

Dkt. No.: NNH-CV22-6127873-S	:	SUPERIOR COURT
	:	
JASON ZANDRI, individually and and as PPA for ANGELA ZANDRI and ADAM ZANDRI; RENATA ZANDRI, individually and as PPA for ANGELA ZANDRI and ADAM ZANDRI; TODD HERBST, individually and as PPA for HUNTER HERBST; SUZANNE HERBST, individually and as PPA for HUNTER HERBST;	:	J.D. of New Haven
	:	
<i>for themselves and other similarly situated students</i>	:	AT NEW HAVEN
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
STACY BUTKUS; LUZ MANSON, THEODORE OCZKOWSKI; ELLEN SOLEK;	:	
	:	
Defendants.	:	NOVEMBER 11, 2022

**PLAINTIFFS’ EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER
AND A PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, A TEMPORARY
ORDER OF MANDAMUS**

There are cases that lawyers and plaintiffs hope and pray that they never have to bring. This case is such a case. From the start of the Fall 2022 school year until approximately a week ago, H.C. Wilcox Technical High School (hereinafter, “Wilcox Tech”) failed to provide approximately 120 11th-grade students a geometry teacher who actually taught geometry instead of babysitting. The Plaintiffs’ persistent pleas to remedy the situation went unheeded by the Defendants until they threatened legal action. Only then did the Defendants act, and their actions proved even more reprehensible than their initial conduct. Instead of making sure that no child was left behind in their education, the

Defendants have left approximately 100-200 9th and 10th graders without a math teacher when they took their math teacher to give to one of the Plaintiffs' children.

The Defendants' conduct clearly violates the Plaintiffs' rights to a free and adequate education under Article Eighth, § 1 of the Connecticut Constitution and the four-part test that the Connecticut Supreme Court established to define a minimally adequate education. See *Connecticut Coalition for Justice Education Funding, Inc. v. Rell*, 327 Conn. 650, 696-97 (2018). In sum, the Defendants have failed, and are continuing to fail, to provide the Plaintiffs with "minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science and social studies..." and "sufficient personnel adequately trained to teach those subject areas." *Id.*

Thus, pursuant to Conn. Gen. Stat. §§ 52-471, 52-473, 52-485, and Practice Book § 23-48, the Plaintiffs move the Court for a temporary restraining order and a preliminary injunction or, in the alternative, a temporary order of mandamus directing the Defendants to immediately:

1. Provide sufficient personnel to teach all mathematics students at Wilcox Tech, especially the students who attend their classes in Room B211;
2. Provide constitutionally adequate teaching of mathematics to all students at Wilcox Tech, especially the students who attend their classes in Room B211;
3. Refrain from recording any mathematics grades for students at Wilcox Tech, especially the Room B211 students, who have not received instruction in geometry; and

4. Refrain from permanently recording, reporting, or, in any other way, making a part of any student's permanent transcript – especially the Room B211 students – grades that they incurred while not receiving adequate instruction.

The Plaintiffs further ask the Court to schedule a hearing expeditiously so that it may hear and decide this motion and to order that notice be provided to Defendants' counsel to attend that hearing. In support of this request, the undersigned certifies to the Court that he has been in written communication via email with counsel for the Defendants for several weeks and that he has provided the Defendants' counsel with a courtesy copy of the complaint and its exhibits as well as a copy of this motion and its exhibits on the above-captioned date. He will undertake to provide Defendants' counsel with notice of any date that the Court schedules a hearing for.

FACTUAL BACKGROUND

Wilcox Tech is a state-operated, technical high school located in Meriden, Connecticut, and it forms part of the Connecticut Technical Education and Career System.¹ As a technical high school, Wilcox Tech offers unique educational opportunities for Connecticut students in that it combines academic education with trade education such as automotive skills, carpentry, electrical, plumbing, graphic design, and other technology-based trades.² Its alumni include U.S. Secretary of Education Miguel Cardona.³

The combination of academic and trade education means that Wilcox Tech divides students' education into cycles. See **Exhibit A, ¶ 20 – Affidavit of Angela Zandri;**

¹ <https://wilcox.cttech.org/>

² <https://wilcox.cttech.org/programs/career-technical-education/>

³ <https://www2.ed.gov/news/staff/bios/cardona.html>

Exhibit B, ¶ 6 – Affidavit of Adam Zandri; Exhibit D, ¶ 17 – Affidavit of Hunter Herbst.

