IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

S.S., *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. _____
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION, *et al.*,	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Maryland Rules 15-504 and 15-505, Plaintiffs Nalda Rozon, Laurie Tucker, Josette Gordon, Audrey Belton, Zuyquestia Irving, Luis Cruz, Wanda Ford, and Shirley Hill ("Guardian Plaintiffs") and S.S., S.M., D.G., K.G., D.S., L.C., K.M., and A.H. ("Student Plaintiffs") respectfully submit this Motion for a Temporary Restraining Order and Preliminary Injunction requesting that the Court order Defendants Prince George's County Board of Education and Dr. Monica Goldson (collectively, "Defendants") to waive the unconstitutional fees charged to students in Prince George's County requiring summer school for grade promotion. Student Plaintiffs—individuals with limited means, all of whom qualify for Free and Reduced Meals ("FARMs")—face immediate, substantial, and irreparable injury absent Court intervention on their behalf. Plaintiffs further respectfully request that the Court allow oral argument on the motion and waive any bond requirement or, in the alternative, require that they post bond of a nominal amount.

STATEMENT OF FACTS

A. Students in Prince George's County Face Several Barriers to Education.

Students in Prince George's County face numerous barriers to equal educational opportunity, which are compounded by Defendants' unlawful policy of charging for summer school. Compl. ¶¶ 61, 83–89. Prince George's County is one of the two most poorly funded districts in Maryland compared to its needs, which impacts the quality of schooling provided to students. *Id.* ¶ 62. Within the County, students who live in economically depressed areas tend to attend schools that perform worse than those in wealthier areas. *Id.* ¶ 65. Further, many students (especially African Americans) are subject to high levels of disciplinary action, including suspensions, which can force them to miss class time and fall behind their peers. *Id.* ¶¶ 69–71. Finally, 67,000 students are from low-income backgrounds that make them eligible for free meals and another 13,000 are eligible for reduced-price meals—more than any other county in Maryland. *Id.* ¶ 73. Many students facing these barriers fail to meet academic expectations for their grade level. *See id.* ¶¶ 74–82. These students are forced to repeat a grade unless they take remedial summer school classes. *Id.* ¶ 88. However, many are not able to access summer school because of the County's unlawful tuition and fee requirements.

B. The County's Summer School Tuition Policy Compounds the Effects of These Barriers.

While Defendants have a written policy stating that students "shall not be denied entrance into summer school for lack of tuition," they violate their own policy by refusing to grant full tuition waivers. *See* Prince George's County Public Schools Board of Education Policy No. 5118.4, https://www1.pgcps.org/generalcounsel/boardpolicies/bp5000.aspx. The County requires that all students pay for summer school classes, which can

cost up to $200 per class for students who attend Prince George's County Public Schools ("PGCPS"), and up to $645 per class for Maryland residents who attend private schools. Compl. ¶¶ 84–87. Defendants have reduced the cost of each full-credit class to $100 tuition, plus a $25 registration fee, for low-income students who are eligible for free and reduced meals, but this price still makes summer school cost-prohibitive for many students. *Id.* ¶¶ 92, 102. The tuition and fee requirements discriminate against FARMs students, who have no choice but to repeat an entire grade if they cannot pay. *Id.* ¶ 88. Defendants' policy has acute, long-term negative impacts on students who are held back, including harm to their self-esteem and feelings of stigma and victimization. *Id.* ¶¶ 102–08.

