IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

NALDA ROZON, *et al.*, Plaintiffs, v. PRINCE GEORGE'S COUNTY BOARD OF EDUCATION, *et al.*, Defendants.	)	Case No. CAL19-19310

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The plain language of Article VIII of the Maryland Constitution, opinions from the Maryland Office of the Attorney General, and cases from other jurisdictions readily answer the central question in this case: Defendants may not charge fees for anything directly related to school curriculum. Classes required for grade matriculation—regardless of whether they are held in the summer or some other season—are directly related to school curriculum and therefore must be provided free of charge.

Defendants largely ignore this central question, instead focusing their opposition on trying to bar Plaintiffs from seeking redress for their injuries from this Court. But there is no dispute in the case law: Plaintiffs may bring a cause of action for injunctive relief under Article VIII of the Constitution, need not name the State Board as a defendant, and need not exhaust administrative remedies where, as here, the requested relief involves a pure question of constitutional law.

Accordingly, this Court has authority to address Plaintiffs' constitutional claim. Given the likelihood of irreparable injury to students who require summer school to progress to the next grade but cannot afford the tuition charged by Defendants, Plaintiffs respectfully request that the Court use its authority to grant a preliminary injunction barring Defendants from charging for core curriculum summer school courses.

ARGUMENT

I. THIS COURT HAS AUTHORITY TO ENFORCE THE CONSTITUTION

It has been well settled for almost forty years that an individual may seek relief in Maryland courts under Article VIII of the Maryland Constitution, if the State, or any of its

subdivisions, fails to provide students in Maryland a free, thorough, and efficient education. Defendants attempt to contest this established principle by misconstruing Plaintiffs' claim, as well as the decisions of the Court of Appeals and Maryland Circuit Courts in *Bradford v. Maryland State Board of Education*, No. 94340058/CE189672 (Cir. Ct. for Balt. City) (complaint filed 1994)[1] and *Hornbeck v. Somerset County Board of Education*, 295 Md. 597 (1983). Their argument fails. A review of these cases makes clear that Plaintiffs may advance their claims.

A. Private Plaintiffs May Seek Relief in Maryland State Court to Enforce Article VIII of the Maryland Constitution

Defendants' arguments that Plaintiffs may not seek relief for violations of Article VIII, Defs.' Br. at 12, misconstrue the nature of Plaintiffs' claim, as well as the relevant case law. The Maryland Court of Appeals recognized in *Hornbeck*, and subsequently in *Bradford*, that an individual can in fact seek relief in Maryland state court for violations of Article VIII. Contrary to Defendants' claims, Defs.' Br. at 13, Plaintiffs are not asking the Court, nor is it necessary to, recognize a fundamental right to education, but simply to enforce Article VIII's explicit terms, just as other Maryland courts repeatedly have done.

In *Hornbeck*, a group of plaintiffs, including individual taxpayers, students, and parents, filed suit in the Circuit Court for Baltimore City, alleging that the State's failure to allocate uniform financing to the school district violated the explicit requirement of Article VIII that the State provide a "thorough and efficient" education. 295 Md. at 608-09. In considering the *Hornbeck* plaintiffs' claim, the court began by examining whether

[1] A more thorough review of the pleadings and the Orders in *Bradford* can be found at: https://www.aclu-md.org/en/bradford.

the text of Article VIII unambiguously required uniform funding of public schools in Maryland. *Id.* at 619. Finding that the text did not explicitly address the issue, the court turned to the "history underlying the enactment of" Article VIII. *Id.* at 619-20. The court also examined the interpretation of similar provisions in other states' constitutions as a means of addressing the question. *See id.* at 632-40 ("In so concluding, we have considered cases from other jurisdictions with state constitutions having a 'thorough and efficient' education clause or like provision."). Although the court ultimately rejected the *Hornbeck* plaintiffs' argument that the words "thorough and efficient" required that the State provide each school district in the State a *uniform* amount of funding, it affirmed that Article VIII requires that all children in the State be provided a "basic or adequate education," *id.* at 632, and as it explained later, if the State fails to provide an adequate education, *individual taxpayers can seek relief to remedy the violation*. The Court of Appeals subsequently stated:

> While *Hornbeck* teaches that the Maryland constitutional provision does not mandate uniformity in per pupil funding or require that the system operate uniformly in every school district, it does require that the General Assembly establish a Statewide system to provide an adequate public school education to the children in every school district. As *Hornbeck* recognizes, Maryland has established comprehensive Statewide qualitative standards governing all facets of the educational process in the State's public elementary and secondary schools. Where, however, these standards failed to make provision for an adequate education, or the State's school financing system did not provide all school districts with the means essential to provide the basic education contemplated by § 1 of Article VIII, when measured by contemporary educational standards, *a constitutional violation may be evident*.

Montgomery Cty. v. Bradford, 345 Md. 175, 181 (1997) (emphasis added) (internal citation and quotation marks omitted).

In *Bradford*, the plaintiffs, a group of parents of children in Baltimore City Public Schools—not the Baltimore City Public School System as the Defendants claim,[2] Defs.' Br. at 11—filed suit in the Circuit Court for Baltimore City alleging that the State had failed to provide children in BCPS an adequate education as required by Article VIII, and as guaranteed in *Hornbeck*. *Md. State Bd. of Educ. v. Bradford*, 387 Md. 353, 360-61 (2005). As the Court of Appeals described,

> the heart of the complaint was that the State had failed to provide resources sufficient to enable the Baltimore City Public Schools (BCPS) to meet, or even make meaningful progress in meeting, contemporary education standards, especially with respect to at-risk students, as measured by the level of student outcomes and the availability of educational resources.

Id. On October 18, 1996, the circuit court granted partial summary judgment *for the plaintiffs*. Order, *Bradford v. Md. State Bd. of Educ.*, No. 94340058/CE189672 (Cir. Ct. for Balt. City Oct. 18, 1996), https://www.aclu-md.org/sites/default/files/legacy/files/1996_bradford_order.pdf. It concluded that "based on the evidence submitted by the parties" "[t]here [was] no genuine material factual dispute" that the "public school children in Baltimore City [were not] being provided with an education that is adequate when measured by contemporary educational standards." *Id.* ¶ 2. The circuit court entered subsequent orders, in response to the *Bradford* plaintiffs' requests to enforce provisions of the consent decree in 2000, 2002, and again, in 2004.[3]

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[2] BCPS and the City of Baltimore filed a separate suit one year later after individual plaintiffs had filed their suit. 387 Md. at 362. The two lawsuits were subsequently consolidated with individual plaintiffs remaining active participants in the case, as described above. *Id.* at 364.

