ensue unless their application is granted. Plaintiffs adduce no clear and convincing evidence of "threatening, irreparable mischief which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Crowe, 90 N.J. at 132.

Rather, Plaintiffs rely upon speculation and generalized articles (Plaintiffs' Exhibits F - J) -- as opposed to any concrete, particularized evidence of irreparable harm -- in

support of their conclusory assertions of alleged irreparable harm. "Mere assertions by counsel are insufficient for the court to determine that irreparable harm will occur." B & S Ltd., 388 N.J. Super. at 168.

Thus, Plaintiffs' application must be denied for its utter failure to adduce any clear and convincing evidence of imminent, irreparable harm.

POINT IV

PLAINTIFFS' APPLICATION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT ADDUCED CLEAR AND CONVINCING EVIDENCE THAT THE RELATIVE HARDSHIPS WEIGH IN THEIR FAVOR.

Injunctive relief should not issue unless the hardship to Plaintiffs, if the relief does not issue, greatly outweighs the harm to the Defendants if it does. J.H. Renarde, 312 N.J. Super. at 204-205. Therefore, a preliminary injunction is not warranted where the hardship to Plaintiffs, if the injunction does not issue, is in equipoise to the harm to the Defendants if it does. *See* Sherman v. Sherman, 330 N.J. Super. 638, 653-654 (Ch. Div. 1999). Plaintiffs must show that "the inconvenience or loss to the opposing party will be minimal if the relief is obtained." Zoning Bd. of Adjustment of Sparta Tp. v. Service Elec. Cable Television of New Jersey, Inc., 198 N.J. Super. 370, 379 (App. Div. 1985).

As set forth at Point III, *supra*, Plaintiffs have not substantiated -- *by any clear and convincing evidence* -- a

substantial, immediate and irreparable harm which would ensue upon denial of their application. Conversely, a grant of Plaintiffs' application would substantially and immediately disrupt fundamental parental rights as well as the operation of school policy in deference to such rights on nothing more than mere speculative allegations and specious legal arguments. Therefore, the relative hardships unequivocally favor denial of Plaintiffs' application.

A balance of the equities warrants denial of Plaintiffs' application since Plaintiffs have utterly failed to adduce any clear and convincing evidence that: (i) the harm, if any, from denial of the restraints substantially outweighs the harm to parental rights from imposition of the restraints; and (ii) the restraints would impose only minimal inconvenience.

POINT V

PLAINTIFFS' APPLICATION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT ADDUCED CLEAR AND CONVINCING EVIDENCE THAT THE PUBLIC INTEREST WILL NOT BE HARMED.

Plaintiffs have not established, by clear and convincing evidence, that the public interest will not be harmed by the grant of their application. *See* Waste Mgmt., 399 N.J. Super. at 520. The remedies sought in Plaintiffs' application would cause unwarranted disruption to fundamental parental rights and educational policy acknowledging such rights based on no more than the erroneous allegations of the complaint and claims that

are not clearly and convincingly well-established -- an outcome inimical to the public interest in protecting parental rights. Plaintiffs' application for restraints based on speculation and conjecture cannot be countenanced as "Parental rights … [are] matters of great public interest…." New Jersey Div. of Youth and Family Services v. B.H., 391 N.J. Super. 322, 343 (App. Div. 2007).

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that this Court deny the relief requested in Plaintiffs' application for injunctive relief.

Respectfully Submitted,

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