

MATTHEW J. PLATKIN  
Attorney General of New Jersey,

and

SUNDEEP IYER, Director  
of the New Jersey Division on Civil Rights

Plaintiffs,

v.

HANOVER TOWNSHIP BOARD OF  
EDUCATION,

and

HANOVER TOWNSHIP PUBLIC SCHOOLS

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
GENERAL EQUITY  
MORRIS COUNTY

CIVIL ACTION

DOCKET NO. MRS-C-\_\_\_\_\_

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**BRIEF IN SUPPORT OF PLAINTIFFS' APPLICATION FOR  
AN ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

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## **PRELIMINARY STATEMENT**

On May 16, 2023, the Hanover Township Board of Education enacted a new Policy that requires all Hanover Township school staff to “immediately, fully and accurately inform a student’s parent(s)” of any “facts or circumstances” staff learn regarding the “sexuality; sexual orientation; transitioning; [or] gender identity or expression” of Hanover Township students. Michael Cert., Ex. B. Under the Policy, school staff are now required to “out” these LGBTQ+<sup>1</sup> students to their parents without their consent—even when doing so will place those students directly in harm’s way. That Policy marked a dramatic departure from the Township’s prior policy, which had followed New Jersey Department of Education guidance and made clear that staff had no obligation to report such information to parents.

Immediately following the enactment of the Policy, the Attorney General and Director of the Division on Civil Rights brought an administrative complaint with the Division on Civil Rights, alleging that the Policy violates the New Jersey Law Against Discrimination (“LAD”). They now separately bring this summary proceeding in the Superior Court, Chancery Division, pursuant to N.J.S.A. 10:5-14.1, N.J.A.C. 13:4-11.3, and R. 4:52.1, seeking temporary restraints and an interlocutory injunction to prevent the Hanover Township Board of Education from

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<sup>1</sup> The term “LGBTQ+” is intended to include individuals who are gay, lesbian, bisexual, polysexual, pansexual, transgender, gender non-conforming, nonbinary, genderqueer, questioning, queer, or otherwise not straight and/or not cisgender.

implementing Policy 8463 or otherwise giving effect to the aspects of the Policy that violate the LAD until the pending administrative challenge is resolved. Michael Cert., Ex. A.

This Court should issue a temporary injunction to maintain the pre-Policy status quo in Hanover Township schools during the pendency of the administrative challenge to the Policy. The Appellate Division has made clear that such a temporary injunction is appropriate when the Division on Civil Rights seeks to prevent harm while an administrative proceeding is underway. Pfaus v. Palermo, 97 N.J. Super. 4, 8 (App. Div. 1967). Here, all of the factors this Court considers in evaluating a request for a temporary injunction strongly support awarding preliminary relief.

First, the State is likely to succeed on the merits. The LAD forbids unlawful discrimination on the basis of, among other things, sexual orientation and gender identity. Here, the Policy violates the LAD's straightforward prohibition against "explicit facial discrimination": The Policy treats LGBTQ+ youth differently from their peers, and requires parental notification without consent for only such students. A.D.P. v. ExxonMobil Research and Eng'g Co., 428 N.J. Super. 518, 537 (App. Div. 2012). But even if the Policy could somehow be understood as facially neutral—which it is not—it would still violate the LAD because it has a disparate impact on LGBTQ+ youth. Requiring parental notification as to sexual orientation

or gender identity for all students would disproportionately affect LGBTQ+ youth, as research and common sense both make clear that LGBTQ+ youth are more likely to suffer harm from parental notification than their peers. See infra at 16-22.

