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 **NON-EMERGENCY FILING**

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

Defendants' latest brief in this matter presents a single, misplaced argument – that this Court is allegedly bound to defer to all decisions of the State Board of Education on all educational matters in every instance. Defendants make no attempt to defend – perhaps because it is indefensible under applicable law – the substance of the State Board's decision, or to address Plaintiffs' arguments and authority in their opening supplemental brief as to why no deference is appropriate where the State Board interprets the Maryland Constitution. *None* of the cases Defendants cite involved a court's determination as to whether the State Board properly interpreted the Constitution. Defendants' cases are further distinguishable in that each involved an appeal of a State Board decision, rather than an original action, such as this case, in which the Court need not accord the State Board deference. Indeed, the most Defendants can offer are snippets of inapposite decisions, taken out of context; all of the cases actually on point hold that courts owe no deference to the State Board's decisions on constitutional questions.

The reality remains that summer school is an integral component of the educational curriculum. This is now more true than ever, in light of the reality that, as a result of COVID-19, thousands of Prince George's County students will likely miss nearly one-third of the school year. And, if they have not achieved a passing grade by the time PGCPS schools close, or, like many students from families with low incomes, do not have the technological resources to complete online learning, they will be forced to repeat their grade if they cannot afford summer school.

Accordingly, the Court should deny Defendants' motions and enter an Order enjoining Defendants from charging tuition for summer school courses required for advancement or graduation.[1]

I. The Court Should Not Defer to the State Board's Opinion.

A. This Court Should Not Accord Any Deference to the State Board's Interpretation of the Maryland Constitution.

As explained in Plaintiffs' brief filed on March 10, 2020, this Court owes no deference to the State Board's answers to constitutional questions, or pure questions of law. Suppl. Br. in Supp. of Pls.' Mot. for a Prelim. Inj. & in Opp'n to Defs.' Mot. to Dismiss & Alternative Mot. for Summ. J. at 3-4, Mar. 10, 2020. None of the cases Defendants cite in their Opposition undercut this argument. Defendants fail to cite a single case, nor provide any authority, in response to the substantial authority Plaintiffs supplied that judicial deference is not owed to an agency's constitutional – or purely legal – determinations.

[1] Defendants, in passing, contend that Plaintiffs fail to satisfy the standard for a preliminary injunction. Defs.' Mem. in Reply to Pls.' Suppl. Br. & in Supp. of Defs.' Mot. for Summ. J. ("Defs.' Br.") at 6-10, Apr. 13, 2020. Plaintiffs disagree, for the reasons set forth in their previous briefs. Pls.' Mot. for a TRO & Prelim. Inj. at 5-12, June 12, 2019; Reply in Supp. of Pls.' Mot. for a Prelim. Inj. & Opp'n to Defs.' Mot. to Dismiss & Alternative Mot. for Summ. J. at 14-31, July 12, 2019.

Rather, Defendants cite only cases involving State Board decisions applying educational statutes and regulations to particular factual circumstances, not decisions addressing constitutional questions like that presented here. *See Montgomery Cty. Educ. Ass'n, Inc. v. Bd. of Educ.*, 311 Md. 303 (1987) (deciding whether Md. Code Ann. § 6-408(b)(1) required the County Board of Education to negotiate with the Montgomery County Education Association regarding the school calendar and job reclassification); *Bd. of Educ. v. Waeldner*, 298 Md. 354 (1984) (reviewing whether the State Board properly determined that an individual teacher should be reprimanded, but not terminated, for improperly disciplining a student with a disability); *Hurl v. Bd. of Educ.*, 107 Md. App. 286 (1995) (reviewing whether the State Board properly refused to grant a school employee a full evidentiary hearing concerning the appeal of her involuntary transfer to a teaching assignment at a different school); *Monarch Acad. Balt. Campus, Inc. v. Balt. City Bd. of Sch. Comm'rs*, 457 Md. 1 (2017) (reviewing breach of contract claim that the City failed to provide Charter School Operators with commensurate funding and also failed to provide them with the budget and financial information specified in the contract).

The language Defendants cite from *Waeldner* is particularly inapt, as it does not even concern the question of a reviewing court's authority to differ with a State Board decision, but rather the distinct question of whether the State Board has the authority to overturn a County Board's decision. *Waeldner*, 298 Md. at 359-60 (responding to "the County Board['s] argu[ment] that the State Board was without power to decide that a penalty less severe than dismissal was warranted and in directing that suspension be the punishment imposed upon Waeldner").

