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Return To:
CARL JACOB SCHWARTZ JR
131 Main St., Suites 201-210
PO Box 681
Penn Yan, NY 14527

Rodriguez, Gwenn
Dunn, Cassandra
Agor, Mark
Calus, David
Nelson, Brooke

Bello, Adam J.
Mendoza, Michael
Rochester City School District
Myers-Small, Lesli
Greece Central School District

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
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JAMIE ROMEO

MONROE COUNTY CLERK



NEW YORK STATE, SUPREME COURT
COUNTY OF MONROE

Gwenn Rodriguez,
Cassandra Dunn,
Mark Agor,
David Calus,
Brooke Nelson,
Amy Hinline,
April Schwenzer-Bennett,
Tara Preteroti,
Karen Coccia,
Melaney Bernhardt,
D. Scott Joerger,
Kevin Quinn,
Kristina Trovato,
Ashley Fennell,
Kathryn Muratore,
Lori McClellan,
Shawannah Sprague,
Melissa Patrick,
Julie Werven,
Christopher Casaceli,
Ashley Casaceli,
Sandro Belpanno,
Maria Belpanno,
Jenna Hogan,
Derek Duignan,
Kylena Payne,
Rachel Schoenthal,

COMPLAINT & ARTICLE 78
VERIFIED PETITION

Plaintiffs/Petitioners,

Index No. _____

Against,

Adam J. Bello, in his official capacity as
Monroe County Executive,

Dr. Michael Mendoza, in his official capacity as
Commissioner of Health for Monroe County,

Rochester City School District,
Lesli Myers-Small, Ed. D., in her official capacity as
Superintendent of the Rochester City School District,

Greece Central School District,
Kathleen Graupman, in her official capacity as
Superintendent of the Greece Central School District,

Webster Central School District,
Carmen Gumina, in his official capacity as
Superintendent of the Webster Central School District,

Gates-Chili Central School District,
Christopher Dailey, in his official capacity as
Superintendent of the Gates-Chili Central School District,

Churchville-Chili Central School District,
Lori Orologio, in her official capacity as
Superintendent of the Churchville-Chili Central School District,

Brighton Central School District,
Dr. Kevin McGowan, in his official capacity as
Superintendent of the Brighton Central School District,

Pittsford Central School District,
Michael D. Pero, in his official capacity as
Superintendent of the Pittsford Central School District,

West Irondequoit Central School District,
Dr. Aaron Johnson, in his official capacity as
Superintendent of the West Irondequoit Central School District,

Hilton Central School District,
Dr. Casey Kosiorek, in his official capacity as
Superintendent of the Hilton Central School District,

Penfield Central School District,
Dr. Thomas Putnam, in his official capacity as
Superintendent of the Penfield Central School District,

Fairport Central School District,
Brett Provenzano, in his official capacity as
Superintendent of the Fairport Central School District,

Brockport Central School District,
Sean Bruno, in his official capacity as
Superintendent of the Brockport Central School District,

Rush-Henrietta Central School District,
Lawrence Bo Wright, in his official capacity as
Superintendent of the Rush-Henrietta Cental School District,

Spencerport Central School District,
Dr. Pamela Kissel, in her official capacity as
Superintendent of the Spencerport Central School District,

Wheatland-Chili Central School District,
Lynda Quick, in her official capacity as
Superintendent of the Wheatland-Chili Central School District,

Honeoye Falls-Lima Central School District,
Gene Mancuso, in his official capacity as
Superintendent of the Honeoye Falls-Lima Central School District,

AS AND FOR A PROCEEDING BROUGHT PURSUANT TO
ARTICLE 78 AND 3001 OF THE CPLR.

Plaintiffs/Petitioners, allege through counsel, the following:

NATURE OF THE PROCEEDING

1. This proceeding is brought pursuant to CPLR Articles 78 and 3001, seeking an injunction and declaratory relief, challenging the actions of the Defendants, Monroe County Executive and Monroe County Commissioner of Public Health, in mandating safety protocols in Monroe County Public Schools that are in excess of the safety protocols established by Governor Andrew Cuomo and NYS Commissioner of Health Howard Zucker, in response to the COVID-19 pandemic.

2. Plaintiffs/Petitioners allege that the Defendants' safety protocols are excessive, unnecessary and create insurmountable barriers to Monroe County public schools with regard to the full re-opening of said schools to in-person learning. In so doing, they are denying the public school students of Monroe County of their right to a full public education as granted by the Constitution of the State of New York.

3. Plaintiffs/Petitioners allege that the above named School Superintendents' passive acquiescence to the excessive and unnecessary protocols referenced herein above are a breach of contract by the School Superintendents/Defendants as they are getting paid by their respective school districts to manage each school's mandate to provide a full and free education to all of the school-age children in their school district. In so doing they are denying the public school students of Monroe County of their right to a full public education as granted by the Constitution of the State of New York.

4. Plaintiffs/Petitioners allege that the excessive mandates of Defendants Bello and Mendoza along with the passive acquiescence to said excessive protocols by the Defendant Superintendents, resulting in the failure of the School Superintendents to get their students back to full-time in-school learning, constitutes negligence on the part of the Defendants resulting in educational, emotional, psychological, physiological, and monetary damages to the Plaintiffs herein and to their children.

