

<p>MATTHEW J. PLATKIN, Attorney General of New Jersey, and SUNDEEP IYER, Director, New Jersey Division on Civil Rights</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>HANOVER TOWNSHIP BOARD OF EDUCATION, and HANOVER TOWNSHIP PUBLIC SCHOOLS,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</p> <p>DOCKET NO.: MRS-C-042-23</p> <p style="text-align: center;">Civil Action</p>
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**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION IN AID OF
LITIGANTS' RIGHTS**

CLEARY GIACOBBE ALFIERI JACOBS, LLC
169 Ramapo Valley Road
Upper Level 105
Oakland, NJ 07436
(973) 845-6700
Attorneys for the Defendants,
Hanover Township Board of Education
and Hanover Township Public Schools

Of Counsel and on the Brief:
Matthew J. Giacobbe, Esq. (021891993)

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii
PRELIMINARY STATEMENT..... 1
STATEMENT OF FACTS..... 2
LEGAL ARGUMENT..... 2
 POINT I
 PLAINTIFF CANNOT ENFORCE A NON-EXISTENT ORDER
 UNDER R. 1:10-3..... 5
CONCLUSION..... 8

TABLE OF AUTHORITIES

Case	Page
<u>Abbott v. Burke</u> , 206 N.J. 332 (2011).....	5
<u>Bd. of Educ., Twp. of Middletown v. Middletown Teachers Educ. Ass'n</u> , 365 N.J. Super. 419 (Ch. Div. 2003)	5
<u>In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing</u> , 221 N.J. 1 (2015)	5
<u>Milne v. Goldenberg</u> , 428 N.J. Super. 184 (App. Div. 2012).....	5
<u>North Jersey Media Group Inc. v. State, Office of Governor</u> , 451 N.J. Super. 282 (App. Div. 2017)	5
<u>P.T. v. M.S.</u> , 325 N.J. Super. 193 (App. Div. 1999).....	5
<u>Romagnola v. Gillespie, Inc.</u> , 194 N.J. 596 (2008).....	6
<u>Haynoski v. Haynoski</u> , 264 N.J. Super. 408 (App. Div. 1993).....	6
 Rules	
<u>R. 1:10-3</u>	1, 5, 6
<u>R. 1:1-2</u>	6

PRELIMINARY STATEMENT

This brief is submitted on behalf of Defendants Hanover Township Board of Education and Hanover Township Public Schools (collectively, the "Board") in opposition to the motion in aid of litigants' rights under R. 1:10-3 filed by the Attorney General of New Jersey and the Director of the New Jersey Division of Civil Rights ("Plaintiffs").

Plaintiffs distort the Court's temporary restraining orders ("TRO") in this matter so as to encompass matters not addressed in the TROs. Specifically, Plaintiffs seek to use the TROs to force the Board to maintain Policy 5756 -- a policy which the Court established, and Plaintiffs conceded, is entirely voluntary and maintained at the Board's discretion.

The Court should deny Plaintiffs' motion because it is baseless, a waste of judicial resources and an abuse of R. 1:10-3 for the reasons more fully set forth below.

STATEMENT OF FACTS

The Court entered two TROs in this matter on May 18, 2023 and subsequently on August 24, 2023. Significantly, neither TRO contains any mention whatsoever of Policy 5756 -- much less requires the Board to maintain this voluntary policy. Rather, the TROs only address the original and revised Policy 8463 -- neither of which provided for a repeal of Policy 5756 as previously clarified for the Court. See 9/6/23 Transcript, 18:18-20 (**Exhibit A**). See also District Regulation 8463 (**Exhibit B**) (acknowledging Policy 5756 as another extant policy requiring parental notification).

Specifically, the May 18, 2023 TRO enjoins:

- A. Implementing Hanover Township Board of Education Policy 8463 "Parental Notice of Material Circumstances" until such time as the litigation before the New Jersey Division on Civil Rights arising from a separate administrative Complaint filed March 17, 2023 is resolved.
- B. Giving effect to the aspects of Policy 8463 that violate the New Jersey Law Against Discrimination- including its specifications based on gender identity, gender expression and affectional or sexual orientation until such time as the litigation before the New Jersey Division on Civil Rights arising from a separate administrative Complaint filed March 17, 2023 is resolved.
- C. Permitting, notwithstanding any restraining or injunctive order entered by this Court, Defendants to require parental notification where it is required by law, or where it is necessary due to a specific and compelling need not based on the student's gender identity or expression, sexual orientation transitioning status, or other protected characteristic, and the School District

makes every effort to ensure that any disclosure is made in a way that reduces or eliminates the risk of re-disclosure and protects the student from harassment.

(Exhibit C).

In addition, the August 24, 2023 Order only provides that:

1. The temporary restraints set forth in the Court's May 18, 2023 Order shall apply to both the original policy, Policy 8463, and Revised Policy 8463, to maintain the status quo; and
2. Defendants are temporarily enjoined and restrained from implementing or giving effect to both Policy 8463, and Revised Policy 8463, until such time as the Court renders a decision on plaintiff's motion for preliminary restraints.

(Plaintiffs' Exhibit A).

At the September 6, 2023 hearing on Plaintiffs' supplemental filing, the Court emphasized -- and Plaintiffs conceded -- that Policy 5756 was subject to repeal by the Board at any time:

THE COURT: Mr. Michael, you are not debating that that particular policy was a voluntary policy anyway subject to repeal by the Board at any time, correct?

