**FILED**

**July 9, 2026**

**Hon. Thomas Daniel McCloskey, J.S.C.**

**The Hon. Thomas Daniel McCloskey, J.S.C.**
Superior Court of New Jersey
Chancery Division, General Equity Part
Middlesex County
Middlesex County Courthouse
56 Paterson Street, 3rd Floor
Chambers/Courtroom 306
New Brunswick, New Jersey 08903-0964

**PREPARED BY THE COURT**:

| NEW BRUNSWICK BOARD OF EDUCATION, Plaintiff, v. NEW BRUNSWICK TODAY, Defendant. | SUPERIOR COURT OF NEW JERSEY<br>CHANCERY DIVISION<br>GENERAL EQUITY PART<br>MIDDLESEX COUNTY<br>DOCKET NO. MID-C-85-26<br><br>Civil Action<br><br>**ORDER AND JUDGMENT MODIFYING TEMPORARY RESTRAINTS, DENYING PLAINTIFF'S APPLICATION FOR PRELIMINARY INJUNCTION IN PART, DENYING DEFENDANT'S MOTION TO DISSOLVE RESTRAINTS IN PART AND APPLICATION FOR RELIEF UNDER N.J.S.A. 2A:53A-50 et seq.** |
|---|---|

**THIS MATTER** came before the Court on July 7, 2026 for hearing on the combined Return Date of the following Orders to Show Cause:

**1.** The Court's "*Order to Show Cause for Preliminary Injunction With Temporary Restraints Pursuant to R. 4:52*" filed on May 29, 2026 (the "May 29th OTSC") on the prior application ("Application") made under Verified Complaint originally filed by George F. Hendricks, Esq. of the law firm of Hendricks & Hendricks, Esqs. (Mr. Hendricks, then appearing), attorneys for and on behalf of the Plaintiff, **NEW BRUNSWICK BOARD OF EDUCATION**

("Plaintiff"), against the Defendant, **NEW BRUNSWICK TODAY** ("Defendant"), seeking preliminary injunctive and other related relief by way of temporary restraints pursuant to R. 4:52, based upon the facts set forth in the Verified Complaint and the Attestation Certification attached as Exhibit "A" thereto of Dr. Aubrey A. Johnson, Ed.D., Superintendent of Schools for the Plaintiff, and filed therewith; and, Robert Mahoney, Esq. of the law firm of Norris McLaughlin, P.A., having since substituted in for Mr. Hendricks on June 22, 2026 as counsel for, and appearing on behalf of, the Plaintiff (Mr. Mahoney, and Kimberley A. Brunner, Esq., appearing); and

**2.** The Court's ensuing "*Order to Show Cause Pursuant to the Uniform Public Expression Protection Act, N.J.S.A. 2A:53A-51*"("UPEPA") filed on June 9, 2026 (the "June 9th OTSC") under application made by Bruce S. Rosen, Esq. and C.J. Griffin, Esq. of the law firm of Pashman Stein Walder Hayden P.C. (Mr. Rosen and Iris Bromberg, Esq., appearing), attorneys for the Defendant, seeking relief under UPEPA and an award of attorney's fees, costs, and reasonable litigation expenses pursuant to N.J.S.A. 2A:53A-50(b)(3), N.J.S.A. 2A:53A-55((a)(1), (a)(3) and N.J.S.A. 2A:53A-58; and companion motion filed on June 10, 2026 ("Motion") on behalf of the Defendant seeking an Order to dissolve the Temporary Restraints (collectively, the Defendant's June 9th OTSC and Motion are referred to as the Defendant's "Related Application");

**AND THE COURT**, having previous determined that the action may be commenced, as it had been, by Verified Complaint and Order to Show Cause as a summary proceeding pursuant to R. 4:52-1, *et seq.*, *inter alia*; that the Plaintiff has timely filed its Application, that notice had been served upon the Defendant and its counsel: and having further determined that the Related Application of the Defendant was made in accordance with N.J.S.A. 2A:53A-55(a), (b) and N.J.S.A. 2A:53A-56 without having to institute a separate lawsuit;