C. The Policy Will Have a Severe and Irreparable Effect on Plaintiffs.

Student Plaintiffs attend school in Prince George's County and participate in the FARMs program. Student Plaintiffs need to take summer school classes to be promoted to the next grade or to graduate. Examples of the difficulties faced by Plaintiffs due to the Defendants' unlawful policy include the following: Plaintiff S.M. struggled in 11th grade and needs to earn a credit in Career Research Development over the summer to graduate. Compl. Ex. 2, Tucker Aff. ("Tucker Aff.") ¶¶ 6–7. S.M.'s mother, Plaintiff Laurie Tucker, does not work outside of the home and cannot afford to pay the $100 fee for her son's summer school. *Id.* ¶¶ 8–9. Plaintiff D.G. needs to take summer school classes to advance to 9th grade and the fee would be a severe financial hardship for his mother, Plaintiff Josette Gordon, who works a low-wage job as a day care aide. Compl. Ex. 3, Gordon Aff. ("Gordon Aff.") ¶¶ 7–9. Plaintiff K.G. has failed 10th grade after multiple suspensions. Compl. Ex. 4, Belton Aff. ("Belton Aff.") ¶ 5. K.G. needs to take English this summer to advance to 11th grade, but his grandmother, Plaintiff Audrey Belton, cannot afford the

tuition and fees. *Id.* ¶¶ 6, 8. K.G. was recommended for summer school last year, but was unable to attend because of the cost. *Id.* ¶ 7. Plaintiff S.S. started the school year very late and will likely need summer school to advance to the 11th Grade. Compl. Ex. 1, Rozon Aff. ("Rozon Aff.") ¶ 4. S.S.'s mother, Plaintiff Nalda Rozon, would not be able to pay the fees if charged. *Id.* Plaintiff D.S. needs to take courses in math and science to advance to 10th grade. Compl. Ex. 5, Irving Aff. ("Irving Aff.") ¶ 6. The fee would be a severe financial hardship for his mother, Plaintiff Zuyquetia Irving, who is the sole provider for her family and is currently unemployed. *Id.* ¶¶ 7-8. Plaintiff L.C. needs to take courses including English over the summer to advance to 10th grade, but his family cannot afford the fee. Compl. Ex. 6, Cruz Aff. ("Cruz Aff.") ¶ 4.

If this Court does not compel Defendants to waive the unlawful summer school tuition and fee requirements, Student Plaintiffs will be unable to take classes and will be held back a grade or prevented from graduating. Their similarly situated peers who can afford summer tuition will be able to make educational progress. Compl. ¶ 5.

ARGUMENT

By charging tuition and fees for summer school, Defendants are violating their constitutional obligation to provide "a thorough and efficient System of Free Public Schools . . . ." *See* Md. Const. art. VIII, § 1; Compl. ¶¶ 109–13. Because of the immediate and irreparable nature of the harm to Student Plaintiffs, this Court should issue a temporary restraining order ("TRO"), or in the alternative, a preliminary injunction, requiring Defendants to provide access to summer school classes for all FARMs-eligible students residing in Prince George's County, without payment of tuition or registration fees.

In deciding whether to grant injunctive relief, Maryland courts will consider four factors: (1) whether plaintiffs "will suffer irreparable injury unless the injunction is granted;" (2) the "'balance of convenience' determined by whether greater injury would be done to the defendant by granting the injunction than would result by its refusal;" (3) the likelihood of success on the merits; and (4) "the public interest." *Schade v. Md. State Bd. of Elections*, 930 A.2d 304, 325 (Md. 2007) (quoting *Ehrlich v. Perez*, 908 A.2d 1220, 1230 (Md. 2006)).

To satisfy the requirements for obtaining a TRO, the Court must also find that it "clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction." Md. R. 15-504(a); *Fuller v. Republican Cent. Comm.*, 120 A.3d 751, 764 (Md. 2015).

I. STUDENT PLAINTIFFS WILL SUFFER IRREPARABLE INJURY UNLESS PRELIMINARY RELIEF IS GRANTED

In the absence of injunctive relief, Student Plaintiffs will suffer injury that "is of such a character that a fair and reasonable redress may not be had in a court of law . . . ." *State Comm'n on Human Relations v. Talbot Cty. Det. Ctr.*, 803 A.2d 527, 542 (Md. 2002) (citation omitted). Student Plaintiffs will be unable to take the core summer school classes they need and will be held back or prevented from graduating. Compl. ¶ 102. Grade retention is destructive to students' long-term development—it lowers their self-esteem, leads to social isolation, and creates feelings of shame and resentment towards school. *See* Compl. ¶¶ 103–08. Retention can also increase students' likelihood of dropping out. *Id.*; *see also* Matt Barnum, *Holding middle-schoolers back causes dropout rates to spike, new*

research finds, Chalkbeat (Oct. 11, 2018), https://chalkbeat.org/posts/us/2018/10/11/holding-middle-schoolers-back-causes-dropout-rates-to-spike/. Student Plaintiffs must be allowed to attend summer school because the immediate and lasting injury they will otherwise suffer cannot be remedied in other ways.