MR. MICHAEL: Correct. But what that policy does, and it follows the, you know, State Department of Education guidance, it basically, you know, helps provide guidance for schools to basically navigate these various issues and sort of set out ways that they can be --

THE COURT: True, but as I think you argued the first time, there are many districts around the State that don't have any policy whatsoever with regard to the issue to maybe the statewide guidance, but there is not necessarily specific policy on the issue; is that correct?

MR. MICHAEL: I am not sure about many. **I know it is not necessarily a mandatory policy.** It's mandatory guidance that the DOE was required to put-- the Legislature directed DOE to put out the guidance, and in this particular area, basically direct in large part what the guidance should say. So, it is sort of an insight into --

THE COURT: **Guidance, yes,** but --

MR. MICHAEL: -- how the Legislature views the issue.

THE COURT: Right, **but guidance yes; policy, no.**

MR. MICHAEL: Right. But it is correct that **this is not a policy that every district is mandated to have.**

9/6/23 Transcript, 41:17-42:22 (**Exhibit A**) (emphasis added).

Moreover, at the September 6, 2023 argument, the Court unequivocally clarified that Policy 5756 was not before the Court:

THE COURT: But counsel, that policy is not before me.

9/6/23 Transcript, 26:15-16 (**Exhibit A**).

THE COURT: Counsel, again it's not before me.

9/6/23 Transcript, 27:2-3 (**Exhibit A**).

THE COURT: **The only issue is to whether this particular policy should be enjoined** preliminary pending review...

9/6/23 Transcript, 27:8-10 (**Exhibit A**).

LEGAL ARGUMENT**POINT I****PLAINTIFF CANNOT ENFORCE A NON-EXISTENT ORDER UNDER R. 1:10-3**

Rule 1:10-3 allows a court to enter an order to enforce litigant's rights commanding a disobedient party to comply with an order. Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012). R. 1:10-3 empowers the court "to enforce its orders to 'aid' a litigant in a civil suit." Bd. of Educ., Twp. of Middletown v. Middletown Teachers Educ. Ass'n, 365 N.J. Super. 419, 424, n. 6 (Ch. Div. 2003). The New Jersey Supreme Court views the process under R. 1:10-3 as one of relief to litigants and, therefore, the focus is on the vindication of litigants' rights. In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1, 17 (2015).

Thus, relief under R. 1:10-3 is not for the purpose of punishment, but rather as a "measure to facilitate the enforcement of the court order." North Jersey Media Group Inc. v. State, Office of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017); P.T. v. M.S., 325 N.J. Super. 193, 220 (App. Div. 1999). **"The scope of relief ... is limited to remediation of the violation of a court order."** Abbott v. Burke, 206 N.J. 332, 371 (2011) (emphasis added).

Significantly, our Court Rules "are not simply a minuet scored for lawyers to prance through on pain of losing the dance contest should they trip." Romagnola v. Gillespie, Inc., 194 N.J. 596, 604 (2008). Rather, our Court Rules are "construed to secure a just determination, simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay." R. 1:1-2. Plaintiffs' motion, however, is the antithesis of these sensible objectives as it seeks to enforce an order which does not exist.

Plaintiff have no rights for vindication as there is no actual order enjoining the repeal of Policy 5756 -- a requisite for a R. 1:10-3 motion. See Haynoski v. Haynoski, 264 N.J. Super. 408, 414 (App. Div. 1993) (the "sine qua non" for a motion in aid of litigant's rights is an order or judgment). Accordingly, Plaintiffs are not entitled to relief under R. 1:10-3 and this motion is a frivolous abuse of the rule as well as a waste of judicial resources as it unnecessarily invokes the court's jurisdiction when no provisions of the TROs require enforcement.

As set forth in the Statement of Facts, above, Plaintiffs seek enforcement of provisions which appear nowhere in the Court's TROs. Plaintiffs' motion represents disingenuous overreach. Indeed, the first page Plaintiffs' letter brief makes an outright misrepresentation of the language contained in

the Court's August 24, 2023 order in stating that "On August 24, 2023, this Court entered an order providing that the 'temporary restraints set forth in the Court's May 18, 2023 Order shall apply to Policy 5756..." (Pb1). A review of the actual language of the August 24, 2023 order reveals no such language and no reference whatsoever to Policy 5756. The same holds true for the May 18, 2023 TRO.

Notably, at the September 6, 2023 argument, the Court emphasized -- and Plaintiffs conceded -- that Policy 5756 is "**a voluntary policy ... subject to repeal by the Board at any time...**" 9/6/23 Transcript, 41:17-21 (**Exhibit A**). In addition, at the September 6, 2023 argument, the Court repeatedly clarified that Policy 5756 was not before it and that it was only deciding restraints as to Policy 8463. 9/6/23 Transcript, 26:15-16; 27:2-3; 27:8-10 (**Exhibit A**). *A fortiori*, Policy 5756 could not be the subject of the Court's TROs and Plaintiffs' motion is contrary to, both, the Court's assessment as delineated above and Plaintiffs' representations to the Court on the record. Accordingly, based on Plaintiffs' representation and the Court's express acknowledgment that Policy 5756 was not under consideration and pursuant to Board Bylaw 0131 (**Exhibit D**), the Board repealed Policy 5756 at its September 11, 2023 meeting and reaffirmed the repeal at its September 26, 2023 meeting.

CONCLUSION

Based on the foregoing facts and law, it is respectfully requested that the Court deny Plaintiffs' motion.

Respectfully Submitted,

CLEARY GIACOBBE ALFIERI JACOBS, LLC
Attorneys for Defendants,
Hanover Township Board of Education
and Hanover Township Public Schools

Dated: September 28, 2023

By: /s/Matthew J. Giacobbe
Matthew J. Giacobbe, Esq.