For approximately ten days or two weeks, students focus primarily on academics. **Exhibit A, ¶ 20; Exhibit B, ¶ 6; Exhibit D, ¶ 17.** They then switch to a new cycle that last approximately the same time period to focus on their selected trade skill with some academic instruction mixed in. **Exhibit A, ¶ 20; Exhibit B, ¶ 6; Exhibit D, ¶ 17.**

The 2022-2023 school year started on August 30, 2022 for Wilcox Tech students, including Plaintiffs Angela Zandri and Hunter Herbst. **Exhibit A, ¶ 6; Exhibit D, ¶ 7.** When they arrived at their “Geometry, Math 2” class in Room B211 at Wilcox Tech on August 30, 2022, they and their classmates did not have a permanent math teacher. **Exhibit A, ¶ 6; Exhibit D, ¶ 7.** Instead, Wilcox Tech assigned a substitute mathematics teacher to their class. **Exhibit A, ¶ 7; Exhibit D, ¶ 8.**

The substitute teacher assigned to teach Zandri and Herbst’s class can scarcely be called that. The extent of her classroom activities amounted to simply sitting in the classroom, making sure the Room B211 students physically behaved themselves, and acting as a proctor for their graded geometry assignments. **Exhibit A, ¶ 8; Exhibit D, ¶ 9.** The substitute did not provide any instruction to Zandri and Herbst’s class or any assistance when students were struggling with geometric concepts that Wilcox Tech assigned them to “learn.” **Exhibit A, ¶ 8; Exhibit D, ¶ 9.** Based on this behavior, both Zandri and Herbst concluded that she was not qualified or trained to instruct 11th grade high school students in geometry and that other math teachers at Wilcox Tech were programming their assignments, which were then computer graded. **Exhibit A, ¶¶ 7, 9; Exhibit D, ¶¶ 8, 10.**

The lack of instruction was not the only nightmare that Zandri, Herbst, and their Room B211 classmates faced. Despite failing to assign them an actual teacher, Wilcox Tech repeatedly gave them graded geometry assignments that they were required to complete on computers in short, designated time periods at school. **Exhibit A, ¶ 9; Exhibit D, ¶ 10.** If they failed to complete the graded assignments within the designated time period, they received a grade of “0” for the assignment. **Exhibit A, ¶ 10; Exhibit D, ¶ 11.** Neither Herbst nor Zandri can recall how many assignments that they failed to complete on time because they did not understand the concepts assigned to them and they were not receiving dedicated instruction on those assignments, but they both acutely recall that they failed to complete so many assignments that their overall grades in their Room B211 “Geometry, Math 2” class was the equivalent or close to an “F.” **Exhibit A, ¶ 11; Exhibit D, ¶ 12.**

Angela Zandri and Hunter Herbst were not alone in their plight. The approximately 20-25 students in their Room B211 “Geometry, Math 2” class, and their classroom discussions and attempts to help each other revealed that they were all struggling with their assignments due to the Defendants’ failure to provide instruction. **Exhibit A, ¶ 12; Exhibit D, ¶ 13.** Based on the number of Room B211, “Geometry, Math 2” class periods, the substitute teacher’s assignment to most, if not all, of those periods, and the approximate number of students per class, Zandri estimated that approximately 80-100 11th grade students faced the same difficulties. **Exhibit A, ¶ 19.**

Angela Zandri and Hunter Herbst’s math grades were not atypical of their performance as students. In her first two years of high school, Angela Zandri repeatedly earned high honors for her academic performance. *Id.* at ¶ 4. Her performance followed

her into the 2022-23 school year where she earned honors-level grades in every one of her classes except her Room B211, “Geometry, Math 2” class, which she was technically failing. *Id.* at ¶ 5. Hunter Herbst has compiled a similarly strong academic record. In his first two years of high school, he has generally earned “A’s” and “B’s” for his academic performance. **Exhibit D, ¶ 4.** In the 2022-23 school year, he has earned “A’s” in every one of his classes except his Room B211, “Geometry, Math 2” class in which his grade was an “F.” *Id.* at ¶¶ 5-6.