Maryland courts also find evidence of irreparable injury where monetary damages "are difficult to ascertain or are otherwise inadequate." *Bey v. Moorish Sci. Temple of Am., Inc.*, 765 A.2d 132, 140 (Md. 2001) (citations omitted). Here, monetary damages are inadequate because they could not compensate for the harm caused by the denial of Student Plaintiffs' right to a free education and the consequences of that denial. Student Plaintiffs simply cannot afford to pay for summer school and hope that they are reimbursed at some later date. Absent a waiver of summer school fees, Student Plaintiffs face repeating an entire school year—losing a year of their life that no amount of money could remedy, and incurring irreparable harm to their self-esteem and emotional well-being. Because Student Plaintiffs cannot be made whole by traditional damages, "to refuse the injunction would be a denial of justice . . . ." *Id.* (citation omitted).

II. THE POTENTIAL HARM TO STUDENT PLAINTIFFS OUTWEIGHS ANY HARM TO DEFENDANTS

The harms to Student Plaintiffs are acute. *See also* Compl. ¶¶ 103–08. The cost to Defendants of granting relief is minimal because Defendants are responsible for Student Plaintiffs' education no matter the outcome of the litigation. *See id.* ¶ 43. Defendants must either allow Student Plaintiffs to earn credits by attending summer school or bear the cost of providing another full year of public education by holding them back. Allowing Student Plaintiffs to catch up to their peers by taking summer classes could even save Defendants

money in the long run.[1] Further, Defendants have already committed to offering these classes over the summer, so the additional attendance from Student Plaintiffs is unlikely to increase Defendants' costs significantly. Any conceivable harm to Defendants from granting preliminary relief is negligible. *See, e.g.*, *Ehrlich*, 908 A.2d at 1244-45 (affirming trial court's holding that plaintiffs had demonstrated a likelihood of suffering an "irreparable injury" from the State's cancellation of their medical assistance coverage that, when weighed against the minimal costs to the State to continue the program, warranted a preliminary injunction).

III. PLAINTIFFS HAVE RAISED SERIOUS QUESTIONS AND ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR UNDERLYING CLAIMS

Generally, Plaintiffs must show that there is a "real *probability*" and not "merely a remote *possibility*" of success on the merits. *Ehrlich*, 908 A.2d at 1230 (quoting *Fogle v. H & G Rest., Inc.*, 654 A.2d 449, 456-57 (Md. 1995)). However, balance of hardships here tips substantially in favor of granting Plaintiffs' request for injunctive relief. Thus, on the likelihood of success factor, this Court need only consider whether the Complaint has raised questions "going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation." *Eastside*

[1] If Defendants retain students in their current grade, the government committing to an expenditure of roughly $16,664 per student for a full year of education. *See Overview of Maryland Local Governments: Finances and Demographic Information*, Maryland Department of Legislative Services, at 90 (2019), http://dls.maryland.gov/pubs/prod/InterGovMatters/LocFinTaxRte/Overview-of-Maryland-Local-Governments-2019.pdf. Scholars view retaining students—rather than providing them with summer services or additional supports throughout the year—as one of the costliest forms of intervention. *See, e.g.*, Martin R. West, *Is Retaining Students in the Early Grades Self-Defeating?*, Center on Children and Families at Brookings, at 3 (Aug. 2012), https://www.brookings.edu/wp-content/uploads/2016/06/16-student-retention-west.pdf.

Vend Distribs., Inc. v. Pepsi Bottling Grp., Inc., 913 A.2d 50, 64 (Md. 2006) (citation omitted).