[3] *See* https://www.aclu-md.org/sites/default/files/legacy/files/2000_bradford_opinion.pdf (2000); https://www.aclu-md.org/sites/default/files/legacy/files/2002_bradford_opinion.pdf (2002); https://www.aclu-md.org/sites/default/files/legacy/files/2004_brad

Plaintiffs in this case, just like the individual plaintiffs in *Hornbeck* and *Bradford*, seek to enforce the guarantees provided in Article VIII. Plaintiffs do not, as Defendants claim, Defs.' Br. at 13, seek to establish that education is a "fundamental right" under the Maryland Constitution, akin to the recognition of fundamental rights under the federal Constitution.

Although Defendants correctly state that these previous cases concerned the adequacy requirement arising out of Article VIII's "thorough and efficient" clause, there is no reason to conclude that while private plaintiffs may seek to enforce that clause, they may not move to enforce Article VIII's even clearer requirement that public school shall be "free"—particularly where, as here, Defendants have violated Article VIII's explicit text. The rule set forth in Article VIII that public school shall be "free" is sufficiently certain to be self-executing and, thus, create a private right of action. *See Benson v. State*, 389 Md. 615 (2005) (explaining that if a provision is "self-executing," it is judicially enforceable).

Maryland courts have repeatedly found similar language that imposes mandatory and certain obligations on the State to be sufficiently concrete to create a private right of action. *See Casey Dev. Corp. v. Montgomery Cty.*, 212 Md. 138, 150 (1957) (finding that a statute that stated that certain real estate improvements *shall* be subject to taxation was

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ford_opinion_part1.pdf (2004), https://www.aclu-md.org/sites/default/files/legacy/files/2004_bradford_opinion_part2.pdf (2004).

The State appealed the 2004 order; however, the Court of Appeals ultimately dismissed the majority of the State's appeal, finding that the issues were not properly before the Court because there had been no final judgment in the case. *Bradford*, 353 Md. at 385-86.

self-executing); *Hammond v. Lancaster*, 194 Md. 462, 476 (1950) (finding self-executing a provision stating that "no law *shall* take effect until the first day of June next after the session of the General Assembly at which it may be passed 'unless it contain' a section declaring such law an emergency law" (emphasis added)); *Harris v. State*, 194 Md. 288, 295 (1950) (holding that Article 21 of the Maryland Declaration of Rights which provides, among other things, that a defendant has a right to a speedy trial by an impartial jury was self-executing), *overruled on other grounds by Stewart v. State*, 282 Md. 557 (1978).

By contrast, if the constitutional or statutory provision merely states a general principle and then calls for legislative action to set the precise standard, it will not be self-executing. *Compare Benson*, 389 Md. at 631-32 (finding Article 14 of the Declaration of Rights which provides that "no aid, charge, tax, burthen or fees ought to be rated or levied, under any pretense, without the consent of the legislature" to be self-executing) *and Leser v. Lowenstein*, 129 Md. 244, 249-51 (1916) (finding the provision charging the General Assembly with setting uniform rules providing for separate assessment of land and classifications "as it may deem proper" to not be self-executing).

Defendants' argument that whether a provision is self-executing depends on whether it confers an individual right, Defs.' Br. at 16-17, is based on a misreading of *Benson*. The language Defendants quote is from the portion of the decision concerning whether an individual plaintiff could seek *damages*; Defendants ignore, however, the preceding portion of the decision in which the Court concluded that the provision was self-executing and a private right of action existed:

> *Having concluded that a private right action may lie based on an Article 14 violation*, we must decide whether monetary damages may be awarded for its violation, if proven. The question becomes whether a common law

> action exists already to remedy the violation, or, if an action does not now exist, whether one should be judicially recognized. The Court has employed this common law tort analysis for constitutional claims previously, finding a right to sue for damages, but has done so only when it concluded that the constitutional provision at issue conveyed an individual right . . . .

Benson, 389 Md. at 630 (emphasis added). Likewise, *Widgeon v. Eastern Shore Hospital Center*, 300 Md. 520 (1984), which Defendants cite for the same proposition, Defs.' Br. at 13, concerns whether individual damages are available, not whether a private right of action exists. *See id.* at 522 ("In this case we are asked to decide whether a private action *for damages* exists for violations of Articles 24 and 26 of the Maryland Declaration of Rights." (emphasis added)).[4]

Similarly, Defendants' argument that Article VIII expired after the Maryland legislature's first session is based on a misreading of the Constitution. Defs.' Br. at 16. Were it not enough that the courts in *Hornbeck*, and then in *Bradford*, treated Article VIII as active, the plain text of the Article contradicts Defendants' argument. Section 1 of Article VIII is not subject to a "sunset" provision. Section 2 clearly states that the "System of Public Schools, as now constituted"—that is, as they existed before Section 1 took effect—would expire after the first legislative session, Md. Const. art. VIII, § 2, because by then, the new system of "Free Public Schools," required by Section 1, would be established. *Id.* § 1 ("The General Assembly, at its First Session after the adoption of this

[4] Finally, Defendants cite *Hunter v. Board of Education*, 292 Md. 481 (1982), and *Doe v. Board of Education*, 295 Md. 67 (1982), in support of their argument that Article VIII does not create a private right of action. Defs.' Br. at 15. Both cases, however, did not concern Article VIII, but were negligence actions. *Hunter*, 292 Md. at 483; *Doe*, 295 Md. at 68. Additionally, *Hunter*, contrary to Defendants' citation, was actually decided ten years earlier than they claim, and thus, occurred before *Hornbeck*.

Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools . . . .").[5] Section 1 of Article VIII was to remain in effect thereafter.[6]

Furthermore, the history of Article VIII highlights the centrality and importance of the requirement that schools be free. *See Hornbeck*, 295 Md. at 619-20 ("it is essential that we consider the history underlying the enactment of § 1"). As detailed in *Hornbeck*, the requirement is nothing new; rather, it was included in the Acts of 1813, the Acts of 1825, the Constitution of 1864, and the current Constitution, which was ratified in 1867. *Id.* at 621-24. By contrast, the requirement that schools be "thorough and efficient," which Maryland courts have already found to be self-executing, was not established until 1867. *Id.* at 624.