5. Plaintiffs/Petitioners allege that the excessive mandates of Defendants Bello and Mendoza along with the passive acquiescence to said excessive protocols by the Defendant Superintendents, resulting in the failure of the School Superintendents to get their students back to full-time in-school learning, constitutes a reckless disregard on the part of the Defendants for the educational, emotional, psychological, physiological, and monetary damage their lack of action has caused to the Plaintiffs herein and their children.

PARTIES

6. Plaintiff/Petitioner, Gwenn Rodriguez, is a resident of Rochester, New York in the Rochester City School District and her son attends Academy of Health Science,

Charter School that has been subjected to the school rules and mandates that are herein being complained of. She has one (1) child in school, an eleven (11) year old son, who suffers from Attention Deficit Hyperactivity Disorder (ADHD) and Tourette Syndrome. He's been forced into virtual isolation at home with no professional instruction or guidance and no peer or social interaction as his school is engaged in full-time remote instruction. This isolation from peers and teachers has greatly exacerbated his disabilities and is independently damaging as well. There are no school age children at home and no one to guide his learning, either educationally or socially. He's effectively been forced into self-teaching and learning, lacking the maturity or skills to do such. There are distractions at home that interfere with his being able to engage in this self-learning especially in light of his disabilities. The State, local and school board mandates have removed her son from society by taking away his teachers, his peers, and isolating him at home to fend for himself. The Plaintiff must work full-time to otherwise support her son and she is unable to fill the role of her son's professional teacher (nor is she paid or trained to do such) and has no way to insure that he has any peer to peer social interaction. In the Fall of 2019, her son's grades were satisfactory under the last period of normal instruction; presently, having to fend for himself, he's failing each and every class and the school advises he will likely have to repeat this grade. Remote learning has also led to more 'screen time' at home where other peers have bullied her son in such a manner that would otherwise not be occurring if he was physically present at school.

Plaintiff/Petitioner, Brooke Nelson, is the parent of two school age children who attend Webster Central School District. Petitioner's children are very young students and have only been allowed to be in school a couple of days per week. The lack of routine of

going to school every day during the work week has caused her children to have increased levels of anxiety. Neither of her kids are getting the quality of education that they would receive if they were in school on a regular basis. Her daughter is not developing her social skills as she should be and still does not know the alphabet due to not being in a live classroom.

Plaintiff/Petitioner, David Calus, is the father of an 18 year old senior and a 13 year old 8th grader in the Webster Central Schools. It is impossible to overstate the damage that has been done to his son, a senior, as he has not been able to participate in normal activities particularly enjoyed for graduating seniors. It has affected his son's social life, sports life, academic life and other areas as well. His son has always wanted to be a teacher and the happenings of school life have really shaken his desire at this time. His 8th grader, likewise, is not doing well and fears that he will fail and was entirely verbal in response to being told that there would not be in-school learning for 2021 saying "Great Dad, do they WANT me to fail 8th grade?" It is imperative that his kids get back to school full time.

Plaintiff/Petitioner, Melaney Bernhardt, is the mother of three school-age children. The oldest is 18 years of age and graduated last Spring after losing her last semester of school. The loss to her was unfathomable and now she is concerned about her son who is a junior and who has a 504 Plan which requires one on one daily instruction. Her son is not receiving that and is not doing well educationally, socially and physically. Her 13 year old was so negatively affected he was unable to continue with virtual learning and the Plaintiff was forced to commence home schooling for him. That has cost the Plaintiff financially as she has not had the time to work as she once did

on other things and it been a strain emotionally as well. Her kids need to be get back to school.

Plaintiff/Petitioner, Kristina Trovato, is the mother of three school age children all of whom are girls. The oldest is a senior and the loss she is sustaining by not being involved in the normal senior year activities is incalculable. The Plaintiff's daughter's emotional well-being is at stake as she is not able to socialize with her peers and she has not been able to check out colleges as they are all closed and she can no longer even remember her "pre-COVID" life which has the effect of detracting from her sense of normal life. The Plaintiff's daughter has lost the benefits of her sports and what social component exists as students eat lunch together is largely affected by distancing - it is imperative that her daughter get back to school in a real classroom. Separately, Plaintiff's twin 13-year-olds in 7th grade are done with their virtual schooling by 10 am. This form of education is a farce and a breach of the duty of Defendants to provide an education to the students of their respective school districts.

Plaintiff/Petitioner, Ashley Fennell, is the mother of four children, all of whom are of school age and attend the Hilton Central School District. Her oldest is 12 years of age and is in 7th grade and, prior to COVID-19, was highly involved in school activities in addition to the schooling itself and was committed to such five days a week. Since only being allowed to attend school for two days a week, her daughter's motivation and ambition have plummeted such that, all she wants to do now is to sit around and watch television for hours on end. Plaintiff's sons, 10, 8 and 7 years of age, all suffer from not having a routine. Her oldest son became very depressed when he could no longer be in school five days a week and has since just started to "coast" academically as he is not

being challenged by virtual learning. Her 8-year-old absolutely HATES virtual schooling. He is not diagnosed with a learning disability but ends up doing his work in the principal's office where he then misses what social time he has. Her son has written that he hates school and he wants to DIE. The school's response was to offer a virtual school counselor for her son! This is outlandish. Plaintiff's youngest son complies with the work but only while Plaintiff is sitting with him the entire time. The Plaintiff is employed as a nurse and simply cannot continue to school her children – they need to be back in school.