Neither Angela Zandri nor Hunter Herbst took their struggles passively. Angela Zandri, in particular, was remarkably brave and zealous in her efforts to advocate for herself and her classmates and to work hard to overcome the obstacles that the Defendants put in her way. She scoured the internet for mathematics tutorials, and she went to other geometry teachers at Wilcox Tech during her free time to obtain assistance and instruction. **Exhibit A, ¶ 13.** She could not get enough consistent instruction though to learn the geometric concepts that she should and to perform adequately on her graded assignments. *Id.* at ¶ 13. She also faced direct opposition to her efforts to seek adequate instruction. On at least one occasion when she attempted to leave her “home room” to obtain assistance with her geometry assignments, the substitute teacher attempted to stop her from doing so and threatened her with discipline despite Zandri explaining that she was seeking assistance from another geometry teacher. *Id.* at ¶ 14.

Ms. Zandri’s efforts did not stop there. She learned in late September or early October that there were other geometry classes at Wilcox Tech that had room for additional students. *Id.* at ¶ 15. She requested a transfer into one of those classes from the Defendants, who promptly denied her request. *Id.* at ¶¶ 15-16. The Defendants told

her that they were trying to hire another geometry teacher for Zandri's class and that too many students had applied for transfers. *Id.* at ¶ 16. Having been promised a new geometry teacher, Zandri turned to repeated inquiries as to when the new teacher would be hired and assigned. *Id.* at ¶ 17. Instead of giving her definite answers, the Defendants repeatedly told her to keep being patient at which point Zandri turned her struggles over to her parents to advocate for her. *Id.* at ¶¶ 17-18.

Hunter Herbst also did not go quietly into the night even though he took a different path than Angela Zandri did. He also scoured the internet for mathematics tutorials and sought assistance from other Wilcox Tech geometry teachers. **Exhibit D, ¶ 14.** Even though he could not get instruction consistently enough to make sure he adequately learned the concepts and performed well on his graded assignments, Herbst's constant effort and independent work managed to raise his grade to a "D." *Id.* at ¶¶ 14-15.

Angela Zandri's and Hunter Herbst's parents did not stand idly by as they watched their children's future be treated like numbers on a bureaucratic roulette wheel. They made strenuous efforts to communicate their concerns to the Defendants and Wilcox Tech.

Jason Zandri took the lead in advocating for his daughter. After Angela brought her story of struggle to him and Renata Zandri, Jason Zandri immediately attempted to contact Wilcox Tech officials. **Exhibit C, ¶¶ 2-6 – Affidavit of Jason Zandri.** His initially calls "received nothing more than a 'we are working on it' response." *Id.* at ¶ 8. Wilcox Tech officials repeatedly told him about teacher shortages and blamed the state's human resources hiring process for being slow. *Id.* at ¶ 8. They, however, turned a deaf ear to any requests that Zandri made for interim solutions such as assigning Angela to another

class while they were working on hiring a teacher. *Id.* at ¶ 9. When Jason Zandri finally reached Defendant Stacy Butkus (Wilcox Tech’s principa) by phone, he passionately pled his daughter’s case to her – raising his voice much like a lawyer pleading his case to a jury, but not yelling or being unprofessional in his language. *Id.* at ¶ 10. Defendant Butkus threatened to hang up on Zandri if he did not change his tone and simply repeated the same excuses that Wilcox Tech had previously given him. *Id.* at ¶¶ 11. She then ignored Zandri’s subsequent calls. *Id.* at ¶ 12.

Undeterred, Zandri reached out to Defendant Solek – the Superintendent of Connecticut’s Technical Education And Career System – but she repeatedly ignored his phone calls. *Id.* at ¶ 13. Out of options, Zandri contacted several state representatives for assistance. *Id.* at ¶ 14. One of them personally referred him to the undersigned, and another – Rep. Catherine Abercrombie – took an interest in our plight and emailed Defendant Solek on October 7, 2022. *Id.* at ¶ 14. Defendant Solek responded to Rep. Abercrombie that same day, explaining that the state had made an offer to a finalist math teacher candidate to accept its employment offer and that they hoped it would provide a solution. *Id.* at ¶ 15. When Zandri replied and asked for an interim solution as to Angela’s grades, remedial instruction, and the timeline for her proposed solution, Defendant Solek obfuscated, inviting him to meet with her and a “math accountability” team to discuss his concerns rather than acting promptly to provide solutions. *Id.* at ¶ 16. Zandri did not accept her invite because he had already obtained counsel. *Id.* at ¶ 17.