Defendants repeatedly attempt to characterize this case as a matter of fiscal, education, and legislative policy that is outside the purview of this Court. *See, e.g.*, Defs.' Br. at 8, 15. But nothing about Plaintiffs' suit requests or requires this Court to delve into policy considerations. This case is about Defendants' obligation to comply with the Maryland Constitution's unequivocal requirement that schools shall be "free." Were the Court to accept Defendants' arguments that enforcement of the State's constitutional provisions is outside the scope of this Court's authority, it would invalidate nearly four decades of case law and run counter to the view of the Court of Appeals.

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[5] *The Maryland State Constitution*—the definitive text on the topic written by now Appellate Judge Dan Friedman—concurs with this interpretation, explaining that "Section 2 provides a transition between the system of public education enacted under the 1864 constitution and the new system that was to be established under the 1867 constitution. It is, by its own terms, obsolete, and could be deleted from the constitution without harm." Dan Friedman, *The Maryland State Constitution* 287-88 (1st ed. 2011).

[6] *Id.*

B. Article VIII Applies Equally to the State and Its Subdivisions, Including the Prince George's County Board of Education

Contrary to Defendants' assertion, *see* Defs.' Br. at 23, the State Board is not a necessary party to a suit under Article VIII of the Maryland Constitution because Defendant Prince George's County Board of Education is a subdivision of the State. Maryland courts have long held that county school boards are State agencies for purposes of State law. In *Donlon v. Montgomery County Public Schools*, the Court of Appeals noted that county school boards are often considered state agencies because:

> (1) the public school system in Maryland is a comprehensive Statewide system, created by the General Assembly in conformance with the mandate in Article VIII, § 1 of the Maryland Constitution to establish throughout the State a thorough and efficient system of free public schools, (2) the county boards were created by the General Assembly as an integral part of that State system, (3) their mission is therefore to carry out a State, not a county, function, and (4) they are subject to extensive supervision by the State Board of Education in virtually every aspect of their operations that affects educational policy or the administration of the public schools in the county.

460 Md. 62, 84–85 (2018) (quoting *Chesapeake Charter, Inc. v. Anne Arundel Cty. Bd. of Educ.*, 358 Md. 129, 136-37 (2000)); *see also, e.g.*, *Beka Indus., Inc. v. Worcester Cty. Bd. of Educ.*, 419 Md. 194, 210 (2011) ("We affirm that a county board of education, is 'a State agency entitled to government immunity.'" (citation omitted)); *Bd. of Educ. v. Zimmer-Rubert*, 409 Md. 200, 205–206, 215–216 (2009) (finding county board of education to be a state agency and noting numerous cases in support of the proposition that the Court of Appeals has "long considered county school boards to be State agencies"). As Defendant Prince George's County Board of Education was created in conformance with the mandate in Article VIII, this Court should likewise view Defendant as a State agency. Naming the

State Board as a defendant would be redundant, and the Defendants already named are responsible for the tuition policy at issue here.

Further, Defendants' argument that the State Board must be a defendant in order to "defend the regulations that it has promulgated" under COMAR 13A.03.02.04 fails. *See* Defs.' Br. at 23. The regulation Defendants cite does not condone charging tuition or instruct districts to charge for summer programs; it merely provides that "credits may be earned, at the discretion of the local school system" through programs including summer school, evening school, and online courses. *Id.* The regulation contains no language at all about *cost*. *Id.* Rather, "discretion" refers to the local school system's ability to choose among options for additional programming. *Id.* COMAR 13A.03.02.04 should not be read, and cannot reasonably be read, to contravene Article VIII's free public schools mandate by advocating for an unconstitutional tuition scheme. *See, e.g.*, *Heslop v. State*, 202 Md. 123, 131 (1953) (explaining that statutes, "must be construed so as to harmonize with the Constitution, or if not susceptible of such construction, must yield to its superior force" (citation omitted)).

As discussed in the previous section, Defendants also incorrectly analogize to *Hornbec*k and *Bradford* to argue that the State is a necessary party defendant. Defs.' Br. at 23. *Hornbeck* and *Bradford* were both broad challenges to the State's financing system, focusing on the disparities of taxable wealth among districts. *Bradford*, 387 Md. at 358;

Hornbeck, 295 Md. at 603. By contrast, Plaintiffs here are challenging the specific practice of charging tuition within one district, which lies within Defendants' control.[7]

Finally, should this Court nevertheless find that the State Board is a necessary party, Plaintiffs should be given leave to amend their Complaint rather than having the action dismissed as Defendants urge. *See* Md. R. 2-341(c) (amendment may seek to "add a party or parties" and amendments "shall be freely allowed when justice so permits").

C. Plaintiffs Were Not Required to Exhaust Any Administrative Remedies

Maryland courts have long recognized that a plaintiff need not exhaust administrative remedies if he or she alleges that a statute or policy violates the Maryland Constitution. *Prince George's Cty. v. Ray's Used Cars*, 398 Md. 632, 652-53 (2007); *Ehrlich v. Perez*, 394 Md. 691, 700 n.6 (2006); M*ontgomery Cty. v. Broad. Equities, Inc.*, 360 Md. 438, 452–461 (2000); *Goldstein v. Time-Out Family Amusement Ctrs., Inc.*, 301 Md. 583, 590 (1984); *Harbor Island Marina, Inc. v. Bd. of Cty. Comm'rs*, 286 Md. 303, 308 (1979). Defendants' brief fails to account for this rule, citing only cases in which the Court considered non-constitutional claims, or which pre-date the exception, and thus are so ancient as to be irrelevant. *See* Defs.' Br. at 20-21 (citing *Wiley v. Bd. of Cty. Sch. Comm'rs*, 51 Md. 401 (1879) (pre-dating by a century the Court of Appeal's recognition of the constitutional exception in 1979); *Bd. of Educ. v. Hubbard*, 305 Md. 774, 785 (1986) (alleging that arbitration of certain disputes conflicted with the arbitration agreement and Maryland state statutes)).

[7] Indeed, since all of the Plaintiffs reside in Prince George's County, they would likely lack standing to challenge summer school fees in other districts.

To satisfy the constitutional exception: the constitutional claim must involve a purely legal or "facial" challenge to a particular policy or practice; the claim alleged must not require extensive factual exploration; relief must not be available on non-constitutional grounds; and the administrative remedy must not be the only recognized statutory, common law, or equitable remedy available. *Broad. Equities, Inc.*, 360 Md. at 455-56 (discussing *Goldstein*, 301 Md. at 590).