**AND THE COURT**, having re-reviewed and considered the moving papers of the submitted by the Plaintiff in support of its Application, those submitted on behalf of the Defendant in opposition thereto,[1] those submitted on behalf of the Plaintiff in reply thereto[2], and those submitted on behalf of the Defendant in sur-reply thereto[3];

**AND THE COURT**, having further reviewed and considered the moving papers submitted by the Defendant in support of its Related Application,[4] those submitted on behalf of the Plaintiff in opposition thereto[5], and those submitted on behalf of the Defendant in reply thereto[6];

**AND THE COURT**, having heard and considered the extensive oral argument of counsel present with respect to the Plaintiff's Application and the Defendant's Related Application, for the reasons set forth on the record at the conclusion of the hearing and as contained in the Court's Opinion attached hereto, and for good and sufficient cause having otherwise been shown:

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[1] Including the "Brief in Support of Emergent Motion for Leave to Appeal" and accompanying papers filed on behalf the Defendant with the Superior Court, Appellate Division, on June 3, 2026.

[2] I.e., the Reply Letter Brief filed on June 30, 2026 on behalf of the Plaintiff in reply to the Defendant's Opposition Brief of June 23, 2026 and in further support of the May 29th OTSC.

[3] I.e., the "Second Supplemental Certification of Charlies Kravotil" filed on behalf of the Defendant on July 6, 2026.

[4] Inclusive of the application for Order to Show Cause Pursuant to the Uniform Public Expression Protection Act, N.J.S.A. 2A:53A-51, accompanying moving papers (including the Certification of Charlie Kravotil dated June 5, 2026), filed on June 5, 2026 on behalf of the Defendants, and the "Brief of Defendant in Support of Emergent Motion to Lift Temporary Restraints" filed with this Court on June 10, 2026.

[5] I.e., the "Plaintiff New Brunswick Board of Education's Brief in Opposition to Defendant's Order to Show Cause to Dismiss the Complaint and Motion to Vacate Temporary Restraining Order" and accompanying "Supplemental Certification of Dr. Aubrey A. Johnson, Ed.D." filed with this Court on June 23, 2026, on behalf of the Plaintiff.

[6] I.e., the "Reply Brief of Defendant in Support of UPEPA OTSC and Motion to Lift Temporary Restraints" and accompanying "Certification of Charlie Kravotil" filed with this Court on June 30, 2026, on behalf of the Defendant.

**IT IS** on this **9th** day of **JULY 2026 ADJUDGED AND ORDERED**, that the Plaintiff's Application, be, and hereby is **DENIED IN PART AND GRANTED IN PART**; and, more specifically, it is

**ORDERED**, as follows:

**1.** That the Application for a preliminary injunction – and, in particular, the scope of the preliminary injunction - sought by the Plaintiff to be entered against the Defendant is hereby **DENIED**; ***subject, however***, to the following;

**2.** That the "Temporary Restraints" ("TRO") as defined in the Court's May 29th OTSC and imposed against the Defendant shall be and hereby are **MODIFIED** – and to the extent not modified as herein provided, are hereby lifted, dissolved and vacated – as follows. In order to appropriately balance the 16-year-old juvenile's (and other depicted juveniles') privacy rights and identity protection under N.J.S.A. 2A:4A-60 against the "prior restraint" doctrine:

A. The Court will vacate the portion of the TRO the forbids the Defendant and the press from *writing* or posting about the content of the confidential school security/surveillance video footage of the 16-year old juvenile/student and incident of May 8, 2026 specifically at issue in this matter, so long as the **name(s)** and **identity(ies)** of the 16-year old juvenile/student, and of any and all other juvenile/students depicted in the video footage, is/are not revealed or identified in any way or manner whatsoever;

B. The Court will vacate the portion of the TRO that compelled the Defendant to remove the confidential school security/surveillance video footage of the 16-year old juvenile/student and incident of May 8, 2026 specifically at issue in this matter that had been posted on the website and/or YouTube channel of ***New Brunswick Today***; and, to the latter end, expressly subject to the following;

C. That, in order to protect the privacy interests of the 16-year-old juvenile/student, and of any and all other juvenile/students, depicted in the video footage at issue, the Defendant and the press shall be permitted to post the subject video footage ***but only on the express condition*** that the Defendant and the press redact, blur, or obscure the face and identifying markers of the minors in the video footage – in addition to withholding their names or identity(ies), rather than force a total takedown of the video and the reporting. To the extent NBT seeks to immediately re-publish the video footage at issue, it must first modify the footage by redacting or blurring out the identities of all juvenile students depicted in it; and present the modified footage to Plaintiff and its counsel for review and approval, with copy to the Court.