Likewise, Todd and Suzanne Herbst did not sit idly by while their son struggled. They have raised Hunter to take school seriously, and they have nightly dinnertime discussions to make sure that he is doing his best. **Exhibit E, ¶¶ 3-4.** They quickly

became aware of his struggles in geometry and why. *Id.* at ¶¶ 5-6. They initially encouraged him to study harder, and they gave him all of the support and help that they could. *Id.* at ¶ 7. They, however, are not math teachers. *Id.* at ¶ 7. Frustrated about his struggles, Suzanne Herbst took the lead in attempting to contact Wilcox Tech. *Id.* at ¶ 9. Wilcox Tech, however, simply never responded to her attempts to contact it. *Id.* at ¶ 10.

The Defendants' cavalier treatment of the Zandris and Herbsts caused the Zandris to retain the undersigned who, on October 10, 2022, sent a six-page demand letter to the Defendants detailing their conduct, putting them on notice of their constitutional obligations under Article Eighth, § 1 of the Connecticut Constitution, alerting them to the standard that the Connecticut Supreme Court articulated in *Reil*, and how they were failing to meet that standard. **Exhibit F – October 10, 2022 Demand Letter.**

On October 24, 2022, while Angela Zandri and Hunter Herbst were in their trade cycles, both the Zandris and Herbsts received an email from Ms. Kathleen Swenor informing them that she would be their children's new geometry teacher. **Exhibit C, ¶ 19; Exhibit E, ¶ 12.** When Angela and Hunter returned to their academic cycle on or about October 31, 2022, Ms. Swenor was, indeed, their teacher. **Exhibit A, ¶ 21; Exhibit D, ¶ 18.** Under adequate instruction from her, both Angela's and Hunter's individual assignment grades improved dramatically. **Exhibit A, ¶ 21; Exhibit D, ¶ 18.** Angela's overall grades improved to the point where she is now earning honors in the geometry class that she was previously failing. **Exhibit A, ¶ 21.** Hunter's overall grade has taken inexplicably twists and turns though. After completing a graded homework assignment where he earned a perfect grade, his overall geometry grade dropped instead of improving. **Exhibit D, ¶¶ 18-19.** The Herbsts remained committed to solving that issue

with the school, but they seek the Court's intervention to bring definitive answers to the process.

Despite this improvement, the nightmare continued for the Zandris. On or about November 2, 2022, Jason Zandri learned from Angela and his son, Adam Zandri, that Ms. Swenor had been the teacher assigned to teach the 9th and 10th grade Room B211, algebra class that he must attend three times per week during his trade cycle. **Exhibit B, ¶ 7; Exhibit C, ¶ 22.** The purpose of Adam's trade cycle algebra class is to give students assignments and instruction that is consistent with the regular algebra class that they taught during their academic cycle. **Exhibit B, ¶ 14.** Adam Zandri, however, learned after conferring with Jason and Angela Zandri that Ms. Swenor had been removed from his class and one of the substitute teachers who had been assigned to his class was the same substitute teacher who failed to teach Angela's class. *Id.* at ¶¶ 11-12.

Since the substitute teachers took over Adam's Room B211 algebra class, he and his classmates have not received any instruction at all. *Id.* at ¶ 13. Instead, he and his classmates have received assignments programmed by their regular academic instructors to complete during their trade cycles, but they are receiving no instruction on how to handle those algebraic concepts as opposed to the instruction they received from Ms. Swenor. *Id.* at ¶¶ 15-16. The Defendants have not indicated when they will receive proper instruction or assistance again or how the lack of instruction or assistance will affect their grades. *Id.* at ¶¶ 17-18. In Adam's estimation, this repeated disaster affects approximately 100 Wilcox Tech 9th and 10th graders. *Id.* at ¶ 19.