Plaintiff/Petitioner, Amy Hine, is the mother of five children, three of whom are in the Webster Central School District. Her 15-year-old is not particularly affected by the virtual learning process but her 10 and 8-year-olds are not doing well with same. They get picked up by the bus at 7:30 am and are returned from school by 10:10 every business day. This limited amount of time at school is not nearly enough to establish the kind of structure and accountability they need in order to become educated and be productive members of society. They are spending an inordinate amount of time playing video games and watching television and this has seriously impaired their academic ambition. It is imperative that Plaintiff's sons get back full day in-person learning. Additionally, the children's parents are both working and this has exacerbated the situation with the kids being home for so many hours during the school day.

Plaintiff/Petitioner, Kevin Quinn, is the father of a sophomore who attends Pittsford Central School District. His son has always been internally self motivated but has lost much of his motivation to succeed academically as classes are substantially not in-person. The academic part of his son's life has suffered and he is failing to engage the

process as he once did prior to COVID-19. His son is a basketball player and has experienced physical atrophy while not being able to thrive in his sport. His son is home alone a great deal and Plaintiff fears for his son's overall well-being if his son is not able to return to in-person learning full time.

Plaintiff/Petitioner, April Schwenzer-Bennett, is the parent of two school age children who attend the Webster Central School District. Her third grade daughter is in school all five days for only a period of 2 hours. Her daughter was a "social butterfly" prior to COVID-19 and is now no longer in relationship with her friends. Her daughter does not cooperate with schooling once she is no longer at school and she has lost much of the academic skills that she should have learned in the Spring semester. This frustrates her daughter as she was moved ahead in the materials despite not learning some of the fundamentals that are required for the more advanced math. Plaintiff is unaware of Common Core and has been greatly challenged in her efforts to teach her daughter at home. Plaintiff's son has an Individualized Education Plan (IEP) and legally is required to be in school every school day. Instead, Plaintiff's son has only been able to attend school two days of the week and has regressed so much from the lack of structure at school that he has become frustrated and is sometimes violent in the home. Plaintiff's son suffers from ADHD, Disruptive Mood Disregulation Disorder and Executive Functioning Disorder and it is imperative for his well-being that he be in school all day long five days a week.

Plaintiff/Petitioner, Shawannah Sprague, is the mother of two students who attend Fairport Central School District. Petitioner is self employed and works from home and is not equipped to teach her children particularly given the Common Core curriculum.

Petitioner's daughter is a sophomore and is not receiving the full benefit of an education given that she is not in a live classroom setting with a teacher and other students. Due to the fact that Plaintiff's daughter has a 504 Plan, it is practically impossible for the Plaintiff to hold her daughter accountable for getting school work done outside of the classroom and it is vitally important that her daughter get back to in-person schooling. Plaintiff's son is in the 3rd grade and he has been unable to establish a new social life having just moved into the district prior to the commencement of COVID-19. Plaintiff's son was once a very socially active boy and now has no friends and no likelihood of acquiring any until school gets re-opened for real. Plaintiff's son always excelled in academics to include math and as a result of not being in school he has regressed drastically. He needs to get back into an in-person, day and week long school setting.

Peititioner, Melissa Patrick, is the parent of three children, the oldest of which just failed out of college as a result of it being on-line. Her two younger children attend Brockport Central School District which has a hybrid model with two days of school. Her 7th grader has done marginally well but wants to be in school full time and have the opportunity to make new friends. Her daughter ends up being at home most of the week with her 9th grade brother who refuses to wear a mask due to his sensory disorder resulting in his not being in school at all. Plaintiff's son suffers from ADD, ADHD, Obsessive-Compulsive Disorder (OCD), Auditory Proessing Disorder and Dyslexia. Her son should have a 504 Plan but because the family moved into the district as COVID-19 was starting there has been no means of getting him the evaluation that he needs. If schools were to re-open for in-person education her son would have an opportunity to be diagnosed properly and an education plan prepared that would give him an education. At

present, her son is getting 30s and is failing miserably and it is critical that he be in school where he once excelled academically. The Plaintiff has had to hire a tutor to assist her son but that is still woefully short of what he needs and what he would get from in-person learning with peers present.

Petitioner, Lori McClellan, has three children, two of whom are college students, one having failing grades due to lack of in-person education. Her youngest child is in 9th grade at the Penfield Central School District and he has always been an active and energetic child thriving in in-person education. Since her son is only in school a couple days of the week he has regressed socially, academically and physically as a result of his eating and sleeping patterns being disrupted. Plaintiff's son thrives on the routine of the school day structure and secretly desires to be back in school and not playing video games all day long. It is critical to Plaintiff's son's success at regaining focus on his development that he be allowed back into full time in-person education.