The remaining Crowe factors also weigh heavily in favor of injunctive relief. The involuntary disclosure of students' sexual orientation or gender identity will irreparably harm LGBTQ+ students: It will subject them to unlawful discrimination, violate their privacy, cause them severe mental or emotional distress, and cause educational, familial, and social disruption. And the balance of the equities strongly favors a temporary injunction here too: A temporary injunction would merely preserve the status quo while the administrative challenge to the Policy plays out. Enjoining the Policy would not prevent school staff from notifying parents about concerns unrelated to LAD-protected characteristics, nor would it prevent school staff from reporting illegal activity, firearms, or other comparable concerns to the appropriate authorities. Denying an injunction, by contrast, would risk visiting enormous and irremediable harms on LGBTQ+ students who are involuntarily outed because of the Policy.

To be clear, the Attorney General and the Division on Civil Rights take no position on parental notification that may not implicate the LAD—for instance, any requirement that parents be notified of issues concerning substance use, alcohol use, firearms use, or other unlawful activity. But the Policy is remarkable precisely

because it lumps sexual orientation and gender identity in with those other illegal activities—and, in doing so, sends a deeply stigmatizing signal of exclusion to LGBTQ+ youth in Hanover Township. The Court should grant the State’s application and issue a temporary injunction to preserve the status quo during the pendency of the administrative challenge to the Policy.

### **STATEMENT OF FACTS**

On May 16, 2023, the Hanover Township Board of Education (“Board”) enacted Policy 8463 – Parental Notice of Material Circumstances (“Policy”). The Policy asserts that it is intended to “provide direction” to Hanover Township School District (“District”) administrators and staff. It provides as follows:

All school staff members (certified and non-certified personnel) and administrators shall take all necessary steps – including notifying appropriate school administrators (e.g., the Principal and/or his/her designee) – to immediately, fully and accurately inform a student’s parent(s) whenever such staff member is made aware of, directly or indirectly, any facts or circumstances that may have a material impact on the student’s physical and/or mental health, safety and/or social/emotional well-being, including, without limitation, the following: substance use; tobacco/vaping use; alcohol use; firearms; peer/academic/athletic pressures; school performance; eating disorders; suicide; self-harm; anxiety; depression; fatigue; isolationism / anti-social behaviors / social withdraw; truancy; theft; vandalism; unlawful activity; violent or aggressive behavior; preoccupation with anti-social music; pornography; sexual activity; sexuality; sexual orientation; transitioning; gender identity or expression; gang affiliation; obsessive behaviors;

familial/cultural challenges; harassment; intimidation; or bullying.

Where a staff member reasonably believes that such notification to a student's parent(s) will place the student at risk of abuse or neglect as defined by N.J.S.A. § 9:6-1, the staff member and appropriate administrators shall immediately notify the Department of Children and Families, Institutional Abuse (DCF), Division of Child Protection and Permanency (DCPP), and/or the Hanover Township Police Department (HTPD) in accordance with the annual Memorandum of Agreement and/or as directed by the Superintendent, his/her designee and/or the Board's legal counsel.

[Michael Cert., Ex. B (emphasis added).]

On its face, the Policy requires District staff members to notify parents regarding the sexual orientation, transitioning, and gender identity or expression of students. When the Policy was adopted, Board Member Gregory Skiff announced that a primary purpose of the Policy was to remove subjective discretion from the Board's policies, or, in other words, require staff members to make notifications without exercising personal judgment as to whether notification is appropriate or necessary in the particular circumstance. Compl. ¶ 27. It thereby singles out particular classes of students—including gay, lesbian, bisexual, transgender, nonbinary, and other LGBTQ+ students—for facially differential treatment, subjecting such students to involuntary disclosure, or “outing,” of their sexual orientation and/or gender identity to administrators and parents. Even for those students who may be “out,” the Policy requires staff to make ongoing reports of

issues concerning sexuality, sexual orientation, transitioning, or gender identity, essentially putting such students under continuous surveillance by school staff.<sup>2</sup> And extending the reporting requirement to “any” information a staff member becomes aware of “directly or indirectly” requires school staff to pass on such information even if learned through rumors or hearsay.