Plaintiffs readily satisfy each requirement. First, Plaintiffs, in their Complaint, allege that the Board's policy of charging students for summer school, on its face, violates Article VIII of the Maryland Constitution. *See* Compl. ¶ 114 ("Plaintiffs respectfully request . . . [a] declaration that PGCPS Education Policy No. 5118.4 violates Article VIII of the Maryland Constitution, specifically the clause requiring the State to establish a free education for all children in Maryland."). Plaintiffs do not allege that the policy is unconstitutional as applied to only the particular plaintiffs in this case. Accordingly, for the same reason, and as counsel for the Defendants conceded in the Court's June 14, 2019 telephone conference with the parties, the case does not require significant factual exploration. The dispute before the Court is a pure question of law: whether the Board may charge students tuition for summer school despite the fact that the Constitution explicitly provides that public schools in Maryland shall be free. Unlike in some other cases, no factual exploration related to the individual circumstances of Plaintiffs, or the Board, is required to answer this question. *See Ins. Comm'r v. Equitable Life Assurance Soc'y of the U.S.*, 339 Md. 596, 623–624 (1995) (requiring plaintiffs to exhaust their administrative remedies where "the need to resolve the constitutional issue was dependent

upon, *inter alia,* evidence and findings" regarding the specific justification upon which the defendant based its actions).

Nor is any relief available on non-constitutional grounds; Plaintiffs have raised only a single constitutional claim. *See* Compl. ¶¶ 109-13. The Court's determination regarding this issue will decide the case in its entirety. Finally, as explained above, Maryland courts have long recognized that private plaintiffs may seek relief in Maryland Circuit Court for violations of Article VIII of the Maryland Constitution. *See supra* Section I.A. Accordingly, administrative relief is not the sole available avenue for Plaintiffs to seek relief.

The particular circumstances of this case highlight the inappropriateness of an exhaustion requirement. Although Defendants fault Plaintiffs for "waiting until the very eve of summer school" to file this case, Defs.' Br. at 21, this allegation is a gross mischaracterization of the facts, as well as the way in which the summer school process unfolds. *Id.* Plaintiffs, in many cases, were only recently informed of the need to attend summer school. *See* Compl. ¶¶ 12, 41. In at least one case, Plaintiffs had yet to be informed of such, despite the need. *Id.* ¶ 8. Requiring them to exhaust any administrative remedies just weeks before summer school starts would mean that regardless of the outcome of their appeal, they would not be able to enroll in summer school this year, causing them irreparable harm, as demonstrated *infra* in Section II.B.

Furthermore, as described in Plaintiffs' Complaint, Assistant Public Defender Grace Reuisng informed the Board of this problem in October 2018. Compl. ¶ 90. On December 10, 2018, counsel for the Plaintiffs met with counsel for the Board to discuss

the policy.[8] At that time, the Board informed counsel that it was reconsidering its policy, that the matter had been referred to a policy subcommittee of the Board, and that the Board would inform Plaintiffs when the Policy Committee would be meeting. On February 5, 2019, Plaintiffs contacted the Board, asking if they could meet with the Policy Committee.[9] The Board did not respond to this request.[10] On April 29, 2019, Dr. Goldson mailed Plaintiffs a letter indicating that the Committee had, in fact, met and without input from Plaintiffs, had created a new policy that would continue to charge fees for summer school.[11] Plaintiffs, having no other choice at that point, filed suit shortly thereafter; there was no "waiting" involved.

II. PLAINTIFFS HAVE SATISFIED THE CRITERIA FOR A PRELIMINARY INJUNCTION

As described in Plaintiffs' opening brief and below, the four factors considered by courts when deciding whether to grant a preliminary injunction favor imposing an injunction here. *Schade v. Md. State Bd. of Elections*, 401 Md. 1, 37 (2007) (quoting *Ehrlich*, 394 Md. at 708).

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[8] *See* Ex. A, Email from Grace Reusing, Maryland Office of the Public Defender to Diana Wyles, Demetria Tobias, Associate General Counsel, Prince George's County Public Schools (Dec. 10, 2018).

[9] Ex. B, Email from Ajmel Quereshi, Howard University School of Law, Civil Rights Clinic, to Diana Wyles, General Counsel, Prince George's County Public Schools, (Feb. 5, 2019).

[10] Ex. C, Email from Diana Wyles, Prince George's County Public Schools, to Ajmel Quereshi, Howard University School of Law, Civil Rights Clinic (Feb. 6, 2019).

[11] Compl. ¶ 91.

A. Plaintiffs Are Likely to Prevail on Their Claims, and, at a Minimum, May Advance the Claims Presented

The weight of authority in this matter favors Plaintiffs' straightforward interpretation of Article VIII. Accordingly, Plaintiffs are likely to prevail.[12]

1. The Maryland Constitution Prohibits Defendants From Charging Tuition for Courses Directly Related to the School's Curriculum

Article VIII of the Maryland Constitution requires that the Legislature "establish throughout the State a thorough and efficient System of Free Public Schools . . . ." Contrary to Defendants' assertion, however, this foundational principle of Maryland law does not expire at the doorstep of the General Assembly. As the Court of Special Appeals of Maryland explained in *Thomas v. Allegany County Board of Education*,

> The right of Maryland students to a free public school education is protected by a state statute passed in accordance with the Constitution of Maryland. . . . This mandate was implemented in Maryland Education Code Ann. [§] 7-101(a) which provides that "all individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State." Thus, in Maryland, the entitlement to education is protected by the due process clause of the Fourteenth Amendment as a property interest.

51 Md. App. 312, 319–20 (1982) (holding right to attend free, public school music program did not extend to students who chose to attend private schools); *see also* MD. CODE ANN., EDUC. § 7-101(a).

[12] In the alternative, Defendants have asked that the Court dismiss the Complaint under Maryland Rule 2-322(b)(2). Because Plaintiffs are likely to prevail on the merits of this pure legally issue, *see infra* Section II.A and Pls.' Mot., they have easily satisfied the criteria for stating a claim upon which relief may be granted, *see RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010). Moreover, to the extent summary judgment is appropriate at this time, it should be granted in Plaintiffs' favor.

This has been the law in Maryland for more than one hundred years:

> The constitution of this state requires the general assembly to establish *and maintain* a thorough and efficient system of free public schools. *This means that the schools must be open to all without expense*. The right is given to the whole body of the people.