Plaintiffs should be granted injunctive relief because the Complaint raises serious and substantial questions about the legality of Defendants' policy of charging students—including FARMs-eligible students—for access to summer school. Further, Plaintiffs have a "real probability" of succeeding on their claims because Maryland's Constitution and statutes mandate free public education. As demonstrated below, Defendants' policy violates both the Maryland Constitution and Education § 1-201 of the Maryland Code. Further, Defendants have impermissibly promulgated their policy without legislative authorization.

A. Defendants' Policy Violates Maryland's Constitution and Code

Article VIII, Section 1 of the Maryland Constitution establishes the mandate for free public schools, stating that the legislature "shall by Law establish throughout the State a thorough and efficient System of Free public schools . . . ." Md. Const. art. VIII, § 1. The Maryland Court of Appeals has construed this provision as requiring schools to "be open to all without expense." *State ex rel. Clark v. Md. Inst. for Promotion of Mech. Arts*, 41 A. 126, 129 (Md. 1898). Maryland's education code likewise guarantees "a general system of free public schools . . . ." MD. CODE ANN., EDUC. § 1-201.

Charging tuition and fees for core summer school courses violates the mandate for a system of free public schools. Although Maryland state courts have not considered the issue, the Office of the Maryland Attorney General ("OAG") published an opinion holding 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." 72 Op. Atty Gen. Md. 262, 267 (Dec. 9, 1987) (emphasis added). OAG borrowed the North Dakota Supreme Court's formulation to conclude that "whatever is an 'integral part of the educational system' must be free." *Id.* (quoting *Cardiff v. Bismarck Pub. Sch. Dist.*, 263 N.W.2d 105, 113 (N.D. 1978)).

In addition, courts in other states have found fees for public summer school unconstitutional. In *Giannini v. Council on Elementary & Secondary Education*, the Superior Court of Rhode Island held in a nearly identical factual situation that plaintiffs were entitled to a waiver of summer school fees because the classes were necessary to graduate and would be free during the year. No. PC 2014-5240 at 20 (R.I. Sup. Ct. Mar. 30, 2016). The court noted that "[t]he fact that one option would have been free and the other option incurred a fee necessarily leads to an absurd result." *Id.* Similarly, the Supreme Court of California has interpreted its state constitutional guarantee of free education to include curricular and extracurricular programming: in *Hartzell v. Connell*, the court held that a public high school could not charge fees for educational programs even if they had been classified as "extracurricular." 679 P.2d 35, 43 (Cal. 1984). The Supreme Court of California noted that "all educational activities . . . offered to students by school districts fall within the free school guarantee [of the California Constitution]." *Id.* Finally, in Missouri, the state supreme court has held that the state constitution's guarantee of free public schools prohibits school districts from charging fees for any courses in which academic credit is given. *See Concerned Parents v. Caruthersville Sch. Dist.*, 548 S.W.2d 554, 562 (Mo. 1977). The courses that Student Plaintiffs need to take over the summer—which include English and science—are "integral" and "directly related" to the curriculum

because they fall within the regular education program for public school in Maryland. *See, e.g.*, Belton Aff. ¶ 6.

To graduate from a public high school in Maryland, a student must earn a minimum of twenty-one credits, including credits in English, mathematics, science, and social studies. Maryland State Department of Education, *Graduation Requirements for Public High Schools in Maryland* at 3–4 (Mar. 2018), http://www.marylandpublicschools.org/programs/Documents/Testing/GraduationsRequirements2018.pdf. The core classes offered in the summer have curricula aligned with Maryland standards and are integral because they are mandatory for grade promotion or graduation. In Prince George's County, these classes are known as "credit recovery" and described as "allow[ing] middle and high school students the opportunity to earn previously attempted credits to meet promotion or graduation requirements." *2019 PGCPS Summer Programs*, Prince George's County Public Schools, https://www.pgcps.org/summerprograms/. The courses Student Plaintiffs need to take would be free during the school year, which further emphasizes their integral nature. Defendants' policy plainly violates Maryland's constitutional guarantee of free education.