**IT IS FURTHER ORDERED**, that with respect to the Defendant's Related Application,

A. Insofar as the Defendant's Motion seeks to dissolve the Temporary Restraints, that aspect of the Related Application is **DENIED IN PART, AND GRANTED IN PART**, as above provided.

B. Insofar as the Defendant seeks relief or remedy, i.e., an award of attorney's fees, costs, and reasonable litigation expenses, against the Plaintiff pursuant to N.J.S.A. 2A:53A-50(b)(3), N.J.S.A. 2A:53A-55(a)(1), (a)(3) and N.J.S.A. 2A:53A-58, that application is **DENIED** and dismissed in its entirety, the Court having found and determined that the Uniform Public Expression Protection Act, N.J.S.A. 2A:53A-51"("UPEPA") does not apply to or cover the Plaintiff and, therefore, that the Plaintiff, including Dr. Aubrey A. Johnson, Ed.D., as Superintendent of Schools for the Plaintiff, is/are exempt from application of that Act to it/them in this instance, pursuant to the statute's definitional criteria and exceptions set forth at N.J.S.A. 2A;53A-50a(2) and (c)(1), (2), which explicitly provide that:

N.J.S.A. 2A:53A-50**. Definitions; scope**.

a. In this section:

* * *

(2) "**Governmental unit**" means a public corporation or government or governmental subdivision, agency, or instrumentality."

* * *

c. This act **does not apply** to a cause of action asserted:

* * *

(2) **by a governmental unit or an employee** or agent of a governmental unit action in an official capacity to enforce a law to protect against an imminent threat to public health or safety; and

C. That although the Plaintiff, as the responding party, has prevailed on the Defendant's UPEPA Claim, it is not entitled to an award of its court costs, reasonable attorney's fees and reasonable litigation expenses related to the order to show cause under N.J.S.A. 2A:53A-51, in that the Court does not find that the order to show cause was frivolous or filed solely with intent the delay the proceeding, *see* N.J.S.A. 2A:53A-58.

**IT IS FURTHER ORDERED**, that a copy of this Order shall be deemed served on all counsel of record upon its posting by the Court to the eCourts case jacket for this matter.

SO ORDERED:

**HON. THOMAS DANIEL McCLOSKEY, J.S.C.**

(X) Opposed.

**Pursuant to R. 1:6-2(f) and R. 1:7-4(a), the Court's written Opinion and Statement of Reasons is attached hereto and made a part hereof.**

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

| **NEW BRUNSWICK BOARD OF EDUCATION,**<br><br>Plaintiff,<br><br>v.<br><br>**NEW BRUNSWICK TODAY,**<br><br>Defendant. | SUPERIOR COURT OF NEW JERSEY<br>CHANCERY DIVISION<br>GENERAL EQUITY PART<br>MIDDLESEX COUNTY<br>DOCKET NO. MID-C-85-26<br><br>Civil Action<br><br>**OPINION** |
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**Initial OTSC Hearing for Temporary Restraints: May 29, 2026**.

*Order to Show Cause for Preliminary Injunction With Temporary Restraints Pursuant to* R. *4:52*, filed: May 29, 2026.

- Defendant's Opposition filed June 23, 2026
- Plaintiff's Reply filed June 30, 2026; Defendant's Sur-Reply filed July 6, 2026.

*Order to Show Cause Pursuant to the Uniform Public Expression Protection Act,* N.J.S.A. *2A:53-51*, filed: June 9, 2026.

- Defendant's Motion to Dissolve Restraints, filed June 10, 2026.
- Plaintiff's Opposition filed June 23, 2026.
- Defendant's Reply filed June 30, 2026.