The Policy provides that when “a staff member reasonably believes that such notification to a student’s parent(s) will place the student at risk of abuse or neglect as defined by N.J.S.A. § 9:6-1, the staff member and appropriate administrators shall immediately notify the Department of Children and Families, Institutional Abuse (DCF), Division of Child Protection and Permanency (DCPP), and/or the Hanover Township Police Department (HTPD)[.]” Michael Cert., Ex. B. The statute cited by the Policy, N.J.S.A. 9:6-1, sets a high standard for what constitutes “abuse” or “neglect,” including, but not limited to, “using excessive physical restraint on the child” and “willfully failing to provide proper and sufficient food,” limiting the applicability of this provision. But even in the narrow circumstances where that provision does apply, it does not expressly exempt school staff from their obligation

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<sup>2</sup> “Transitioning,” as it relates to gender identity or expression, is commonly understood to mean a process during which a person begins to live according to their gender identity, rather than the gender they were assigned at birth. Depending on an individual’s needs and access to resources, gender transition may or may not include changing one’s gender expression, including by changing one’s clothing, appearance, and name.

under the Policy to notify parents of their child’s sexual orientation, transitioning, or gender identity or expression.

The Policy marks a dramatic departure from the Hanover Township Board of Education’s prior policy on this score. In 2019, the Township Board of Education enacted Policy 5756. In Policy 5756, the Board cited the Law Against Discrimination’s prohibition against discrimination based on gender identity or expression, reaffirmed the importance of creating a “learning environment that is free from discrimination and harassment for transgender students,” and outlined policies for protecting the confidentiality of student information. Michael Cert., Ex. C. Policy 5756 made clear that “[t]here is no affirmative duty for any school district staff member to notify a student’s parent of the student’s gender identity or expression.” Michael Cert., Ex. C.

Unlike the Policy enacted by the Board in May 2023, Policy 5756 was substantively identical to, and followed from, the New Jersey Department of Education’s Transgender Guidance. The Guidance, which begins by citing the Law Against Discrimination’s prohibition against discrimination on the basis of sexual orientation and gender identity or expression, states that “[a] school district shall keep confidential a current, new, or prospective student’s transgender status.” Michael Cert., Ex. D. The Guidance further states that “[s]chool personnel may not disclose information that may reveal a student’s transgender status except as allowed



by law.” Michael Cert., Ex. D. This Department of Education guidance was promulgated pursuant to the Legislature’s express direction that the Department establish guidance to “assist schools in establishing policies and procedures that ensure a supportive and nondiscriminatory environment for transgender students.” N.J.S.A. 18A:36-41. Policy 8463, by contrast, makes no mention of the Guidance.

On May 17, 2023, the Attorney General and Director filed a complaint with the Division on Civil Rights pursuant to N.J.S.A. 10:5-8.2 and -13, alleging that the school district violated the LAD by enacting Policy 8463. Specifically, the administrative complaint alleges that the Policy unlawfully discriminates on the basis of gender identity, gender expression, and sexual orientation. That administrative litigation is currently pending. Michael Cert., Ex. A.

The LAD and DCR Rules of Practice and Procedure, N.J.A.C. 13:4-1.1 to 13.2, set forth the process for litigation of the administrative complaint. The Board will have the opportunity to file an answer to the administrative complaint and submit a position statement as well as any documents in support of its position. N.J.A.C. 13:4-3.1 and 3.2. The Division on Civil Rights will then conduct an investigation of the complaint to determine if probable cause exists to credit the allegations in the complaint. N.J.S.A. 10:5-14. If probable cause is found, the agency will engage in conciliation efforts with the Board to eliminate any alleged discriminatory practice. Ibid. If such conciliation efforts fail, the matter will then

proceed to a plenary hearing. N.J.S.A. 10:5-15; N.J.A.C. 13:4-11.1. After a full hearing, the Division will issue its final findings and determination, N.J.S.A. 10:5-17, which is subject to an appeal filed with the Appellate Division of the Superior Court. N.J.S.A. 10:5-21. Accordingly, there is an established and comprehensive process in place for the adjudication of the administrative complaint.