State ex rel. Clark v. Md. Inst. for Promotion of Mech. Arts, 87 Md. 643, 661 (1898) (emphasis added).

Defendants' own authority concedes this point, providing that: "whatever the outer limits of Maryland's 'free public schools' guarantee, we are safe in saying that anything directly related to a school's curriculum must be available to all without charge." Ex. 1B to Defs.' Br., 72 Op. Att'y Gen. Md. 262, 267 (1987) (concluding that Maryland's constitutional guarantee to a free education encompassed the provision of public library services free of charge). Similarly, the Attorney General has stated, "[t]he concept of charging fees to public school students for . . . courses in the public schools is contrary to constitutional and statutory principles regarding free public education." Ex. 1A to Defs.' Br., 57 Op. Att'y Gen. Md. 176, 177 (1972).

Although courts are not bound by the Attorney General's opinion, "when the meaning of legislative language is not entirely clear, such legal interpretation [by the Attorney General] should be given great consideration in determining the legislative intention." *Donlon*, 460 Md. at 95 (citation omitted); *see, e.g.*, *Dodds v. Shamer*, 339 Md. 540, 556–57 (1995); *State v. Crescent Cities Jaycees Found., Inc.*, 330 Md. 460, 470 (1993); *Read Drug & Chem. Co. v. Claypoole*, 165 Md. 250, 257 (1933).

Plaintiffs' claim, alleging that the Maryland Constitution prohibits the Board from charging students for essential summer school courses, falls firmly within this ambit.

Courses such as English, Mathematics, History, and Science are required for students to graduate from high school. *See* Pls.' Mot. at 10; *see also, e.g.*, COMAR 13A.03.02.03. Accordingly, they, and other courses like them, are directly related to—indeed, an integral part of—a school's curriculum, and must be offered free of charge.

While courts in Maryland have yet to have an opportunity to address the precise issue presented in this case, states that have considered the issue have held that the constitutional guarantee of free public schooling does extend to summer school courses. *See Giannini v. Council on Elementary & Secondary Educ.*, No. PC 2014-5240, at 20 (R.I. Sup. Ct. Mar. 30, 2016); *Hartzell v. Connell*, 679 P.2d 35, 43 (Cal. 1984); *Concerned Parents v. Caruthersville Sch. Dist.*, 548 S.W.2d 554, 559 (Mo. 1977); *Norton v. Bd. of Educ.*, 553 P.2d 1277 (N.M. 1976). Notably, Defendants do not even attempt to distinguish this authority, nor do they provide any reason for interpreting Maryland's Constitution more narrowly than nearly identical provisions in Rhode Island, California, Missouri, and New Mexico. To the extent that the Court finds the language of Article VIII to be ambiguous, these decisions are highly relevant to the interpretation of Article VIII, as they were in *Hornbeck*.[13]

Indeed, the Maryland Office of the Attorney General and several other jurisdictions have extended the guarantee to free public school far beyond required courses in the

[13] Although Defendants complain that *Bradford* and *Hornbeck* concern the adequacy of education, and not whether schools shall be free, they themselves then cite cases from other jurisdictions in which courts have refused to enforce adequacy provisions. Defs.' Br. at 17 (citing *Lewis E. v. Spagnolo*, 710 N.E.2d 798 (Ill. 1999); *Simon v. Celebration Co.*, 883 So.2d 828 (Fla. App. 2004)). These cases, given that they are from other jurisdictions and concern a separate issue, are of minimal consequence.

summer term. The Maryland Office of the Attorney General has stated, "the 'free schools' requirement is *not limited to traditional curricular offerings*," and therefore the constitutional guarantee to free public education prohibited schools from charging a $25 per student fee to underwrite the cost of its driver education program,[14] which was part of the school curriculum. Ex. 1A to Defs.' Br., 57 Op. Att'y Gen. Md. 176, 177 (1972); *see also* Ex. 1B to Defs.' Br., 72 Op. Att'y Gen. Md. 262 (1987) (holding that the State would be required to provide public library services for free because such services were integral to a public education). Likewise, courts in California and West Virginia have held that constitutional language requiring educational programs be free prohibits the charging of

[14] Defendants devote a significant portion of their brief to driver's education, suggesting that the Attorney General's legal conclusion that schools could not charge for the program resulted in its discontinuation. Defs' Br. at 29. But Defendants provide no support for their claim that charging fees is the sole reason that Maryland schools no longer offer driver's education; in reality, factors like rising auto insurance costs and school overcrowding also contributed to the program's decline. *See, e.g.*, Matthew L. Wald, *New Md. drivers must take class; Anyone who wants a license will have to take drivers education; Not just for teens anymore; Courses typically cost $30 to $35 an hour, too high in some lawmakers' eyes*, Baltimore Sun (May 30, 1999), https://www.baltimoresun.com/news/bs-xpm-1999-05-30-9906040409-story.html (noting that "budget cuts, rising liability insurance bills and the end of car companies' onetime practice of giving cars to schools" have all contributed to the decline of public schools offering driver's education); Anne Haddad, *Driver ed decision tabled until May Private firms may be too expensive*, Baltimore Sun (Mar. 11, 1993), https://www.nydailynews.com/bs-xpm-1993-03-11-1993070117-story.html (noting that the "primary reason" one district ended driver's education was "to free up teachers and space to accommodate the growing enrollment").

But even if program costs had caused schools to terminate the program, this would not justify the imposition of unconstitutional fees for public education. The courses Student Plaintiffs need to take this summer are integral because they are part of the twenty-one credits needed for graduation in Maryland; consequently, Defendants are constitutionally obligated to provide them for free. *See* Pls.' Mot. at 10.

fees for extracurricular activities.[15] Plaintiffs do not ask this Court to go that far; this is a much easier case.

Defendants wrongly assert that judicial enforcement of Article VIII will somehow create a "'right' to an education for any reason – including, for instance, student discipline or poor instruction leading to the child's functional illiteracy . . . ." Defs.' Br. at 15. This is nonsensical. Nothing in Article VIII, the Opinions of the Attorney General, or decisions from other jurisdictions supports Defendants' slippery slope arguments regarding judicial oversight of education policy. The authority Plaintiffs rely on relates solely to the prohibition of charging fees in contravention of this State's and others' constitutional mandate to provide a free public education.