Combined OTSC Hearing Return Date/Applications Heard: July 7, 2026
Record Closed: July 7, 2026. Decided: July 9, 2026.

**PARTY/COUNSEL APPEARANCES**:

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**McCLOSKEY, J.S.C.**

**Preface**.

At its core, this matter arises from an incident that occurred back on May 8, 2026 at New Brunswick High School. On that date, a 16-year-old male minor/student at the high school was apprehended by security personnel after entering the school late and setting off the school's metal detectors. As a result, a uniformed school security guard asked him to hold up his arms after passing through the metal detectors, manually frisked him at his waist, whereupon the guard recovered what was alleged to be a weapon and later turned out to be an airsoft B.B. handgun.

Upon finding the gun the student was pushed up and against a wall and two other staff members then joined in the restraint. They took off the student's shoes, turned the student around, and a second uniformed security guard then joined the first. The search of the student continued with the first security guard removing something else from the student's person with the student's hands free and holding them up. At the same time, two other, apparently minor students had entered the building and were themselves moving through the metal detectors. The school then issued a lockdown order as a precaution. The apprehended student was detained, released, and criminal and juvenile proceedings have since been initiated against him.

Twenty (20) days later, on May 28, 2026, the Defendant, New Brunswick Today (herein "NBT"), a well-known local news organization, published a video of the May 8th incident involving the juvenile/minor student on its YouTube channel, where it publishes its video news content. Upon learning of the publication and examining the video, the Plaintiff, New Brunswick Board of Education (herein "BOE", "District", "Board" or "NBBE"), determined the video to be the exact video security footage taken by and maintained within the District's confidential, proprietary and internal security surveillance system, which footage the Defendant had somehow obtained or had leaked to it without the BOE's knowledge or authorization, and then disseminated. The BOE launched an investigation as to its sourcing.

That same day, counsel for the BOE sent New Brunswick Today a cease-and-desist letter demanding that it remove the "highly confidential security video", asserting that "[t]his posting not only violates the law, but violates the presumption of privacy afforded to all students." The letter further demanded that the Defendant immediately disclose how it obtained the video, further indicating that "its illegal access and use of school security video has placed the safety and welfare of the [d]istrict's students and staff in jeopardy."

Upon receipt, Charlie Kravotil, Editor of New Brunswick Today, responded and asked what laws were violated by the posting of the video, and how was the

video being made public placing the safety and welfare of the District's students and staff in jeopardy? On May 29, the next morning, BOE counsel responded citing to the law relied upon (including reference to civil and criminal penalties that potentially would attach by the disclosure made and any refusal to remove the post), and further repeated the demand that the video being taken down. Counsel further warned that immediate action would be taken up with the Court without such compliance but invited the Editor to contact him to discuss the matter before doing so. Mr. Kravotil and New Brunswick Today refused, and this action followed.

## I. **Procedural History**.

The Plaintiff instituted its emergent application for an Order to Show Cause with Temporary Restraints under Verified Complaint and accompanying papers filed on May 29, 2026, with notice given to the Defendant and its counsel. Citing to N.J.S.A. 2A:4A-60 and correlative requirements under the "Family Educational and Privacy Act" ("FERPA"), 20 U.S.C. §1232, the single-count Complaint sought temporary restraints and preliminary injunctive relief and, specifically, (i) the immediate removal of the confidential school security/surveillance video of the incident taken at New Brunswick High School taken down from the Defendant's website, and (ii) further ultimately enjoining and restraining the Defendant from any and all future postings of the subject video and confidential school security/surveillance video as taken at any of the schools in the Plaintiff's District.

The matter came to and was assigned to this Court at approximately 2:45 p.m. on May 29, 2026, a Friday. Upon review of the submission, given the urgency of the matter and on the eve of the weekend, the Court dropped everything and arranged for an emergent hearing on the initial application for temporary restraints to be scheduled for 3:00 p.m. – and which, as a courtesy and accommodation to counsel for both sides, was then timely conducted via Zoom (though the undersigned was in its actual courtroom).