Plaintiff/Petitioner, Karen Coccia, is the mother of three children, two of whom are supposed to attend Churchville-Chili Central School District. Her youngest child is in Kindergarten and has missed all of the socialization that should have been occurring had he been in school. The Plaintiff ended up home schooling her son because the school could not produce a program during the COVID-19 school closures that was structured for the education and development of young children. Plaintiff's son had looked forward to riding the school bus with his older brother which would have been the only year such could occur and he has missed being in a Christmas program. Plaintiff's 4th grade son is also now homeschooled but wants to be in school on a full time basis where he would experience the normalcy of student life, peer interaction and the benefit of school day

structure. Plaintiff's husband works from home and Plaintiff just got licensed to sell real estate prior to COVID-19 and had to put her career on hold due to the need to homeschool her kids given how the school has failed to do so.

Petitioner, Julie Werven, is the mother of three school age children who attend Rush Henrietta Central School District. Her oldest child is a senior and suffers from depression, anxiety and OCD. Her daughter is a theatre girl and was doing so well with her education and self esteem that she was intending to attend Cornell University to become a veterinarian right up until COVID-19 evicted her from school. The Plaintiff's daughter has a 504 Plan but refuses to talk to the counselors because its all virtual. Accordingly, the therapist advised the Plaintiff to take her daughter to the emergency room because she was claiming to be suicidal. Plaintiff's daughter was sent home from the hospital as the doctor was of the opinion that she was simply overwhelmed by not being able to attend school in-person. The doctor further advised that Plaintiff's daughter participate in Partial Hospitalization to include her education but she has refused same. Plaintiff's daughter has hardly attended school since Thanksgiving and has completely lost her focus and it is a matter of life and death that she be allowed to attend school full time and in-person. Plaintiff's 9th grade son was a picture of athleticism at its finest until COVID-19 removed him from the rink and the field. Since that time Plaintiff's son has not done well with the hybrid model of learning and has become a different person than he was just a year ago, many days being hardly able to get out of bed. Plaintiff's youngest son is in the 4th grade and does OK with what schooling he gets but on his days at home he only does work on-line for 20 to 30 minutes and then has

nothing to do to keep him occupied for the duration of the day - he would definitely be better off if he were in school all five days of the week.

Petitioner, Jenna Hogan, has two school-age children who attend Spencerport Central School District. Her oldest is in 4th grade and has a 504 Plan which had been largely ignored at the commencement of the 2020/2021 school year. Her son suffers from ADHD and anxiety which COVID-19 restrictions have exacerbated. Her son needs the emotional connection of being in school with his friends and the adults in the school community. The fact that her son is in school only two days of the week together with the wearing of masks and social distancing has caused him to feel disconnected and has resulted in his becoming bitter and angry. Plaintiff fears that her son will not develop in a healthy way until he is able to return to full in-school learning. Plaintiff's 1st grade son is not being academically challenged and, as such, has become bored and resentful of the COVID-19 protocols and is in need of Occupational Therapy which he will not be able to receive until school returns to normal.

Plaintiff/Petitioner, Rachel Schoenthal, is a resident of Scottsville and her children attend the Wheatland Chili School District. Her 5th grade son and 3rd grade daughter suffer from a lack of focus when being schooled at home. It is difficult for them to get their school work completed when not physically in school. Her 1st grader missed nearly half of her kindergarten year and as such was not prepared for her 1st grade year which is exacerbated by not being in school five days a week. Virtual learning is not as productive as in-person education. She has had to alter her work schedule to accommodate her kids' remote learning days and has been forced to give up shifts she would otherwise be working in order to

monitor her kid's remote school. She is not a trained teacher but is doing her best as a parent to assist her kids' self-based learning. Since all the kids' remote learning is computer based they are spending an excessive amount of time on screens and becoming increasingly addicted to videos and computer games as a result.

Plaintiff/Petitioner, Kylena Payne, resides in the Honeoye Falls-Lima Central School District. She is the mother of two sons, the oldest being in the 9th grade. Her son used to be on the honor roll and has, as a result of the hybrid model, one week on and then one week off, not done well academically. Subject matter that was to have been mastered in the Spring wasn't so her son is behind in his work. Additionally, her 9th grader is a sportsman and has been depressed by not being allowed to be involved in football, the camps for same, and other sports. Her 7th grader has also not been able to participate in sports and sports camps and as a result of his parents not being home when he is home from school, he has not been able to achieve the level of academic development that he would have if he were in school and his emotional and social well-being have suffered as well.

Plaintiff/Petitioner, Mark Agor, is a resident of Penfield, New York in the Webster Central School District and is the parent of three (3) children in said District that have been subjected to the school rules and mandates that are being complained of herein. His 14-year-old daughter in the eighth grade routinely held an average of 90 or above throughout her academic career but since September of 2020, her average in her core classes dropped to approximately 60 and she failed 3

of them. There is no doubt that this is due to the sudden and drastic change in the educational model. Plaintiff's children are only receiving full in-person instruction two (2) days per week and two (2) days a week they are essentially left to self-teach with no teacher involvement and no peer to peer interaction. The Plaintiff has had to drastically alter his work schedule in order to effectively become and replace what the professional teachers and staff are obligated to do; and, he is untrained and not effective at it. Forcing parents to be educators has resulted in their children not being properly educated. Plaintiff's 5th grader is being home-schooled as the remote learning was very stressful and she was unable to get the educational assistance she was accustomed to in math and reading. This has led Plaintiff's daughter to suffer emotional anxiety and stress due to the lack of friend, classmate and peer to peer interaction. All of this is the direct result of the arbitrary and unnecessary changes to the educational system in the District.