### **ARGUMENT**

This Court should grant the application and preserve the status quo pending the resolution of Plaintiffs' administrative complaint challenging the Policy.

Under the LAD, after filing an administrative complaint, the Attorney General may proceed in a summary manner in Superior Court to prevent violations of the LAD or attempts to interfere with or impede the enforcement of the statute. N.J.S.A. 10:5-14.1. The statute authorizes the Attorney General and Director to seek preliminary injunctive relief to maintain the status quo while the administrative complaint is being resolved. Poff v. Caro, 228 N.J. Super. 370, 375 (Law Div. 1987). Courts should consider such applications relying on traditional principles governing the issuance of preliminary injunctive relief. Ibid. The Appellate Division has also cautioned, however, that trial courts should not adopt "a grudging or narrow approach" to consideration of a preliminary injunction request by the Division on Civil Rights when it is seeking to prevent harm while an administrative proceeding is underway. Pfaus v. Palermo, 97 N.J. Super. 4, 8 (App. Div. 1967).

Here, all of the relevant factors plainly support the issuance of a preliminary injunction barring enforcement of the Policy and thus preserving the pre-Policy status quo at Hanover Township schools while administrative litigation proceeds. Preliminary injunctive relief is warranted where the moving party “establish[es] (1) a likelihood of success on the merits; (2) irreparable harm; (3) a showing that on balance the harm to the moving party is greater than the harm to the party to be restrained; and (4) the public interest will not be harmed.” In re City of Newark, 469 N.J. Super. 366, 387 (App. Div. 2021) (citing Crowe v. De Gioia, 90 N.J. 126, 132–34 (1982)). “[A]lthough it is generally understood that all the Crowe factors must weigh in favor of injunctive relief, a court may take a less rigid view than it would after a final hearing when the interlocutory injunction is merely designed to preserve the status quo.” Waste Mgmt. of New Jersey, Inc. v. Union Cty. Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008) (internal citations omitted). In this case, the State is likely to succeed on the merits, and the other factors also weigh heavily in favor of preliminary relief. The Court should grant the application.

**POINT I**  
**THE STATE IS LIKELY TO SUCCEED ON THE MERITS**

Plaintiffs are likely to succeed on the merits of their LAD claims challenging the Policy. The Policy violates the LAD because it expressly singles out LGBTQ+ students for differential treatment. But even if the Policy could somehow be

understood on its face as treating all students equally, it would still violate the LAD because it would plainly result in an unjustified disparate impact on such students.

The LAD prohibits any place of public accommodation, including public schools, from discriminating against any person, directly or indirectly, on the basis of their “gender identity or expression . . . or sexual orientation.” N.J.S.A. 10:5-12(f); see Enriquez v. West Jersey Health Sys., 342 N.J. Super. 501, 511 (App. Div. 2001); see also Nini v. Mercer Cty. Cmty. Coll., 202 N.J. 98, 111 (2010). N.J.S.A. 10:5-12(f) now provides, in relevant part, that it shall be unlawful discrimination for

any owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof . . . on account of the . . . gender identity or expression, affectional or sexual orientation . . . of such person . . . .  
[N.J.S.A. 10:5-12(f) (emphasis added).]

The “LAD is the Legislature’s attempt to protect society from the vestiges of discrimination.” L.W. ex rel. L.G. v. Toms River Reg’l Schs. Bd. of Educ., 189 N.J. 381, 399 (2007) (quoting Cedeno v. Montclair State Univ., 163 N.J. 473, 478 (2000)). Consistent with the LAD’s broad remedial purposes, the Legislature has declared that the LAD must be “liberally construed” to further those remedial aims. Ibid. In applying that statutory mandate, the New Jersey Supreme Court has articulated “special rules of interpretation” that apply to the LAD:

[Where a case] involves the LAD, special rules of interpretation apply. When confronted with any interpretive question, [the court] must recognize that the LAD is remedial legislation intended to eradicate the cancer of discrimination in society, and should therefore be liberally construed in order to advance its beneficial purposes. . . . The more broadly the LAD is applied, the greater its anti-discriminatory impact.