B. Defendants' Policy Violates Article 14 of the Maryland Declaration of Rights

Under Article 14 of the Maryland Declaration of Rights, "no aid, charge, tax, burthen or fees ought to be rated or levied, under any pretense, without the consent of the Legislature." Md. Const. Declaration of Rights art. 14. This Court should declare Defendants' fees invalid under Article 14. *See Benson v. State*, 887 A.2d 525, 533 (Md. 2005). In *Hornbeck v. Somerset County Board of Education*, the Court of Appeals stated that "[t]he quantity and quality of educational opportunities to be made available to the

State's public school children is a determination committed to the legislature or to the people of Maryland through adoption of an appropriate amendment to the State Constitution." 458 A.2d 758, 790 (Md. 1983). The Maryland General Assembly has not authorized local school boards to collect tuition or fees for summer school. The availability of summer school impacts Student Plaintiffs' futures, and *Hornbeck* suggests legislative involvement is necessary when determining the availability of educational opportunities. Defendants should not be permitted to sidestep this clear requirement by unilaterally imposing costs and fees without express legislative authorization.

Plaintiffs are plainly entitled to the relief they seek. At the very least, they have strong claims for relief and have raised serious questions about the nature of free public education in Maryland, which supports a grant of preliminary relief.

IV. GRANTING PRELIMINARY RELIEF SERVES THE PUBLIC INTEREST

An order allowing Student Plaintiffs to access summer school serves the public interest because it removes a barrier to accessing public education. In litigation between private and governmental parties, Maryland state courts are not "bound by the strict requirements of traditional equity as developed in private litigation." *Schade,* 930 A.2d at 325 (quoting *Fogle*, 654 A.2d at 457). Instead, courts "may, and frequently do, go much farther" to give relief in furtherance of the public interest. *Id.* (quoting *Fogle,* 654 A.2d at 456). Maryland's Constitution guarantees that the public will have access to education, *free of charge*. Md. Const. art. VIII, § 1. Granting preliminary relief and allowing Student Plaintiffs to take summer school courses free of charge serves that mandate.

V. STUDENT PLAINTIFFS FACE IMMEDIATE, SUBSTANTIAL, AND IRREPARABLE HARM

To receive a TRO, Plaintiffs must show by affidavit in addition to the factors for injunctive relief that they will suffer "immediate, substantial, and irreparable harm" if an order is not granted before a full adversary hearing can be held on a preliminary injunction. *Fuller*, 120 A.3d at 764. Student Plaintiffs face immediate harm because summer school in Prince George's County starts as early as July 1, 2019. *2019 PGCPS Summer Programs*, Prince George's County Public Schools, https://www.pgcps.org/summerprograms/. Plaintiffs must register and pay the tuition and fees *this month* in order to attend. *Id.* Plaintiffs' affidavits establish that paying the $100 tuition and $25 fee for summer courses would be impossible or a severe financial hardship and that they will not advance or graduate without taking summer courses. *See* Tucker Aff. ¶¶ 7–8; Gordon Aff. ¶¶ 7–10; Belton Aff. ¶¶ 6, 8, 10; Rozon Aff. ¶¶ 4, 6-7; Irving Aff. ¶¶ 6-7; Cruz Aff. ¶¶ 4, 7. Without intervention from this Court, Student Plaintiffs will be deprived of their constitutional right to access free public education. The harm is substantial and irreparable because, as discussed in Section I, grade retention will have severe, long-term impacts on Student Plaintiffs' prospects and their social and emotional well-being. *See also* Compl. ¶¶ 103–08. These children's well-being should not be sacrificed in furtherance of the Defendants' unlawful summer school fee policy.

CONCLUSION

For all of the foregoing reasons, Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction should be granted. Plaintiffs further respectfully request that Court allow oral argument on this motion and waive any bond requirement or in the alternative, require that they post a bond for a nominal amount.

Dated: June 12, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2019, a copy of the document entitled "Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction" was delivered via email to:

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Additionally, a paper copy of the documents will be delivered in-person via process server along with the Complaint.

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