2. Charging Tuition for Essential Curriculum Is Not Within the Board's Delegated Authority to Oversee Public Education in Prince George's County

Defendants' argument that, as a result of the Board's "broad visitatorial authority" over education, it had authority to charge tuition for summer school is incorrect. *Id.* at 18. Article 14 of the Declaration of Rights provides that "payments imposed by the State should not be allotted, valued, imposed, or collected without the authorization or approval of the Legislature." *Benson*, 389 Md. at 638. While the Legislature may delegate this

[15] *See Hartzell*, 35 Cal. 3d at 909 ("It can no longer be denied that extracurricular activities constitute an integral component of public education. Such activities are 'generally recognized as a fundamental ingredient of the educational process.'" (citation omitted)); *Vandevender v. Cassell*, 208 S.E.2d 436, 439 (W. Va. 1974) (holding that "[u]nder a 'free' school system, fees cannot be charged as a requirement for students to be admitted to school nor can fees be charged for any required course under the curriculum set up by the state board of education.").

authority to another governmental agency, Defendants have not established, and cannot establish, that the Maryland Legislature did so here.

It is insufficient to argue that the Legislature's delegation of authority to the State Board to decide matters concerning "educational policy or the administration of the system of public education" encompasses the authority to charge tuition for public summer school. Defs.' Br. at 18 (quoting *Bd. of Educ. v. Heister*, 392 Md. 140, 153 (2006)). As Defendants' own cited authority makes clear, the authority delegated to the State Board does not extend to "purely legal questions" or to disregarding legal requirements. *See, e.g.*, *Heister*, 392 Md. at 154 (holding that "the State Board may not decide finally purely legal questions"); *Zeitschel v. Bd. of Educ.*, 274 Md. 69, 81 (1975) ("the State Board's visitatorial power is not without limitations. It cannot be . . . asserted to finally decide purely legal questions or exercised in contravention of statute."). Whether Plaintiffs' rights under Article VIII of the Maryland Constitution were violated and whether Defendants exceeded the scope of their authority in charging tuition present pure legal questions about which the Board deserves no deference.[16]

Given Article VIII's clear mandate that public schools be "free," it is unsurprising that Defendants fail to cite any statutory provision or regulation expressly providing the Board with the authority to charge tuition for public school. As discussed previously, simply creating regulations authorizing school boards to establish avenues for *earning credit* does not equate to allowing a school board to charge tuition for those programs. *See*

[16] Conversely, as noted above, the Maryland Attorney General's opinion that county boards cannot charge for core courses taught in summer school *is* entitled to deference.

supra Section I.B. Indeed, Defendants' only cited statutory provision, MD. CODE ANN., EDUC. § 3-1006, provides only that the CEO of Prince George's County may *decide appeals* related to a variety of issues, including "tuition." Defendants essentially ask the Court to infer that the authority to *decide an appeal related to* tuition also confers upon Defendants the authority to *charge* tuition. It does not.

Far from delegating the authority to charge tuition, the Legislature has, in accordance with the Constitution, expressly required that students be "admitted free of charge" to public school. MD. CODE ANN., EDUC. § 7-101(a). This unambiguous directive cannot reasonably be interpreted as delegating authority to charge fees. Notably, the only references to the charging of tuition in Titles 2-9.5 of the Maryland Education Code are entirely unrelated to whether the Legislature delegated authority to the Board to impose tuition for attending summer school. Rather the code references tuition in very narrow and unrelated circumstances[17] or as a penalty for fraudulently attending an out-of-bounds public school.[18]

As a final effort to establish that the Legislature consented to the charging of tuition for summer school, Defendants assert that, because "17 of Maryland's 24 school systems" also allegedly charge tuition for summer school "with the knowledge of the Maryland

[17] MD. CODE ANN., EDUC. § 8-406 (authorizing the payment of tuition at private schools if it is determined that the public schools are unable to meet the needs of a particular child); *see also* MD. CODE ANN., EDUC. § 7-1804 (clarifying that students participating in a specialized program involving college credit and technology would not be required to pay related tuition and costs).

[18] MD. CODE ANN., EDUC. § 7-101.

General Assembly," it somehow follows that the "General Assembly and State Board 'consent' to the tuition at issue in this case." Defs.' Br. at 20. Unsurprisingly, Defendants provide no legal authority to support the notion that a Court may infer "consent" to impose a fee under Article 14 based on a generalized inference that the Legislature knows about a particular practice and yet fails to pass legislation prohibiting that practice. To the contrary, *Benson* defines "consent" as used in Article 14 to mean, "to voluntarily give assent, to agree, or to approve"—all affirmative indications of agreement. *Benson*, 389 Md. at 637 (holding legislature had consented to prison charging fees for telephone usage by citing statutory provision expressly authorizing the charging of fees for telephones).

The Maryland Legislature could not, and did not, authorize Defendants to charge tuition for summer school and, accordingly, the imposition of these costs violates both Articles VIII and 14 of the Maryland Constitution.

B. Absent an Injunction, Plaintiffs and Other FARMs Students in Prince George's County Will Suffer Irreparable Harm

If Student Plaintiffs are unable to enroll in summer school, they will suffer irreparable injury through social stigma, damage to their self-esteem, and lost opportunities. Defendants cannot rebut these facts; instead, they try to argue that Plaintiffs are generalizing about harms and do not understand the costs of operating summer school. Defs.' Br. at 27.

Plaintiffs' affidavits explicitly show tangible harm to Student Plaintiffs from grade retention. Without summer school, Student Plaintiffs S.M., D.G., K.G., L.C., and A.H.

will be unable to advance to the next grade or graduate on time. *See* Ex. 2 to Compl., Tucker Aff. ¶ 7; Ex. 3 to Compl., Gordon Aff. ¶ 7; Ex. 4 to Compl., Belton Decl. ¶ 6; Ex. 6 to Compl., Cruz Aff. ¶ 4; Ex. 8 to Compl., Hill Aff. ¶ 5.[19] Defendants' response, that students can "graduate at the end of any marking period" or take part-time classes during the year, Defs.' Br. at 28, is insufficient because it cannot change the fact that these students will graduate later than their peers, or eliminate the harm stemming from that fact. Student Plaintiffs will still be unable to take advantage of post-graduate opportunities as early as they would have if not retained. Needing to take additional part-time classes during the year limits Student Plaintiffs' options for higher education or full-time employment.