[Smith v. Millville Rescue Squad, 225 N.J. 373, 390 (2016) (internal quotation marks and citations omitted).]

Here, the LAD plainly applies to the Board's policies. The LAD has barred discrimination against students in public schools since public accommodation protections were added to the statute in 1949: "Place of public accommodation" is expressly defined to include public primary and secondary schools. N.J.S.A. 10:5-5(1); see also L.W. ex rel. L.G., 189 N.J. at 401. The question, then, is whether the Policy violates the LAD either because it mandates disparate treatment or has an unjustified disparate impact. See Carter v. AFG Indus. Inc., 344 N.J. Super. 549, 556 (App. Div. 2001); Peper v. Princeton Univ. Bd. of Trs., 77 N.J. 55, 81 (1978). The answer is yes: Under either theory of liability, this Policy is unlawful.

To start, the Policy targets students belonging to protected classes by specifically singling students out for differential treatment based on their "sexuality; sexual orientation; transitioning [sic]; [and] gender identity or expression." Michael Cert., Ex. B. On its face, the Policy requires school staff members to inform parents about only those students who are "transitioning," thereby expressly treating those students differently than others on the basis of their gender identity or expression.

And as a practical matter, Defendants cannot plausibly contend that school staff will notify parents of the “sexual orientation” or “gender identity or expression” of straight or cisgender students; it is hard to fathom that school staff would be required to notify parents every time they see a boy dressed in pants, or a boy and a girl flirting in the hallways. Rather, the Policy plainly contemplates reporting to parents on the sexuality, sexual orientation and gender identity or expression of only those students who are LGBTQ+ — not those students who are cisgender or straight.

The Board itself has made their intent to target LGBTQ+ individuals clear. In March 2023, Hanover Township Board of Education Vice President Marc Amoresano reported that the Board’s policy committee discussed the “importance” of parental notification of students’ transgender status. Compl. ¶ 24. Further, an attorney for the Board confirmed during an April Board meeting that a proposed version of the Policy requires notification to all parents any time the school learns that a student is “gay.” Compl. ¶ 25.

This singling out of LGBTQ+ students will subject students belonging to these protected classes to differential treatment. Such facially differential treatment is anathema under our law, and constitutes discrimination under the LAD. Carter, 344 N.J. Super. at 556 (“Discrimination at the very least implies the accordance of differential treatment to persons or groups of persons that are in similar conditions or circumstances.” (internal quotation marks and citation omitted)); see also Peper,

77 N.J. at 81 (1978) (describing “disparate treatment” as a situation where a covered entity “treats some people less favorably than others because of their [protected class]”).

Indeed, even if the Board professes to have benign intent in including sexual orientation and gender identity or expression in the Policy, such purported intent could not save the Policy from violating the LAD. The LAD, after all, is not a “fault- or intent-based statute.” Lehmann v. Toys R Us, Inc., 132 N.J. 587, 604 (1993). Whether a policy or practice “involves disparate treatment through explicit facial discrimination does not depend on why the [entity] discriminates but rather on the explicit terms of the discrimination.” A.D.P., 428 N.J. Super. at 537. Imposing additional conditions on some but not others based on membership in a protected class violates the law, plain and simple. Ibid.; see also Castellano v. Linden Bd. Of Educ., 79 N.J. 407, 412–13 (1979) (finding discrimination when employer singled out maternity leave for mandatory one-year leave of absence no matter whether employer’s policy was well-meaning). The Policy expressly discriminates on the basis of sexual orientation and gender identity or expression. That alone is enough to violate the LAD.