Furthermore, the cases Defendants cite explicitly *acknowledge* their inapplicability to judicial review of the State Board's determination regarding a constitutional matter. As the

Court of Appeals ruled in *Monarch Academy Baltimore Campus*: "The State Board's visitatorial power 'is not unlimited,' and it is the courts that ultimately must decide purely legal questions." 457 Md. at 14; *Hurl*, 107 Md. App. at 299 (same); *see id*. at 305 (explaining that where the Court is reviewing an agency's conclusions of law, as opposed to its findings of fact, "we may substitute our judgment for that of the State Board's"). Rather, any "special deference" afforded the State Board is to "be given to its interpretation of statutes that it administers . . . ." *See Monarch Acam. Balt. Campus*, 457 Md. at 13-14 (quoting *Frederick Classical Charter Sch., Inc. v. Frederick Cty. Bd. of Educ.*, 454 Md. 330, 370 (2017)) (explaining that because the State Board has been statutorily directed to interpret the Education Article, its interpretation of the statute is generally entitled to weight).

The language Defendants cite from these cases is inapplicable here where no facts are in dispute, the parties have undertaken no discovery, and the ultimate inquiry concerns the interpretation and application of a constitutional provision – which, by definition, is beyond the scope of the State Board's expertise. Were the Court to accept Defendants' argument that deference is to be accorded in a case such as this, it would directly contradict the Court of Appeals' rulings on this issue: the State Board's visitatorial power would be unlimited.

B. Defendants' Cases Are Further Distinguishable in That Most Involved the Direct Appeal of a State Board Decision.

Additionally, all but one of the cases Defendants cite are distinguishable because they involved the direct appeal of a State Board decision. *Montgomery Cty. Educ. Ass'n*, 311 Md. at 307 ("MCEA filed in the Circuit Court for Montgomery County an action for judicial review of the State Board's decision."); *Waeldner*, 298 Md. at 356 ("[T]he Circuit Court for Prince George's County . . . affirmed the State Board's decision. . . . [T]he Court of Special Appeals affirmed the circuit court's judgment in an unreported opinion. We granted certiorari . . . .");

Hurl, 107 Md. App. at 290 ("Hurl, a Howard County school teacher, appeals from an order of the Circuit Court for Howard County . . . that affirmed an administrative decision of the Maryland State Board of Education").

Courts in that specific factual circumstance – which does not obtain here – are bound by Maryland precedent and principles of administrative law to apply a deferential standard of review. *Montgomery Cty. Educ. Ass'n*, 311 Md. at 310 ("These broad powers necessarily circumscribe the scope of judicial review of State Board decisions."); *Waeldner*, 298 Md. at 362 (limiting its review to whether the State Board exceeded its statutory authority). These principles do not apply in an independent action based on the Maryland Constitution, as opposed to an appeal from a State Board decision applying educational statutes and regulations. Where a constitutional claim is at issue, it is this Court, and not the Board, that has primary authority over determination of the issue.

Nor does the fact that Plaintiffs did not appeal the State Board's ruling mean that this Court and all other courts are bound to follow it, as Defendants claim. Defs.' Br. at 8. As explained above and in Plaintiffs' March 10 brief, the definition of "integral" is ultimately a constitutional question, over which this Court has primary authority.[2]

[2] To the extent that Defendants intend not only to argue that this Court must adhere to the State Board's interpretation in this independent proceeding, but also to argue that Plaintiffs may not proceed in this Court as a procedural matter because they failed to appeal the State Board's ruling, this argument is undercut by the Court's direction to the parties that if they disagreed with the State Board's rulings, they could immediately return to the Court to seek further proceedings in the case, as opposed to initiating a new lawsuit, as would be required for a formal appeal of the State Board's rulings, July 18, 2019 Hr'g Tr. at 14:17-22 ("I can assure you that if we were to stay this proceeding, move it to the State Board of Education, and . . . the State makes a decision, and if the Plaintiffs are unhappy with that decision, I'll schedule this hearing for the following day"), as well as the parties' stipulation that this was the proper course of action, *see* Pls.' Letter, Feb. 19, 2020 (requesting, with Defendants' consent, the opportunity to provide further briefing from both parties regarding Plaintiffs' Motion for a Preliminary Injunction and Defendants' Motion to Dismiss), and the authority and arguments in Plaintiffs' Opposition to Defendants'

In their reliance on *Monarch Academy Baltimore Campus*, Defendants only confuse the issue by misconstruing the quoted language and the ultimate resolution of the case. Contrary to Defendants' claims, the Court was not laying out the required procedure for advancing a claim at odds with a ruling of the State Board. Defs' Br. at 8. It was instead simply describing the likely future proceedings in that particular case, for the purpose of estimating the amount of time that would be required for the *Monarch* plaintiffs to obtain relief were their original action in the circuit court dismissed while they exhausted their administrative remedies. *Monarch Acad. Balt. Campus*, 457 Md. at 54 ("If that appeals process was followed to its full extent, with additional appeals to the Court of Special Appeals and this Court—as occurred recently in *Frederick Classical*—the process could drag on for years before the Charter School Operators could obtain a final decision . . . ."). Ultimately, given the length of this process, and the lack of information available to the *Monarch* plaintiffs through it, the Court of Appeals concluded that the trial court improperly required the plaintiffs to exhaust their claims before the State Board, and remanded the case for further proceedings before the circuit court. *Id.* at 65-66 ("[W]e hold that the circuit court abused its discretion in staying the breach of contract proceedings when no factual record had yet been developed . . . ."). This decision in no way supports Defendants' position.