Of particular import and significance at that time was the submitted supporting Certification and Attestation provided by Dr. Aubrey A. Johnson, Ed.D., Superintendent of Schools for the New Brunswick Board of Education, dated May 28, 2026, and copy of which was annexed as Exhibit "A" to the Plaintiff's Verified Complaint.[7] Dr. Johnson provided and certified to the following:

> "I, **Dr. Aubrey A. Johnson**, Superintendent of Schools for the New Brunswick Public Schools, hereby certify and attest to the following based upon my knowledge, information provided to me by district administrators, and district records maintained in the ordinary course of business:
>
> 1. On **May 8, 2026**, at approximately 9:10 a.m., the New Brunswick High School Security Team identified a student entering the

[7] Given the significance and urgency of the issues, and without more other than a link that was furnished to the Court mid-hearing of the actual video footage at issue, the Court relied heavily on the attestations made and so much so repeated the same verbatim on the record in conjunction with and in support of the issuance of its initial ruling made on the record at the conclusion of the hearing. The Court did have the opportunity mid-hearing to view the video footage, once a link of the same was provided. For those same reasons and the additional procedural context that follows, the Attestation merits being repeated in full here.

building whose passage through the metal detector activated the security alarm.

2. School security personnel proceeded to conduct secondary screening procedures utilizing a handheld metal detection wand. The wand continued to alert during the screening process.

3. Security personnel then conducted a manual search and recovered a weapon identified as an airsoft (BB) gun from the student's waistband.

4. The student was immediately detained by school security personnel, and the weapon was confiscated.

5. Following the recovery of the weapon, the New Brunswick High School Principal initiated a school lockdown in accordance with district safety and security protocols.

6. The student was subsequently transported to the New Brunswick Police Department, and the student's parents/guardians were contacted by a school vice principal.

7. On **May 28, 2026**, video footage depicting the incident was publicly posted on the New Brunswick Today YouTube platform. [Video Link]

8. Upon review, the video posted publicly is the exact surveillance footage maintained within the district's internal security surveillance system.

9. The district has reason to believe that the footage was recorded from a computer by an individual with access to the district's surveillance system and disseminated without authorization (the district is conducting its own investigation for this purpose).

10. The publicly posted video contains identifiable images of students, including student facial identities.

11. The unauthorized public dissemination of this footage raises significant concerns regarding student privacy rights, including

potential FERPA-related concerns, and may place students at risk of embarrassment, intimidation, retaliation, or other potential harm.

12. Additionally, the video publicly reveals components of the district's security operations, including security staffing responses, screening procedures, camera positioning, and building security and safety protocols.

13. The public dissemination of such security-related information creates substantial concern regarding the safety and security of students, staff, and school facilities, as the footage may provide information that could be utilized by individuals seeking to circumvent, undermine, or breach district security procedures in the future.

14. The district did not authorize the release or public dissemination of this surveillance footage.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/_*Aubrey Johnson*______
Dr. Aubrey A. Johnson
Superintendent of Schools"

Counsel for both parties appeared (albeit remotely) and the Court proceeded to hear extensive oral argument from both sides limited to the issue of the bases (or lack thereof) for the requested imposition of temporary restraints by the Court pending a full plenary hearing on the issues raised and the preliminary injunctive relief sought. The defense had not yet submitted any written opposition, though, clearly, the Court would require the same going forward as it did before hearing and disposing of the application on the merits.

After hearing the argument of counsel, and for the reasons the Court took great pains to articulate orally as best it could given the time constraints then presented, the Court granted the application and the requested temporary restraints, and fashioned an Order to Show Cause with defined "Temporary Restraints" on May 29, 2026 (the "May 29th OTSC") therein setting the matter down for a return date as expeditiously as its congested calendar would permit together with a formal briefing schedule. The Order to Show Cause set the matter down for a return date of July 7, 2026, fixed the briefing schedule, and imposed the following:

> **IT IS** on this **29th** day of **MAY 2026 ORDERED**, that the Plaintiff's Application for an Order to Show Cause, be, and hereby is, **GRANTED**; and, more specifically, it is
>
> **ORDERED**, that the Defendant**, NEW BRUNSWICK TODAY** ("Defendant"), appear and show cause on **JULY 7, 2026** (the "Return Date") before the Honorable Thomas Daniel McCloskey, J.S.C., at the Middlesex County Courthouse, 56 Paterson Street, New Brunswick, New Jersey, Courtroom 306, **in-person**, **at 1:30 P.M**. in the afternoon or soon thereafter as counsel may be heard, as to why judgment and/or an Order should not be entered:
>
> **A.** Mandating the Defendant's immediate removal of confidential security/surveillance video taken at Plaintiff's New Brunswick High School, as posted on the website of ***New Brunswick Today***;
>
> **B.** Preliminarily and permanently restraining and enjoining the Defendant, New Brunswick Today, from any and all future postings of confidential school security/surveillance video as taken at any of the schools in the Plaintiff's District; and
>
> **C.** Granting such other, further, and different relief as the Court may deem equitable and just; and

> **IT IS FURTHER ORDERED**, that pending the Return Date herein, the Defendant, **NEW BRUNSWICK TODAY**, be, and hereby is **IMMEDIATELY COMPELLED** to remove all confidential school security/surveillance video taken at Plaintiff's New Brunswick High School, as posted on the website of ***New Brunswick Today***; and further **TEMPORARILY RESTRAINED AND ENJOINED** from (i) writing or posting about the content of the confidential video footage of the 16-year juvenile/student specifically at issue in this matter, and (ii) making any further postings of confidential school security/surveillance video as taken at any of the schools in the Plaintiff's District (collectively, the "**Temporary Restraints**"); and
>
> **IT IS FURTHER ORDERED**, that the Defendant may move to dissolve or modify the Temporary Restraints herein imposed on three (3) business days' notice to the Plaintiff and Plaintiff's counsel; and
>
> * * * [8]

Once the foregoing was recited on the record, counsel for the Defendant made an oral request for a stay of the Order pending an intended emergent application to the Superior Court, Appellate Division, which request the Court denied and subsequently memorialized its denial by an Order filed on June 1, 2026.

On June 1, 2026, the Defendant then filed an emergent application with the Appellate Division for permission to file an emergent motion for leave to appeal coupled with a request for a stay of this Court's May 29th TRO. By Order of the Hon. Lisa A. Puglisi, J.A.D. entered on June 1, 2026, the Defendant's motion to stay

[8] It is to be noted that the Court was desirous of setting the Return Date down for the earlier date of June 29, 2026, but it conflicted with defense counsel's personal vacation schedule, hence, the selection of July 7th as the mutually agreed upon date.

the Temporary Restraints was denied, but permission to file a motion for leave to appeal on short notice was granted.

On June 2, 2026, the Defendant filed an ensuing emergent application with the Supreme Court for permission to file an emergent motion and related request for temporary stay and other relief pending disposition of an emergent motion, which application was denied by Order entered by Supreme Court Justice Anne M. Patterson on June 2, 2026. In her denial, Justice Patterson stated that "[t]he applicant has failed to make a preliminary showing of an entitlement to emergent relief. The Appellate Division already has ordered expedited briefing on the applicant's emergent motion."

On June 9, 2026, after submittal and consideration of the Defendant's emergent motion for leave to appeal on June 5, 2026, the Appellate Division via Order entered by the Hon. Lisa A. Puglisi, J.A.D. and received by this Court at 1:30 p.m. that date, denied the Defendant's motion, without prejudice, stating:

> "Defendant's motion for leave to appeal the May 29, 2026 order to show cause for preliminary injunction with temporary restraints is denied without prejudice. **The order permits defendant to move to dissolve or modify the temporary restraints on three business days' notice to plaintiff, which would provide the trial court the benefit of the parties' briefing of the constitutional issues raised in this matter, which it did not have when it entered the May 29 order to show cause. This would allow the trial court to address these issues in the first instance. Should defendant move to dissolve or modify the restraints, the trial court shall expeditiously hear the motion**."

(Emphasis added).

Undeterred, the Defendant nevertheless proceeded with filing its own application for an Order to Show Cause pursuant to R. 4:52 and the "Uniform Public Expression Protection Act" ("UPEPA"), N.J.S.A. 2A:53A-51, seeking a stay of the action and for relief and remedy under that Act, including a declaration that the Plaintiff had failed to state a *prima facie* case or cause of action in its original Verified Complaint, and an award of reasonable attorney's fees and costs for having to defend it and take this action.