In the alternative, even if the Policy were to be construed as facially neutral, it would unlawfully subject LGBTQ+ students to a disparate impact in violation of the LAD. A prima facie case for unlawful disparate impact is established where

“practices that are facially neutral in their treatment of different groups . . . in fact fall more harshly on one group than another.” Peper, 77 N.J. at 81. Here, the disparate impact is clear: In practice, only LGBTQ+ students will be harmed by the provisions requiring reports of all information concerning “sexual orientation; transitioning; [and] gender identity or expression.” Michael Cert., Ex. B. Nor is there any “evidence of a legitimate, non-discriminatory, reason” to justify the Policy falling more heavily on LGBTQ+ children. Bumbaca v. Twp. of Edison, 373 N.J. Super. 239, 251 (App. Div. 2004). Even if that provision could somehow be understood to require reporting of sexual orientation and gender identity or expression for all students, LGBTQ+ students would face a far greater risk of harm from the involuntary disclosure of their sexual orientation or gender identity. That is because while cisgender, straight students often consistently express their sexual orientation or gender identity at home and at school, LGBTQ+ students are far more likely to express a different sexual orientation or gender identity at home than they do at school—often precisely because they may fear reprisal or harm. See Sterling v. Borough of Minersville, 232 F.3d 190 (3d Cir. 2000) (finding that police violated a teenager’s constitutional rights when they threatened to tell his family that he was gay, after which the teenager took his own life). That is more than enough to show at this stage that the policy will have a disparate impact.



The academic research makes clear that transgender and nonbinary youth report feeling disproportionately scared, stressed, and nervous about the implementation of any policy that would require their schools to tell a student's parent or guardian if they request to use a different name or pronoun, or if they identify as LGBTQ+ at school. Michael Cert., Ex. F. Discriminatory policies in general cause harm to the educational outcomes, psychological wellbeing, and basic health of LGBTQ+ students. See infra at 22. The result of the Policy, in other words, would “in fact fall more harshly on one group than another.” Peper, 77 N.J. at 81.

The Policy would also have a disparate impact on LGBTQ+ youth in other respects, as well. The Policy implements an additional set of procedures that staff members must follow if they “reasonably believe[] that such notification to a student's parent(s) will place the student at risk of abuse or neglect.” The staff member can report the abuse to (1) the Department of Children and Families, Institutional Abuse, (2) the Division of Child Protection and Permanency, and/or (3) the Hanover Township Police Department. The Policy never says, however, that the core mandate of parental notification does not apply in those circumstances—and fairly read, the Policy suggests quite the opposite. In other words, the Policy seems to require parental notification even when it “will place the student at risk of abuse or neglect.” And even if it did not require parental notification in those circumstances, the Policy would still result in LGBTQ+ youth becoming involved

with the Department of Children and Families or the Division of Child Protection and Permanency at higher rates than their peers—increasing the risk that these youth will be separated from their parents or family members.

The LAD also declares it to be unlawful discrimination “[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.” N.J.S.A. 10:5-12(e). Here, the Board sets out a Policy that not just causes it to violate the LAD, but also mandates that District staff take specific actions in furtherance of the Policy that would cause those staff members to violate the LAD. As stated above, the LAD makes it unlawful for “any owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation” to engage in practices that violate the act. N.J.S.A. 10:5-12(f). As such, employees of the District may be subject to liability for engaging in unlawful discrimination and, moreover, may be required to do so to comply with the Policy. By mandating its employees to engage in such practices, the Board has incited, compelled, and/or coerced its employees to engage in practices that violate N.J.S.A. 10:5-12(e).