II. The Integral Nature of Summer School Is Highlighted by the Recent Closure of Schools As a Result of COVID-19.

The integral nature of summer school for required courses is accentuated by COVID-19-related school closures impacting Plaintiffs and other PGCPS students. As it currently stands, all Maryland public schools will be closed at least until Friday, May 15, though it is possible that

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Motion to Dismiss that Plaintiffs need not first seek a decision from the State Board. Reply in Supp. of Pls.' Mot. for a Prelim. Inj. & Opp'n to Defs.' Mot. to Dismiss & Alternative Mot. for Summ. J. at 11-14, July 12, 2019.

schools in Prince George's County, and throughout Maryland, will remain closed for the remainder of the school year. *Coronavirus*, PGCPS, https://www.pgcps.org/coronavirus/. On April 14, 2020, PGCPS launched its distance learning program. *Id.* By this time, students had missed nearly a month of education. *See* Darran Simon, Erin Cox, & Laura Vozella, *Maryland closes schools, bans large gatherings as coronavirus shutdown expands*, WASHINGTON POST (Mar. 13, 2020), https://www.washingtonpost.com/local/virginia-dc-maryland-coronavirus-news-thursday/2020/03/12/77d178ce-6410-11ea-acca-80c22bbee96f_story.html (reporting that Maryland schools initially closed on March 16, 2020).

As PGCPS explains, the program will be centered primarily around online learning. *Coronavirus*, PGCPS, *supra*. Although the district has taken steps to increase computer and internet availability, students who are economically impoverished will be disadvantaged by a model that relies primarily on resources they disproportionately do not have. "Chronic absenteeism is a problem in American education during the best of times, but now, with the vast majority of the nation's school buildings closed and lessons being conducted remotely, more students than ever are missing class . . . ." Dana Goldstein, Adam Popescu, & Nikole Hannah-Jones, *As School Moves Online, Many Students Stay Logged Out*, NEW YORK TIMES (Apr. 6, 2020), https://www.nytimes.com/2020/04/06/us/coronavirus-schools-attendance-absent.html. "The absence rate appears particularly high in schools with many low-income students, whose access to home computers and internet connections can be spotty." *Id.*

Students in Prince George's County have been hit particularly hard by the absence of classroom instruction. As the *Baltimore Sun* noted last week, "The highest poverty areas of the state — where students are less likely to have their own laptop at home or reliable internet — have the highest percentage of students who have lost their connection to school." Liz Bowie,

Tens of thousands of Maryland students have missed lessons since schools closed for coronavirus, BALTIMORE SUN (Apr. 23, 2020), https://www.baltimoresun.com/coronavirus/bs-md-students-not-learning-20200423-227kclee6jdtpg3eafcgivw5w4-story.html. According to the *Baltimore Sun*'s investigation, about 20% of PGCPS students have been unable to access instruction since the district transitioned to distance learning. *Id.*

Even assuming that students are able to connect, online learning is no replacement for full-time, in-person learning. Indeed, PGCPS admits as much; according to PGCPS' own website, "in the distance learning structure, daily learning will not be equivalent to a six-hour day." *Coronavirus*, PGCPS, *supra*. Furthermore, as PGCPS admits, those students who were failing at the conclusion of the marking period ending March 30, when schools closed, and are unable to complete online learning due to a lack of access, will receive a failing grade. *See id.* (discussing grading for the third and fourth quarter marking periods).

"The trend is leading to widespread concern among educators, with talk of a potential need for summer sessions, an early start in the fall, or perhaps having some or even all students repeat a grade once Americans are able to return to classrooms." Goldstein, Popescu, & Hannah-Jones, *supra*. The Defendants' position, however, would require students to *pay* for these courses, if offered during the summer, allowing economically advantaged students to make up the time, while leaving poor students who are unable to afford such courses irredeemably behind. While every year may not involve mass events affecting so many students, this year is such a year.[3] And every year, some students are affected by various external forces that may inhibit their ability to complete required coursework during the regular school year.

[3] Indeed, even if the Court were disinclined to grant Plaintiffs permanent relief, at the very least, current circumstances plainly necessitate a waiver of summer school fees for the summer of 2020.

CONCLUSION

For the foregoing reasons and those set forth in Plaintiffs' previous filings, the Court should deny Defendants' motions and enter an Order enjoining Defendants from charging tuition for summer school courses required for advancement or graduation.

Dated: April 27, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2020, a copy of the foregoing document will be delivered via email to:

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