In that this Court was on vacation then, the new matter was handled by the vicinage Assignment Judge, Michael A. Toto, A.J.S.C., who then entered an "*Order to Show Cause Pursuant to the Uniform Public Expression Protection Act, N.J.S.A. 2A:53A-51*" on June 9, 2026 (the "June 9th OTSC") coordinating and setting the matter of that application down for hearing before the undersigned in conjunction with the then pending Return Date of the Court's May 29th OTSC, and calibrated the required briefing to coincide with that provided for in the original May 29th OTSC.

On June 10, 2026, in light of the foregoing filing, the Defendant then moved in this Court seeking an Order to dissolve the Temporary Restraints and to have a hearing on that application on June 15, 2026, the next available date given the intervening weekend and required three (3) business days' notice. Having to be contacted on vacation, the Court instructed chambers to advise counsel that the hearing on the dissolution application would not be heard on June 15 as mistakenly

demanded, but rather, on the original July 7th Return Date on now both Orders to Show Cause and as the most expeditious date it could be heard in coordination with the pending applications given the Court's calendar, with no exceptions.

Undeterred again, the Defendant proceeded with yet another emergent application to the Appellate Division for leave to file an emergent motion on short notice to be heard on the Court's scheduling of the motion to dissolve the restraints. By Order of the Hon. Lisa A. Puglisi, J.A.D. entered on June 12, 2026, the Defendant's motion for leave was denied by the Appellate Division, and for the following stated reasons:

> "During the May 29, 2026 hearing on the order to show cause, the judge set the initial return date as June 29, 2026. However, defense counsel advised he was unavailable because he had vacation planned for June 26 to July 5. The judge granted the request for an adjournment to July 7, 2026.
>
> After we denied defendant's application for leave to file an emergent appeal, defendant moved to dissolve the restraints on June 10, 2026. The next morning, the judge's chambers sent an email acknowledging receipt of the application and advising the motion would be heard on the return date of the order to show cause, along with the original order to show cause and a second order to show cause filed by defendant. The email further emphasized there would be no exceptions.
>
> Although not provided to us, defense counsel emailed a follow-up letter to the judge that afternoon. The judge's chambers sent an email indicating:
>
> > Receipt acknowledged, and the requested is again **DENIED**. The [c]ourt is currently on vacation and the July 7th date already scheduled is a[s] "expeditious" as this [c]ourt can hear that motion and all related matters given

> its congested calendar and other matters of emergent priority.
>
> Defendant now seeks emergent relief, contending the judge is not following our June 9, 2026 order that "the trial court shall expeditiously hear the motion." Defendant contends it continues to experience irreparable harm each day. It seeks either a hearing on June 15, 2026 or a ruling staying the restraints imposed in the May 29, 2026 order.
>
> We decline to order the judge to conduct the hearing on a particular date for two reasons. First, defense counsel misreads the provision in the May 29, 2026 order permitting defendant to move to dissolve or modify the temporary restraints on three business days' notice to plaintiff and plaintiff's counsel. Contrary to defendant's contention, this provision does not require the court to hear the application in three business days, only that plaintiff must have three business days' notice of it.
>
> Second, the judge was cognizant of our order to "expeditiously hear" defendant's application and advised the July 7 return date was as soon as he was able to calendar it. A trial court exercises broad discretion in controlling its calendar, and any challenge to that authority is "reviewed under a deferential standard." State v. Miller, 216 N.J. 40, 65 (2013). "Calendars must be controlled by the court, not unilaterally by [counsel], if civil cases are to be processed in an orderly and expeditious manner." Vargas v. Camillo, 354 N.J. Super. 422, 431 (App. Div. 2002).
>
> We deny defendant's alternative request to stay the restraints imposed in the May 29, 2026 order for the same reasons we previously articulated in our June 9, 2026 order.
>
> Nevertheless, should the judge's calendar adjust such that an earlier date may be accommodated by both counsel, the matter should be rescheduled accordingly."