Plaintiffs/Petitioners, Sandro Belpanno and Maria Belpanno, are residents of Ogden, New York in the Spencerport Central School District and are the parents of two (2) children in said District that have been subjected to the school rules and mandates that are herein being complained of. Their eleven (11) year old daughter in sixth grade has a 504 plan and is diagnosed with ADHD and anxiety. Because of the restrictions, the Plan cannot and is not being followed, and as a result, their daughter is not receiving the necessary and proper level of educational instruction. Their daughter had previously struggled with all-

important peer connection and now peer interaction is substantially limited and her issues have worsened. Their daughter needs additional academic support that is not being provided. Further, their daughter is struggling with organization of tasks due to the sudden and new and unknown instruction methods which are exacerbated by only being in class 2 days per week with zoom instruction 2 days per week and merely 1 fifteen minute check-in for each class and zero instruction on the 5th day. The Plaintiffs' nine (9) year old son is in fourth grade and is only in school 2 days per week receiving zero formal in person professional instruction on the other 3 days. Their son is effectively forced to self-teach and self-monitor for 2 days per week under the supervision of a paid 'baby-sitter' even as they are forced to pay school taxes for the non-instruction. On the 5th day their son receives 1.5 hours of zoom instruction only and all of this has resulted in his becoming anxious, distressed and often crying about his educational endeavors, emotional well-being and educational progress.

Plaintiffs/Petitioners, Christopher Casaceli and Ashley Casaceli, are residents of Town of Chili, New York and their daughter attends the Churchville-Chili School District. Their daughter is seven years old, is in the second grade, and is only in school two (2) days per week, where instruction is not up to par as the teacher('s) attention is divided between in person instruction and trying to manage the on-line students. Their daughter is confined at home receiving non-teacher, part-time, video instruction the other three (3) days where she receives

none of the professional instruction for which her parents are paying taxes. Further, their daughter suffers the lack of peer to peer social interaction which is especially detrimental to a young developing seven (7) year old. They do not believe that their daughter is learning at the level that she should be and would be if she had the full benefit of in-person professional instruction as presently most of the 'instruction' is unmonitored, independent and un-reinforced 'learning'. The Plaintiffs have other responsibilities and are not qualified or available to provide a proper education for their daughter and have witnessed a lack of emotional development that was occurring with conventional education. Further, their daughter has suffered symptoms of anxiety and frustration and anger that appears related to dealing with the different and ever-changing models and methods of education.

Plaintiff/Petitioner, Cassandra Dunn, is a resident of Greece, New York in the Greece Central School District and is the parent of three children in said District. Her daughter, eighteen (18) years old, is a Senior, and is a three sport/season athlete who has missed out on all of her sports opportunities as a result of the failure of the Defendants to open the schools for education and extra-curricular activities. Their daughter's lost opportunities have substantially affected her identity and emotional well-being and her current mental and physical state is evidence of her 'failure to thrive' as a senior. Further, their daughter was unable to take a class known as RTE (responding to emergencies) due to the restrictions.

Additionally, the Plaintiffs have 2 boys with 504 plans, and their plans have not been modified in a way to effectively provide an educational model that supports their diagnoses and deficiencies. One of their sons has been pulled out of school due to the negative effects of not having a proper model of education in place. The District has wholly failed to provide practical resources to parents in order to effectuate the remote learning models that have been instituted for students.

Plaintiff/Petitioner, Scott Joerger, is a resident of Pittsford, New York in the Pittsford Central School District and is the parent of one child in said District. His daughter, fifteen (15) years old, is in ninth grade and has suffered a lack of engagement with her teachers, classmates and education in general. Plaintiff's daughter is a Varsity soccer player and this past season was substantially abridged causing her to miss out on multiple opportunities to grow both as an athlete and as a person. Further, his daughter is not thriving with remote learning, and specifically, due to being at home, the substantially shortened time dedicated to learning overseen by untrained parents instead of teachers. This has created an unmanageable and damaging level of emotional stress and discourse for his daughter and proof that remote learning is not producing a full education for students.

Plaintiff/Petitioner, Kathryn Muratore, is a resident of Brighton, New York in the Penfield Central School District and is the parent of two children in said District. Her seventh grade son only goes in person for school two (2) days per

week, and the remaining three (3) he is home with no formal instruction, and no professional teacher or any other necessary social interaction. Her son routinely breaks down emotionally, is detached and is suffering mental anguish. The Plaintiff is untrained as a teacher and the forced isolation from conventional learning for students has created an unmanageable and damaging level of emotional stress and discourse for the family. Plaintiff's son has been marked absent 280 times in the 2020-2021 school year. Plaintiff's sixth grade son is on the autism spectrum and his current educational model wholly fails to address his educational and social needs. Plaintiff's son suffers from wearing a mask in class, including gym class, and struggles organizing and managing his materials and belongings when he does go to school as the students have no lockers or desks in which to store their belongings in a conventional way. Both of Plaintiff's sons have become addicted to and are being damaged by excessive 'screen' time. They see very little of their friends and suffer from a lack of necessary social interaction. Both sons have gained weight as a result of the lack of activity that otherwise would occur with school and organized athletics and both are substantially confined to interacting with their parents at home or otherwise confine themselves to electronics as their only way to gain peer to peer interaction.