Adam's plight is no different than his sister's or Hunter Herbst's. He has been an excellent high school student, bringing home "A's and B's" for almost all of his classes.

Id. at ¶ 5. He now is in jeopardy of being subjected to the same recipe for failure that his sister and Hunter Herbst were.

LEGAL STANDARD

“A party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor....” *Aqleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 97-98 (2010).

In the alternative, a writ of mandamus may only issue when “(1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy.” *Miles v. Foley*, 253 Conn. 381, 391 (2000).

ARGUMENT

I. The Plaintiffs satisfy the legal standard for a temporary restraining order and a preliminary injunction.

A. The Plaintiffs demonstrate that they will suffer irreparable harm with equitable relief and that they lack an adequate alternative remedy at law.

In *Gelinas v. Town of West Hartford*, 225 Conn. 575, 588 (1993), the Connecticut Supreme Court held that statutory sections can, by implication, assume that no adequate alternative remedy exists if they are violated and that the damage resulting from that violation is irreparable. If such a presumption applies to statutes, there is no reason that it should not apply to rights guaranteed by the Connecticut Constitution.

While not binding, federal courts follow the rule that a violation of someone’s constitutional rights creates a presumption of irreparable harm and the lack of an

adequate alternative remedy at law. See *Am. Civil Liberties Union v. Clapper*, 804 F.3d 617, 622 (2d Cir. 2015). The Court should do the same here, and it should conclude that the violation of the Plaintiffs' right to a constitutionally adequate education will cause them irreparable harm that the law cannot remedy otherwise.

If the Court does not adopt this rule, ample evidence and inferences exists for it conclude that the lack of adequate instruction will cause the Plaintiffs irreparable harm. The U.S. Department of Education just released the Nation's Report Card, which showed national average test scores in mathematics experienced their largest drop ever between 2019 and 2022. **Exhibit G**. Of the ills that the Department of Education warned could happen if the decline was not addressed was that the lack of key mathematic skills "could alter the trajectories and life opportunities of a whole cohort of young people, potentially reducing their abilities to pursue rewarding and productive careers in mathematics, science, and technology." *Id.*

The Defendants' failure to educate the Plaintiffs properly in math will affect their SAT and PSAT performances, and it will jeopardize their ability to pursue these careers, which depend on mathematics. In other words, the Plaintiffs will go through the rest of their lives deficient in mathematics that they must acquire now while they are in the stage of their life most conducive to learning. No amount of money that the Court can award or any remedial instruction can undo the damage caused now by the Defendants.

Speaking of money, the Plaintiffs have indeed stated damages claims on behalf of themselves and a putative class. Getting past motion practice or collecting on a verdict will not be easy although the Plaintiffs are confident in their chances. The Plaintiffs cannot sue the state for monetary damages without its consent because of the ill-fashioned

doctrine of sovereign immunity.⁴ See *Columbia Air Services, Inc. v. Department of Transp.*, 293 Conn. 342, 349 (2009). Since the state has gone out of its way to dismiss the Plaintiffs and their legitimate and compelling concerns throughout this process, it is highly unlikely that they or their putative class will ever obtain the state's permission to sue it.⁵ To reach the Defendants' wallets, Conn. Gen. Stat. § 4-165 requires the Plaintiffs to show that their conduct was wanton, reckless, or malicious. The Defendants, however, have the bankruptcy system to protect themselves from collection, and the very elements of wantonness, recklessness, or maliciousness that the Plaintiffs would have to prove would relieve the state of its responsibility to indemnify the Defendants under Conn. Gen. Stat. § 5-141d.

In other words, the state has created a situation where it can violate the Plaintiffs' state constitutional rights with impunity, knowing that the only meaningful remedy to their conduct is equitable relief in the form of an injunction or a writ of mandamus. An adequate alternative remedy at law does not exist for the Plaintiffs and other Wilcox Tech students. Equitable relief from this Court is their only hope for a meaningful remedy.