Accordingly, there is a high likelihood that Hanover Board of Education’s Policy 8463 violates the LAD. The Board has long been on notice that such a policy is unlawful. Indeed, the very first sentence of the New Jersey Department of Education’s Transgender Student Guidance for School Districts—the Guidance that

the Board of Education had followed until its enactment of Policy 8463—states that “[t]he New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. 10:5-12(11)(f), generally makes it unlawful for schools to subject individuals to differential treatment based on,” among other things, “affectional or sexual orientation, gender identity or expression[.]” Michael Cert., Ex. D. That same Guidance states that “[a] school district shall accept a student’s asserted gender identity; parental consent is not required,” and that “[t]here is no affirmative duty for any school district personnel to notify a student’s parent or guardian of the student’s gender identity or expression.” Ibid. The Hanover Township Board of Education itself previously acknowledged and followed this guidance in its own Policy 5756. Michael Cert, Ex. C. Despite state law and Department of Education guidance to the contrary, the Board enacted a policy that specifically singles out LGBTQ+ students for differential treatment and results in a disparate impact.

At this stage, this Court need not decide the ultimate merits. But the merits here are sufficiently clear to justify preserving the status quo during the pendency of Plaintiffs’ challenge. Because the Policy violates the LAD, Plaintiffs are highly likely to succeed on the merits.

**POINT II**  
**THE REMAINING CROWE FACTORS**  
**SUPPORT GRANTING THIS APPLICATION**

All three of the remaining Crowe factors—irreparable harm, the balance of harms between the parties, and the public interest—strongly support granting this application and issuing a preliminary injunction.

To start, the Legislature has already made clear that a violation of the LAD may be sufficient in itself to establish irreparable harm. Where a party seeks a preliminary injunction pursuant to a statute that expressly authorizes injunctive relief, as the LAD does, “irreparable injury need not be shown. The Legislature in enacting [the statute], has determined that a violation per se of the act warrants equitable interposition.” Hoffman v. Garden State Farms, Inc., 76 N.J. Super. 189, 201 (N.J. Ch. 1962) (citing State ex rel. State Bd. of Milk Control v. Newark Milk Co., 118 N.J. Eq. 504 (1935)); see also New Jersey Dep’t of Env’t Prot. v. Boro Auto Wrecking Co., 2006 N.J. Super. No. A-4920-04T3, 2006 WL 3007394, at \*5 (App. Div. Oct. 24, 2006), Michael Cert., Ex. E; Matawan Reg’l Teachers Ass’n v. Matawan-Aberdeen Reg’l Bd. of Educ., 212 N.J. Super. 328, 335 (Law. Div. 1986).<sup>3</sup>

As relevant here, the LAD provides that “the Attorney General or the director may proceed against any person in a summary manner in the Superior Court of New

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<sup>3</sup> Pursuant to R. 1:36-3, copies of all unpublished opinions cited in this brief are submitted as exhibits to the Michael Cert.

Jersey to obtain an injunction prohibiting [persons engaged in practices declared unlawful by the LAD] from continuing such practices or engaging therein or doing any acts in furtherance thereof, to compel compliance with any of the provisions of this act, or to prevent violations or attempts to violate any such provisions[.]” N.J.S.A. 10:5-14.1; see also Poff, 228 N.J. Super. at 375 (recognizing that N.J.S.A. 10:5-14.1 permits the Attorney General to obtain a preliminary injunction). The LAD itself also expressly states that discrimination against protected classes—including on the basis of sexual orientation and gender identity or expression—causes “irreparable harm resulting from [*inter alia*] education, family and social disruption; and adjustment problems, which particularly impact . . . those protected by this act.” N.J.S.A. 10:5-3. As such, given the express determination made by the Legislature in the LAD, the State need not make a separate showing of irreparable harm here to justify the preliminary injunctive relief it has requested.

In any event, Plaintiffs can easily show that the Policy will cause “substantial, immediate, and irreparable harm.” Subcarrier Commc’ns, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). “Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Crowe, 90 N.J. at 132–33. Here, evidence amply demonstrates that the involuntary disclosure of a student’s sexual orientation and/or gender identity causes real and irreparable harm

to students, including by infringing on students' basic privacy interests, causing mental and emotional distress, and disrupting education, family, and social life.