Additionally, the letters sent from the school to Plaintiffs do not suggest that Student Plaintiffs will have "ample opportunity" to make up necessary credits, as Defendants claim, *id.*; rather, the letters state that Student Plaintiffs will be entirely unable to advance to the next grade. This kind of injury easily qualifies as one for which money damages would be both difficult to ascertain and inadequate. *See, e.g.*, *State v. Ficker*, 266 Md. 500, 510–11 (1972) (reversing denial of preliminary injunction where potential fines were inadequate to fully remedy plaintiffs' potential injury).

[19] Defendants mischaracterize the affidavit of Plaintiff Zuyquetia Irving. Defs.' Br. at 27 n.22. Ms. Irving does not state that D.S. lacked the necessary credits to advance a year, but rather that she received a letter "recommending [she] enroll D.S. in two summer school courses in order for him to advance to the 10th grade . . . ." Ex. 5 to Compl., Irving Aff. ¶ 6. Defendants' scurrilous comments about Student Plaintiff D.S.'s absences are irrelevant. Students may fall behind academically for a variety of reasons; the point remains that D.S.'s school has recommended summer classes as a way for him to get back on track to successfully complete his education, and his mother cannot afford the associated fees. *Id.* ¶¶ 6-7.

Defendants also cannot refute the fact that Student Plaintiffs will still suffer stigma and emotional harm from taking lower-level classes than their peers. Plaintiffs show that retention—at any grade level—causes harm to students' self-esteem and decreases the likelihood of school completion. Defendants try to differentiate between the harms caused by early- and late-grade retention, but in fact, a substantial body of research emphasizes that retention at *any* grade level causes long-term harm to students, including increasing the risk of students dropping out of school entirely. *See, e.g.*, Louis T. Mariano et al., *The Effects of Grade Retention on High School Outcomes: Evidence from New York City Schools*, RAND EDUCATION (July 2018), https://www.rand.org/pubs/working_papers/WR1259.html, at 1 ("Grade retention reduces high school credit accumulation and the likelihood of taking math and English [graduation] exams."); Gabrielle E. Anderson et al., *Grade Retention: Achievement And Mental Health Outcomes*, CENTER FOR DEVELOPMENT AND LEARNING (Jan. 1, 2003), https://www.cdl.org/articles/grade-retention-achievement-and-mental-health-outcomes/ (summarizing relevant research and concluding that "[w]hat is most important is that, across studies, retention *at any grade level* is associated with later high school dropout, as well as other deleterious long-term effects" (emphasis added)). These harms are compounded by the fact that Student Plaintiffs' more well-off peers will be able to make up the classes they need over the summer because their families can afford them: essentially, Defendants are creating a two-tiered system, where low-income students will be the only ones retained and irreparably harmed thereby.

Finally, Plaintiffs' suggestion that Defendants could ultimately save money if students are able to graduate on time is based on common sense: even if Student Plaintiffs do not take a full school year to make up the credits they need to advance or graduate, it is

indisputable that they will need more time than expected to complete their education, and thus they will need more financial support from Defendants. Pls' Mot. at 7 n.1. The harms to Student Plaintiffs from denial of free summer school education are serious and likely irreversible, while Defendants will not be seriously impacted in the long run from increasing access to summer school.[20]

C. The Defendants Have Not Shown and Cannot Show They Will Be Irreparably Harmed by an Injunction

Defendants improperly seek to characterize what is, from their perspective, nothing more than a budget reallocation, as an "irreparable harm" that could "wreak havoc" not just on the County but also on taxpayers. Defs.' Br. at 24-26. These hyperbolic assertions are unsupported by factual or legal authority.

To begin, Defendants' factual materials do not support their own assertions of likely chaos and harm. Dr. Goldson's affidavit states that, under the current budget, eliminating student tuition payments would result in a deficit. *Id.* at 24; Goldson Aff. ¶ 8. Dr. Goldson affirmed that, because the FY 2020 budget is set, a change in the County's policy of charging tuition would, "result[] in the need to make unplanned budgetary transfers from other programs to cover those losses." *Id.* Based on this assertion, Dr. Goldson makes the implausible and unsupported conclusion that, "the loss of tuition for summer programs would cause a disproportionate impact negatively impacting the taxpayers of Prince George's County and may impact the ability to offer such programs in

[20] Even if Plaintiffs were wrong about the financial implications of free summer school, any harm to the Defendants from the need to reallocate funds or seek additional funding from the Legislature pales in comparison to the irreparable harm Student Plaintiffs will suffer if they cannot attend summer school due to an inability to afford it.

the future, to the detriment of students." *Id.* This assertion fails to establish *to what* the loss of tuition would cause a disproportionate impact—and in what way it would be "disproportionate"—or how an "unplanned budgetary transfer" would "negatively impact[] taxpayers." *Id.* By Defendants' own admission, the Board does not have the authority to levy taxes on county residents to fund the school budget, Defs.' Br. at 30, leaving one to wonder what the exact impact on taxpayers could be.

Defendants similarly contend that, "[t]he sad reality is that the public schools of Maryland all operate with limited resources, and *the funds allocated to mandated programs of necessity* takes priority over the funding of discretionary programs." *Id.* (emphasis added). Given that the courses at issue are directly related to the school's curriculum, Plaintiffs contend that they *are* "mandated programs" and thus should have been included in the budget from the beginning. Moreover, Defendants' inability to fund these courses is, again, undermined by the factual materials Defendants do provide. For example, Exhibit 5 of Dr. Goldson's affidavit states that only partial tuition waivers will be provided to FARMs students wishing to take summer school for credit recovery but that the STEM Middle School Project Summer Program, Aerospace Engineering and Aviation Technology Bridge, and 3D Scholars Orientation are all provided, *free of charge*, over the summer. *Id.* While certainly useful, it is unlikely that such programs are required for graduation, i.e., "mandated," while credit recovery programs are deemed "discretionary."

Glaringly, Defendants fail to cite a *single case* establishing that the fiscal concerns they cite constitute a likelihood of irreparable harm to Defendants. In assessing the "balance of convenience," Maryland courts do not review the purported harm to Defendants in a vacuum; rather, the potential harm to Defendants must be balanced against

the possible harm to Plaintiffs. Given the permanent, life-long implications of denying Plaintiffs their constitutional right to free public school, Defendants' references to budgetary concerns cannot reasonably be said to weigh so heavily in Defendants' favor as to permit the continued deprivation of Plaintiffs' constitutional rights. The relevant case law supports this conclusion.