B. The Plaintiffs demonstrate that they are likely to prevail on the merits.

The controlling rule of law for this case is of relatively recent vintage, and the Connecticut Supreme Court recently clarified it in *Connecticut Coalition for Justice in*

⁴ If there was a remnant of British loyalty that should not have survived the advent of constitutional governments, it is the principle that "the king can do no wrong." The very nature of the social compact contemplated by Article First, § 1 of the Connecticut Constitution and the structure of the Connecticut Constitution's restrictions on government violations of civil rights indicates that governments can do a lot of wrong and that they should be held accountable for it. That, however, is a writing that must await another day.

⁵ Nonetheless, the Plaintiffs do intend to seek permission to sue the state for damages from the Claims Commissioner on behalf of themselves and the putative class.

Education Funding, Inc. v. Rell, 327 Conn. 650 (2018). Article Eighth, § 1 of the Connecticut Constitution guarantees Connecticut school children a minimally adequate, free and public education. *Rell*, 327 Conn. at 696-97.

Rell's "minimal adequacy" standard requires the state to provide

(1) minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn, (2) minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks, (3) minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, and (4) sufficient personnel adequately trained to teach those subject areas.

Id. (internal quotation marks and citations omitted).

In meeting these requirements, the state "must operate within the limits of rationality" and what it provides "cannot be so lacking as to be unreasonable by any fair or objective standard." *Id.* at 697 (internal citations and quotation marks omitted). In other words, the Court

should determine whether the specific educational facilities, instrumentalities, curricula and personnel that the state is required to provide... reasonably address the minimal educational needs of this state's children, that is, whether the state's offerings are sufficient to enable a student who takes advantage of them to become a functional member of society.

Id. at 697-98 (internal citations and quotation marks omitted).

The Defendants have failed miserably to meet the third and fourth requirements in this case, and the evidence before the Court shows just how much of an impact it had on the Plaintiffs and the children similarly situated to them. Angela Zandri and Hunter Herbst are excellent high school students with excellent academic records. Without any instruction at all, they were failing their geometry class as were countless of their peers.

As soon as they received appropriate instruction, their grades just didn't rise to the level of passing. Their grades rose to the highest possible levels.

There is no universe in which it is reasonable to assume or conclude that the Defendants could not have foreseen that they would have a vacancy in the 11th grade, Room B211, geometry class that they assigned Angela Zandri and Hunter Herbst to. There is also no universe in which it was rational or reasonable to assign a substitute teacher who did not provide any instruction to the 11th grade Room B211 geometry classes and who, by her behavior, showed that she was not properly trained to teach 11th grade geometry. Nor is it rational or reasonable for the Defendants to permit that state of affairs to continue for two to three months while they clearly had information that many students were failing the class without instruction.

Not satisfied with defying rationality and reasonableness, the Defendants somehow managed to contort their conduct into the epitome of cruelty by forcing the 11th grade Room B211 geometry classes to complete graded classwork without instruction on tight in-class deadlines and assigning them grades of "0" when they failed to complete the assignments on time. Their conduct should leave the Court and any reasonable person at a temporary loss for words.

The Defendants only acted to "remedy" the situation when the Plaintiffs threatened to take legal action. Even then, their "solution" defied reality, rationality, and reasonableness. Instead of making sure that no child was left behind, the Defendants reassigned the unqualified substitute teacher to a 9th and 10th grade algebra class where she and another substitute teacher have once again proven incapable of teaching

mathematics. They then took the qualified teacher away from that class and reassigned her to Angela Zandri's and Hunter Herbst's class in an effort to escape a legal reckoning.

While the switch largely solved Angela Zandri's and Hunter Herbst's predicament, it came at the expense of more innocent children including Adam Zandri who just happened to be the wrong numbers on the Defendants' bureaucratic roulette wheel. There is no excuse or justification for the Defendants' conduct. They have already seen the devastation that their conduct has wreaked on the 11th graders. There is no universe in which it would be proper to conclude that the same scenario would not repeat itself in the 9th and 10th grade, Room B211 algebra class.

The situation has already largely repeated itself. Adam Zandri and approximately 100-120 students have not received any instruction in algebra in their Room B211 algebra class since the substitute teachers replaced the teacher that they started the year with: Kathleen Swenor. **Exhibit B, ¶ 13.** The Defendants have given no indication on when graded assignments will be given or when they will remedy the situation.