Plaintiff/Petitioner, Tara Preteroti, is a resident of Gates, New York in the Gates-Chili School District and is the parent of one child in said District. Her

daughter, fifteen (15), is in tenth grade and has been involuntary put in the position of predominantly remote or distance learning which is not conducive to her learning. Plaintiff's daughter has stated in no uncertain terms that she is not learning and desires to repeat her grade under the conventional in person learning model. Plaintiff's daughter has previously been diagnosed with anxiety disorder and attention deficit disorder and the current method of instruction is detrimental to her learning as she is largely unable to acclimate to remote and self-learning. Furthermore, Plaintiff's daughter has been a member of the school band and under the remote learning process is no longer able to enjoy that activity and instruction or to play lacrosse - missing all of the foregoing activities has substantially affected her emotional well-being.

Plaintiff/Petitioner Derek Duignan is a resident of the Town of Chili, County of Monroe, State of New York, and is the parent of 1 school age child (5 years of age) in the Churchville-Chili Central School District who is being subjected to and negatively affected by the hybrid schedule, online learning, rules, and guidelines set forth by the Churchville-Chili Central School District in response to COVID-19. This type of hybrid learning model, school schedule, and as well as extensive guidelines being adopted by respondent are limiting and restricting plaintiff/petitioner's child from full and free access to the normal and customary educational and extracurricular activities that would otherwise be enjoyed by children of New York State. This includes masking, social distancing, hybrid or online schooling, lack of social interaction, and excessive medical mandates/COVID-19 procedures being imposed upon families in the Churchville-Chili

School District. Plaintiff/Petitioner and wife due to the above have suffered significant monetary loss due to reduced time at work to be able to teach their daughter the appropriate material as well as provide the appropriate supervision during the school day. Plaintiff/petitioner's daughter is not receiving the foundational blocks for learning as minimal amounts of educational resources are being given to the family. Plaintiff/Petitioner's daughter emotionally does not react positively to zoom sessions provided by the district and through the excessive use of videos and computer learning is missing out on physical, emotional, and social aspects of learning. This in addition to lack of socialization with other kids and teachers has created angst and confusion in the child's life that is unhealthy for a 5-year-old.

All of the Petitioners/Plaintiffs herein and their children have been severely damaged by the actions and inactions of the Defendants mandating and enforcing excessive and unnecessary protocols that have kept students from being able to attend school.

7. Defendant/Respondent Adam Bello is the Monroe County Executive and Defendant/Respondent Michael Mendoza, M.D., is the Commissioner of Health of Monroe County. All of the remaining Defendants/Respondents are the Superintendents of their respective public school districts in Monroe County and the State of New York as set forth herein above.

JURISDICTION

8. This Court has jurisdiction pursuant to CPLR Article 78 to review the challenged actions of the Monroe County Executive and Commissioner of Health and to strike down the excessive mandates they have placed upon Monroe County Public School

Superintendents preventing them from fulfilling their duties to provide full and free education to Monroe County students, and this Court has the authority pursuant to Article 3001 of the CPLR to order the Monroe County School Superintendents to disregard the excessive rules being imposed by the Monroe County Executive and Commissioner of Health and to fully and completely re-open Monroe County Public Schools. This Court has the authority to require the Defendants to refrain from any and all restrictions on schools above the minimum required by the State of New York and to formally regard and treat schools as being the provider of essential services that they indeed are.

ALLEGATIONS

9. When the COVID-19 pandemic started in the early weeks of calendar year 2020, there was limited data as to the amount of harm it would cause and to what individuals within the general population.

10. As time progressed and the medical and scientific sectors had the opportunity to study the virus and its effects on its victims much was discovered about how best to treat and otherwise prevent its spread as well as who was substantially at risk of COVID-19.

11. Fortunately, for school-age children, it was discovered that there is minimal risk. In fact, the risk is so low that there have been zero (0) deaths under the age of thirty (30) from COVID-19 in Monroe County and the Centers for Disease Control (CDC) have stated the case fatality rate in children eighteen (18) and under to be approximately 1 in 33,000, which is less than half the likelihood of being struck by lightning according to National Weather Service statistics.

12. It was also discovered, despite the highly publicized fears of teachers and teacher's organizations about school reopening during the pandemic, that schools are in

fact extremely safe for teachers. There are zero (0) proven cases of student-to-teacher COVID-19 transmissions resulting in a teacher's death, anywhere.

13. It was also discovered that schools in fact do NOT function as sources of community spread of COVID-19. This has been borne out by high-quality studies done throughout the world. Furthermore, at least four (4) States in the USA have mandated a full reopening of all public schools during the pandemic. Those States have all had excellent safety results with full reopening of schools.