In *Ehrlich v. Perez*, the Maryland Court of Appeals specifically held that the risks to plaintiffs from having their medical benefits wrongly discontinued outweighed any harm the State might endure from having to appropriate funds for those benefits within the State budget. 394 Md. at 732–33 (affirming the circuit court's use of an injunctive order to appropriate funds from the budget in order to remedy a potential constitutional violation); *Rowe v. Chesapeake & Potomac Tel. Co.*, 56 Md. App. 23 (1983) (affirming preliminary injunction which prevented proposed amendment from being implemented—thus costing the county's ratepayers more money in telephone charges—where injunction was necessary to prevent potentially unconstitutional amendment from going into effect). Defendants provide no support for the proposition that the inconvenience of adjusting the State budget—even where, as in *Ehrlich*, the budget adjustment could be significant—outweighs the potential harms incurred from a constitutional violation.

This is particularly so given that Defendants are government entities. It is well-settled that in determining whether to impose a preliminary injunction, "in litigation between the government and a private party, the court is not bound by the strict requirements of traditional equity as developed in private litigation." *State Dep't of Health & Mental Hygiene v. Balt. Cty.*, 281 Md. 548, 555 (1977); *see also, e.g., Joy v. Anne Arundel Cty.*, 52 Md. App. 653, 660 (1982) ("While Joy . . . contends that a zoning violation

may not be enjoined absent a showing of irreparable injury, this rule applies only when private parties are the plaintiffs. In litigation between the government and a private party, the court is not bound by the strict requirements of traditional equity as developed in private litigation." (citation and internal quotation marks omitted)).

Moreover, where plaintiffs seek an injunction directed toward a governmental party, "[c]ourts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved." *Space Aero Prods. Co. v. R. E. Darling Co.*, 238 Md. 93, 128 (1965) (quoting *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937)). Given the breadth of the Court's discretion vis-à-vis governmental parties, the professed harms asserted by Defendants are insufficient to tilt the "balance of convenience" in Defendants' favor.

D. Enforcing the Maryland Constitution and Promoting Education for All of Maryland's Children Promotes the Public Interest

"The public interest is best served when representatives and agencies of the state are operating under lawful orders and by lawful means." *State v. Md. State Family Child Care Ass'n*, 184 Md. App. 424, 431 (2009). Defendants' unconstitutional practice of charging tuition for summer school—and thereby depriving Student Plaintiffs of access to education—would not cause the disruption Defendants claim to fear and does not serve the public interest. Defs.' Br. at 28.

First, many summer programs offered by Defendants are already offered free of charge, and it would not be disruptive to offer the remaining few programs for free to students who cannot afford them. Defendants could alternatively consider charging fees

for the summer enrichment programs that are not necessary for grade advancement. Currently, the Middle School STEM Bridge Summer Program, the Aerospace Engineering and Aviation Technology Bridge Program, the 3D Scholars Orientation, the Pathways in Technology Early College High School (P-Tech) Summer Bridge, the First Steps to Success Program for NEW Science and Technology Students, the International Baccalaureate (IB) Summer Bridge, the CTE Career Explorers Summer Camp, the Project Lead the Way (PLTW) Engineering Summer Mathematics Mastery Academy, and ESSA Title I Department Summer Camps are all free.[21] Many of these programs also offer students free breakfast and lunch.[22] Some of the only summer programs that *do* cost money for enrollment are the credit recovery classes that Student Plaintiffs are *required* to take in order to graduate on time.[23] In deciding to charge for credit recovery but not enrichment, Defendants are ignoring the Attorney General's guidance that they cite in their brief, which advises that charging fees for courses offered for credit are "contrary to constitutional and statutory principles regarding free public education," Ex. 1A to Defs.' Br., 57 Op. Att'y Gen. Md. 176, 176-77 (1972), but suggests that "fees for instruction outside of the school's courses would not necessarily be forbidden," Ex. 1B to Defs.' Br., 72 Op. Att'y Gen. Md. 262, 267 n.5 (1987).

Defendants' primary concern with offering full tuition waivers to students who cannot afford summer school is budgetary constraints, *see* Defs.' Br. at 30-31; however,

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[21] *2019 PGCPS Summer Programs*, Prince George's County Public Schools, https://www.pgcps.org/summerprograms/.

[22] *Id.*

[23] *Id.*

financial concerns cannot excuse unconstitutional policies. All funding decisions involve choices: for example, Defendants propose spending nearly $7.2 million on athletics in FY 2020 and currently provide many less essential summer enrichment programs free of charge.[24] Defendants' budget proposal emphasizes that "students are our priority and all students can achieve high academic levels,"[25] yet they have made the unconstitutional choice not to allocate funding where it is needed to ensure students can meet basic academic benchmarks.

Article VIII of the Maryland Constitution guarantees access to a free public education, and ultimately, the public interest is best served when barriers to free public education are eliminated. Defendants' desire to maintain the unconstitutional *status quo* contravenes the public interest by denying equal access to education to low-income students. By pointing out that PGCPS is one of the most poorly funded districts in Maryland, Plaintiffs are not "criticizing" Defendants for their lack of funding, but rather emphasizing that PGCPS serves a particularly vulnerable population of students and should not develop policies that actively and unconstitutionally exacerbate inequality. *See* Compl. ¶ 62; Defs.' Br. at 30. Allowing Student Plaintiffs to enroll in summer school is in the public interest because it will allow these students to avoid grade retention—thus reducing their chances of dropping out and experiencing severe harms to their social and emotional health.

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[24] *See FY 2020 Chief Executive Officer's Proposed Annual Operating Budget*, Prince George's County Public Schools (Dec. 13, 2018), https://www1.pgcps.org/uploadedFiles/Offices/Business_Management_Services/Budget/FY_2020_Budget_Development/FY20%20Proposed%20Full%20Version.pdf, at 247.

[25] *Id.* at 13.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask that the Court grant Plaintiffs' motion for a preliminary injunction preventing Defendants from charging tuition for core summer school classes. Plaintiffs likewise ask that the Court deny Defendants' motion to dismiss/motion for summary judgment.

Dated: July 12, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 2019, a copy of the foregoing document entitled "Reply in Support of Plaintiffs' Motion for a Preliminary Injunction and Opposition to Defendants' Motion to Dismiss and Alternative Motion for Summary Judgment" and the accompanying exhibits will be delivered via email and USPS first class mail, postage prepaid to:

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