Reil requires the state and the Defendants to at least make an effort to provide both sufficient personnel who are adequately trained and minimally adequate teaching of mathematics. The state and the Defendants *have not even tried*. Instead, they have actively sabotaged and held back students who have sought to escape the disaster that they have been made victims. **Exhibit A, ¶¶ 13-16.**

Much ado has been made about teacher shortages across the United States and in Connecticut. The Plaintiffs do not deny that those shortages pose difficulties for the Defendants, but they had multiple solutions at their disposal that they failed to implement. First, they could have temporarily assigned, and still can assign, Room B211 students to

other classrooms. Second, they could have made arrangements to change the Room B211 classrooms' schedules to provide proper teachers from other classrooms. Third, they could have reached out to retired teachers and asked them to fill in until they could hire full-time replacements. Fourth, they could have looked for and hired competent substitute teachers who are actually qualified to teach math. Fifth, they could have made arrangements to use a technology platform such as Microsoft Teams or Zoom to livestream other math classes to the Room B211 students. Sixth, it could have combined math classes to provide adequate instructors.

Why the Defendants did not take any of these steps is a question that the Plaintiffs want answered, and the Court should demand the answers too.

Both the Plaintiffs and the undersigned could understand a case that was closer at the margins where the Defendants actually made a good faith effort to comply with the *Re//* standard but ultimately came up short. The Defendants, however, did not make such an effort. Their conduct flagrantly violates Article Eighth, § 1 of the Connecticut Constitution and the *Re//* standard. There is no question regarding that based on the record before the Court. Thus, there is also no question about whether the Plaintiffs are likely to prevail on the merits, and the Court should make that finding.

C. The balance of equities overwhelmingly and indisputably favor the Plaintiffs.

The very fact that Connecticut chose to guarantee a constitutional right to education in its state constitution is dispositive of this factor. It is a poignant recognition that Connecticut's children are its most important treasures and their future is important to the endurance of our state and our nation. As U.S. Secretary of Education Miguel Cardona illustrates, Wilcox Tech graduates can climb to the highest levels of government

in the greatest civilization in human history, and they can do so on their merits, not on favoritism, corruption, or other nefarious means.

The Plaintiffs and the children similarly situated to them deserve the same opportunity that Mr. Cardona had. They deserve the same opportunity that their current peers have.

If the Court grants this injunction, the Defendants will not suffer any prejudice. They have a non-negotiable, non-discretionary constitutional duty to provide the Plaintiffs with trained instructors who actually instruct instead of babysitting. An order from the Court compelling them to do so will not harm them. It will force them to do their constitutional jobs, and, if they somehow have found a way to satisfy the constitutional standard between now and the hearing that the Court sets, they will still have no cause to complain about the Court reaffirming their constitutional responsibilities and requiring them to perform it.

On the other hand, if the Court denies the Plaintiffs this equitable relief, the Defendants will have free reign to treat their futures like pawns on a bureaucratic chess board of personal and professional convenience. The damage to their futures in this self-serving tragedy will be irreparable and incalculable. Thus, the Plaintiffs submit to the Court that every consideration of justice, right, fairness, and equality favors them, and they ask the Court to put a stop to the egregious conduct that they have become victims to.

II. The Plaintiffs satisfy the legal standard for the issuance of a temporary writ of mandamus.

In the alternative, if the Court concludes that an injunction is not the proper vehicle by which to give the Plaintiffs the equitable relief that they seek, they move the Court for a temporary writ of mandamus pursuant to Practice Book § 23-48.

The Plaintiffs have described above why they have no other specific adequate legal remedy in this matter. They have no need to repeat that discussion here, but they incorporate it by reference.

The remaining two factors⁶ for whether mandamus should issue are inseparable in the undersigned's view so the Plaintiffs will address both factors together. As with the merits analysis for the preliminary injunction, the *Reil* standard controls, and it is crystal clear that the Defendants' duty is mandatory and ministerial, not discretionary:

As we have indicated..., the state *must provide* (1) minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn, (2) minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks, (3) minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, and (4) sufficient personnel adequately trained to teach those subject areas.