14. As early as the middle of July, 2020, physicians in Upstate New York stated publicly to the Defendants that children are at extremely low risk of COVID-19 and that they are at greater risk for many reasons if they are not in school. *Exhibit A: Open Letter from 24 medical doctors in the Rochester, New York, region, posted July 14, 2020.*

15. The doctors of the Panorama Pediatric Group in Rochester, New York, placed a statement on their web-site in support of re-opening schools only to remove their statement and make an apology for same less than one day later, upon information and belief, under political pressure being exerted against them by State or County officials. *Exhibit B: Panorama Pediatric Group Statement Supporting Reopening of Schools.*

16. Likewise, experts the world over affirmed what the Upstate New York physicians had stated by composing and signing a document known as the Great Barrington Declaration. This document was composed by public health experts from Harvard, Oxford, and Stanford Universities, and to the date of this writing has been signed by greater than 40,000 medical practitioners, more than 13,000 medical and public health scientists, and over 725,000 concerned citizens worldwide. The Great Barrington Declaration states to the world at large that during the COVID-19 pandemic, children

should return to in-school learning. *Exhibit C: Great Barrington Declaration, dated October 4, 2020.*

17. Dr. Clayton Baker, one of the signers of the open letter referenced herein above, has stated that based on what has been demonstrated scientifically over the last months, and given the many known harms to children from being denied in-school learning, which far exceed the risk COVID-19 poses to them, schools can and should be fully opened at once. *Exhibit D: Affidavit of Clayton Baker, M.D., dated January 8, 2021.*

18. The position taken by the signers of the Open Letter from 24 doctors, the Barrington Declaration and Dr. Clayton Baker, all referenced herein above, were later affirmed by the New York State Governor, Andrew Cuomo, who, in a COVID-19 Press Conference on December 11, 2020, stated, amongst other things, that "... if it [is] safer for the children to be in school, then have the children in school. If it's safer for the teacher to be in school, then have the teacher in school. It's less disruptive, the children get the education, you don't have the same issues you have with remote learning." Later, he continued by stating "Now, this is a decision that has been left to the local school districts....My advice, although it's their decision, is that unless you have data that says the schools are at problematic infection rate, the school should be open." *Exhibit E: New York Gov. Andrew Cuomo COVID-19 Press Conference Transcript December 11: Shut Down Indoor Dining.*

19. In the meetings that Dr. Baker, Dr. Helen Strapko, and multiple other physicians and concerned parents have had with Monroe County Superintendents and School Board members from mid-July through late December of 2020, as set forth in Dr. Baker's affidavit referenced above, the Defendants were given example after example of other

schools that were able to successfully and safely re-open in-person learning by the use of barriers and social distancing in an effort to protect the well-being of their students. The calls to action have apparently fallen on deaf ears.

20. Defendant/Respondent Superintendents herein were informed of multiple public school districts in the Finger Lakes Region that have successfully opened fully since the beginning of the 2020/2021 school year, obviously not subject to the additional constraints imposed by Defendants Bello and Mendoza, and their response has been that their “hands are tied” by Defendants Bello and Mendoza's mandates and/or that circumstances in other districts are so fundamentally different from theirs that full reopening was feasible there but not in Monroe County.

21. In fact, multiple private and parochial schools within Monroe County have successfully achieved full reopening since the start of the school year. Those private schools, which incidentally spend much less money per student than public schools, managed to open fully despite being in Monroe County. Meanwhile, not one public school district in Monroe County has been opened fully and thousands of public school students in Monroe County have not seen the inside of a classroom since March of 2020!

22. Further, following up on the many meetings that Drs. Baker, Strapko and others have had with area superintendents and school board members referenced above, Plaintiff's Counsel sent a letter to the Defendant School Superintendents giving them one last opportunity to formulate plans by January 8, 2021 for getting their respective schools re-opened to in-school learning by February 1, 2021 or face imminent litigation. *Exhibit F: Letter from Carl J. Schwartz, Jr., Esq., to Monroe County Superintendents dated December 22, 2020.*

23. As it is now January 8, 2021, and Plaintiff's Counsel has not been advised by any of the Defendants how they plan to re-open their schools for in-person learning by February 1, 2021, the within action is being commenced by the Plaintiffs herein.

AS AND FOR A FIRST CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

24. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

25. The Defendants, Adam Bello and Dr. Michael Mendoza, should be estopped from creating any further impediments to the re-opening of Monroe County public schools beyond New York State guidelines and all directives Defendants Bello and Mendoza have made to date not in conformity with the directives of the Governor should be declared null and void as overreaching and arbitrary and capricious.

26. State officials established safety protocols for the re-opening of schools requiring that students be six feet apart OR wear a mask if six feet could not be maintained. State officials further allowed for the use of barriers to substitute for the distance requirements, according to specified guidelines.

27. Defendants Bello and Mendoza established safety protocols for Monroe County that far exceed the protocols established by the State that, if followed fully as the Defendant Superintendents have done, make it extremely difficult for schools to re-open for all students five days a week by requiring that students be six feet apart AND wear a mask and NOT allowing for the use of barriers to substitute for the distance and mask requirements.

28. If the excessive protocols of Defendants Bello and Mendoza were not prohibitive enough to reopening classrooms, it has been at least as problematic for bussing students to and from school. Superintendents have asserted that the additional Monroe County protocols have been extremely limiting with respect to transportation of students, such that in a great many cases, these excessive restrictions preclude full in-person learning five days a week.