Courts have expressly held that a “‘clearly defined and serious injury’ to [transgender individuals may result from] the violation of [their] ‘interest in privacy’ in being transgender. Indeed, it is difficult to imagine a more intimate, personal, and private matter than whether a person’s gender identity conforms with the sex they were assigned at birth.” Matter of T.I.C.-C., 470 N.J. Super. 596, 609 (App. Div. 2022) (quoting Doe v. Boyertown Area Sch. Dist., 897 F.3d 518, 522 (3d Cir. 2018)). The violation of a student’s privacy concerning their gender identity is particularly harmful given that “transgender individuals face violence, harassment, and discrimination because of their gender identity. This is commonly recognized in case law.” Matter of T.I.C.-C., 470 N.J. Super. at 611. The same is true of other classes of LGBTQ+ individuals, who have similar privacy interests and may face violence, harassment, or discrimination if outed by their school district involuntarily.

The New Jersey Legislature, in establishing the Transgender Equality Task Force, recognized those same harms. It declared that transgender individuals “face considerable challenges in society, including discrimination, harassment, physical abuse, and social isolation,” and it noted that transgender schoolchildren in particular are at heightened risk of experiencing “mistreatment, including physical or sexual assault, between kindergarten and grade 12, due to their being out or perceived as

transgender.” N.J. Pub. L. 2018, c.60 § 1(a), 1(g). Involuntary disclosure of LGBTQ+ students’ sexual orientation or gender identity may needlessly subject them to a heightened risk of such harms.

A wealth of academic literature is in accord. Surveys consistently show that LGBTQ+ students who were subject to discriminatory policies and practices had lower levels of educational achievement, lower grade point averages, and lower levels of educational aspiration than other students. Michael Cert., Exs. G and H. A 2022 study found that LGBTQ+ youth experiencing discrimination attempted suicide at more than twice the rate of LGBTQ+ youth who did not experience discrimination. Michael Cert., Ex. I. And a study of transgender people found those who reported negative experiences in grades K-12 were more likely than other respondents to face serious psychological distress, to have experienced homelessness, and to have attempted suicide. Michael Cert., Ex. J. Such harms to the educational outcomes, psychological wellbeing, and basic health of LGBTQ+ students are prototypical examples of irreparable harms that cannot be adequately redressed through monetary damages.

In light of these irreparable harms, the balance of hardships and the public interest also weigh in favor of granting preliminary injunctive relief. Preliminary injunctive relief here would simply maintain the status quo at Hanover Township schools as it existed prior to the implementation of Policy 8463. Any effect of a

pause in implementation of the Policy is diminished by the fact that there are only weeks left in the school year. Further, a preliminary injunction precluding implementation of the Policy would not prevent school staff from notifying parents, or others, of issues affecting a student's well-being or progress in school, as was done prior to the Policy. The Board will not be meaningfully harmed by a temporary delay in implementing the Policy while its lawfulness is adjudicated. Conversely, there is a serious risk of irreparable harm to LGBTQ+ students at Hanover Township schools if the Policy is not enjoined for the pendency of this challenge. After all, once LGBTQ+ students have been "outed" pursuant to the Policy, it will not be possible to unring that bell. That harm cannot be undone after the fact.

The strong public interest in ensuring that schools remain a safe and welcoming place of learning for all students, regardless of their sexual orientation or gender identity, also favors a temporary injunction here. The State and public have a strong interest in ensuring that each district board of education fulfills its responsibility to "[p]romote equal educational opportunity and foster through the policies, programs, and practices of the district board of education a learning environment that is free from all forms of prejudice, discrimination, and harassment based upon race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status." N.J.A.C. 6A:7-1.4. The public interest is therefore served by enjoining the



Hanover Township Board of Education and School District from discriminating against LGBTQ+ students during the pendency of the adjudication of this matter.

**CONCLUSION**

For the foregoing reasons, this court should grant the State’s application for an order to show cause with temporary restraints to preserve the pre-Policy status quo by enjoining Defendants from implementing or otherwise giving effect to the Policy until the lawfulness thereof can be established.

Respectfully submitted,

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