Reil, 327 Conn. at 696-97 (emphasis added) (internal citations and quotation marks omitted).

Reil, therefore, announces a compulsory standard – one that neither the State nor the Defendants have discretion on whether they must live up to it or not. Concededly, the state and the Defendants have discretion on which adequately trained personnel they

⁶ “(1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed....” *Miles v. Foley*, 253 Conn. 381, 391 (2000)

assign to a classroom and how they choose to adequately teach a given subject area, but they do not enjoy the discretion of opting out of providing adequately trained teachers and adequate teaching.

As discussed at length above, the Defendants have not even tried to meet this standard and are still failing to meet the standard with respect to Adam Zandri's class and similarly situated students. There is no question of fact of whether their actions were borderline constitutionally sufficient. Their actions are indisputably constitutionally deficient. Thus, the Court should not hesitate to conclude that the constitutional duty imposed on the Defendants is mandatory, not discretionary.

There is also no reasonable question about whether the Plaintiffs have a clear legal right to have the duty performed. Article Eighth, § 1 of the Connecticut Constitution guarantees them the legal right to a minimally adequate education. *Reil's* rule explicitly describes the contours of that right, and it affirms their right to seek a Court's intervention to compel performance of the duty in the appropriate case. The Plaintiffs will not belabor the point any further as they have discussed it at length above. Both law and fact are clear in this case. They have a clear legal right to have their children educated through the provision of an adequately trained teacher and adequate instruction.

The Defendants have done neither. The Court should compel them to through a temporary writ of mandamus if a preliminary injunction is not the appropriate vehicle through which to do it.

CONCLUSION

The Plaintiffs did not pick this battle. It started when a brave 16-year-old girl named Angela Zandri refused to give up on herself and her future and decided to advocate for herself. All she wanted was a geometry teacher. Instead, she received a lesson in selfishness, lies, and manipulation. She also discovered the beauty of the free speech and petitioning rights contained in the First Amendment and the Connecticut Constitution and the courage to exercise them – both when no one was watching and when an entire state was watching – despite the risk of retaliation.

Her leadership drew an equally courageous and hard-working Hunter Herbst to this battle. All he wanted was a geometry teacher too. He received the same lessons as Angela Zandri did. The lessons will both make them stronger as adults, and their courage has set a fine example for Adam Zandri, who now takes up the battle where they left off and will pursue it with equal fervor, courage, and dignity. Behind them all stand loving and supporting families who demand the benefit of the promises made by the Connecticut Constitution. They seek the Court's intervention to make their nightmare stop.

Their efforts and bravery are not misguided as the Defendants told Channel 3 News. See **Exhibit H, p. 2** (“Eyewitness News reached out to the CT Technical Education and Career System and tonight in a statement they said: ‘This lawsuit is misguided and we plan to defend against this case’”). They are the reaction of every loving and concerned parent in the United States of America who values their children's futures and who understand their importance to our nation and our state.

Thus, the Plaintiffs respectfully move the Court for a temporary restraining order and a preliminary injunction or, in the alternative, a temporary order of mandamus directing the Defendants to immediately:

1. Provide sufficient personnel to teach all mathematics students at Wilcox Tech, especially the students who attend their classes in Room B211;
2. Provide constitutionally adequate teaching of mathematics to all students at Wilcox Tech, especially the students who attend their classes in Room B211;
3. Refrain from recording any mathematics grades for students at Wilcox Tech, especially the Room B211 students, who have not received instruction in geometry; and
4. Refrain from permanently recording, reporting, or, in any other way, making a part of any student's permanent transcript – especially the Room B211 students – grades that they incurred while not receiving adequate instruction.

They further ask the Court to schedule a hearing expeditiously so that it may hear and decide this motion and to order that notice be provided to Defendants' counsel to attend that hearing.

The Plaintiffs

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CERTIFICATION OF SERVICE

Counsel for the Defendants has yet to appear in this case. This is to certify that the undersigned has electronically delivered a copy of the foregoing on this date to the Defendants' counsel who has been in communication with regarding this matter and to whom he agreed to provide, and has provided, an advanced courtesy copy of the complaint in this action prior to its official service:

Susan Scott
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/s/ Cameron L. Atkinson /s/