29. Another area where Defendants Bello and Mendoza have established excessive protocols involves COVID-19 testing. State mandates require that when a student has symptoms of COVID-19 they are allowed to return to school if their medical professional determines that the student is not a risk to the rest of the school population. *Exhibit G: NYSDOH, Pre-K to Gr 12 Covid-19 Toolkit dated September, 2020*

30. Defendants Bello and Mendoza have again established excessive protocols that far exceed what State officials established by requiring that when a student has symptoms that are even potentially consistent with COVID-19, they are required to be tested for COVID-19 regardless of the medical professional's clinical determination, stripping medical professionals of their professional autonomy and infringing unreasonably upon the doctor/patient relationship. The inevitable result of excessive testing such as this is the unnecessary quarantining of children who do not have COVID-19. This is a grave disservice to school children who are already missing school in part or in full, and constitutes a gross disregard for their rights and well-being.

31. In November of 2020, Defendants Bellow and Mendoza mandated the mass testing of asymptomatic school children. The reason for this action was to deliberately test a low-risk population (school children) in order to generate a low test positivity rate

for the community as a whole. This cynical attempt to circumvent the Governor's guidelines on establishing "zones" of COVID-19 activity used school children as, in the words of Defendant Mendoza, "a convenience sample" to drive down community rates.

32. The injustice to Monroe County parents and school children caused by this scheme put forth by Defendants Mendoza and Bello, and readily instituted by the Defendant Superintendents, are several. First, parents were effectively coerced into allowing their children to get a medical test for which their children had no clinical indication, as the entire operation was performed under the condition that if Districts did not complete a mandated number of tests, they would have to close. Second, some schools chose to close (that is, go entirely to remote learning) rather than undergo the burdens of mass testing. Third, any mass medical testing, especially in a low-prevalence population produces a certain amount of false positives that then require that students, their siblings and family members be quarantined for two weeks despite not even being infected with COVID-19.

33. In addition, COVID-19 tests used by the Defendants were not approved to be used on asymptomatic individuals and were never tested for use on children. Despite these facts Defendants Bello and Mendoza continue to mandate their local excessive protocols that are keeping our kids out of school. Now, in January 2021, multiple Monroe County School Districts have once again resumed mass testing of asymptomatic students.

34. The actions and inactions of the Defendants/Respondents in providing a full and free education to the children of the Plaintiffs/Petitioners is a violation of the Constitutional right that all students have to such an education in the State of New York.

AS AND FOR A SECOND CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

35. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

36. The actions and inactions of the Defendants/Respondents in providing a full and free education to the children of the Plaintiffs/Petitioners is a violation of State and Federal requirements that Defendants/Respondents provide special services to students who have Individualized Education Plans (IEPs), 504 Plans, and other specialized educational needs in the State of New York.

AS AND FOR A THIRD CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

37. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

38. The actions and inactions of the Defendants/Respondents in providing a full and free education to the children of the Plaintiffs/Petitioners is a breach of contract whereby the Plaintiffs/Respondents as taxpayers in their respective school districts have paid taxes for the Defendants/Respondents to fully educate their students and the Defendants/Respondents have failed to do same despite being paid significant sums of money.

AS AND FOR A FOURTH CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

39. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

40. The actions and inactions of the Defendants/Respondents in providing a full and free education to the children of the Plaintiffs/Petitioners and further failing to acknowledge, quantify and take responsibility for the fact that their students are not receiving the education to which they are legally entitled constitutes negligence on the part of every Defendant/Respondent.

AS AND FOR A FIFTH CAUSE OF ACTION

(Declaratory Relief under Article 3001 of the CPLR)

41. Plaintiffs/Petitioners incorporate all preceding paragraphs as though set forth fully herein.

42. The actions and inactions of the Defendants/Respondents in providing a full and free education to the children of the Plaintiffs/Petitioners and further failing to acknowledge, quantify and take responsibility for the fact that their students are being injured mentally, emotionally, psychologically and physiologically in addition to educationally by the actions and in-actions of Defendants/Respondents shows a reckless disregard for their students and the harm that has been done to them.

NO PRIOR APPLICATION

No prior application has been made for the relief requested herein.

RELIEF SOUGHT

(a) Ordering that Defendants/Respondents Bello and Mendoza be enjoined from instituting any such rules that would prohibit local school districts from returning children to in-person learning that are in excess of or not in complete conformity with the directives being handed down by State officials nor shall they

interpret State directives in a more constraining manner than that which will best allow a full reopening of Monroe County Schools.

(b) Ordering that the School Superintendent Defendants/Respondents be ordered to formulate plans for the re-opening of their respective schools by February 1, 2021, in conformity with the directives of the Governor and State officials and without respect to any directives being given by the Monroe County Executive and Commissioner of Health.

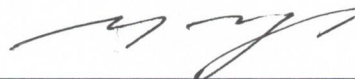
(c) Ordering that Defendant Bello establish the education of primary and secondary schooling as an “essential service” within Monroe County.

(d) Ordering that Defendants allow that sports and other extracurricular activities be allowed as part of the education being provided by the Defendants, again, to the fullest extent permitted by New York State directives.

(e) Such other and further relief as to the Court seems just and proper.

WHEREFORE, based on the foregoing, this Honorable Court should enjoin the Defendants/Respondents Bello and Mendoza from making any further rules or policies that would prohibit Monroe County public schools from re-opening for in-person learning that are in excess of State protocols and that the School Superintendent Defendants be ordered to return all students to in-person learning, five days week, by January 8, 2021.

Respectfully submitted,



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