Undeterred for a third time, on June 12, 2026, the Defendant filed another emergent application with the Supreme Court for permission to file an emergent

motion and related request for temporary stay of the Appellate Division's denial order and other relief pending disposition of an emergent motion, which application was denied by Order entered by Supreme Court Justice Anne M. Patterson on June 13, 2026. In her denial, Justice Patterson stated that "[t]he application for emergent relief is denied for the reasons stated in the Appellate Division's disposition dated June 12, 2026."

Consequently, the matter of the Court's original May 29th OTSC, ensuing June 9th OTSC, and Defendant's intertwined motion for dissolution of the Temporary Restraints, came before the Court for hearing and oral argument on July 7, 2026. Having reviewed and considered the moving, opposing, and reply papers of each of the Plaintiff and the Defendant, and having heard and considered the extensive oral argument of counsel present, the Court's decision on all inter-related matters before it now follows.

## II. **Salient Factual Background**.

To summarize, as recited in the Preface above, on May 8, 2026, a 16-year-old male student at New Brunswick High School triggered a metal detector, leading to the discovery of a weapon (what turned out to be an airsoft/BB gun). The student was detained, arrested, and the school was placed on lockdown. Criminal and juvenile proceedings against the juvenile are pending.

On May 28, 2026, the Defendant, New Brunswick Today, a local news outlet, published internal school surveillance footage of the incident on its YouTube channel. The footage showed the student's face, identifying features, details of the school's security infrastructure, and depicted at least two other students at the metal detectors and school security personnel frisking the student and recovering the weapon. The Board asserts this footage was obtained and published without authorization. The Defendant's Editor, Charlie Kratovil, certified to the Court that the video was "lawfully obtained" but failed to disclose how or from whom.

The BOE demanded removal of the video, citing privacy and legal concerns, and threatened legal action under N.J.S.A. 2A:4A-60 and FERPA. When NBT through its Editor refused, the BOE filed an emergent application on Friday, May 29, 2026, for an order to show cause, seeking immediate removal of the video and an injunction against future publication of any school security footage. The Court hurriedly arranged for an emergency hearing which was conducted at and after 3:00 p.m. that afternoon, via Zoom, with counsel for the parties appearing remotely.

Following the hearing, the Court granted the BOE's request for temporary restraints, ordering New Brunswick Today to remove the video, refrain from reporting on its content, and prohibiting future publication of any school security video from the District pending formal briefing and the scheduled return date. The Order was issued without a written response from New Brunswick Today and

without a First Amendment analysis, hence, the Court's scheduling of the matter for a return date of July 7, 2026, after required briefing, which it would have scheduled for earlier but then scheduled to accommodate the request and conflicting vacation schedule of Defendant's counsel.

The Order to Show Cause also explicitly provided the Defendant with the right to move to dissolve or modify the temporary restraints on three (3) business days' notice. Instead, an array of successive emergent applications was pursued by the Defendant with the Appellate Division and the Supreme Court over the ensuing two (2) week period, all of which were to no avail.

In the interim, the Defendant did separately file an Order to Show Cause on June 9, 2026 that was entered by the Vicinage Assignment Judge (in the place and stead of this Court, who was then on vacation) seeking a dismissal of the BOE's Verified Complaint and related relief under the Uniform Public Expression Protection Act, N.J.S.A. 2A:53A-51 ("UPEPA"), New Jersey's Anti-SLAPP law)[9], and that OTSC was made returnable before the undersigned for the same July 7th return date of the Court's preceding Order of May 29.

[9] SLAPP is a well-known acronym that stands for "*Strategic Lawsuit Against Public Participation*". Anti-SLAPP refers to laws and legal mechanisms designed to protect individuals and media from baseless, intimidating lawsuits meant to silence their free speech on matters of public interest. *See* Reporters Committee for Freedom of the Press, "Understanding Anti-SLAPP laws", at www.rcfp.org.

## III. Contentions of the Parties.

### Plaintiff's Contentions

In seeking the emergent relief it sought from the outset, the Plaintiff contends that it was statutorily duty-bound to do so under the overlapping requirements of both state and federal law, to wit:

- **Family Educational and Privacy Act (FERPA) (20 U.S.C. §1232g):** Which prohibits unauthorized disclosure of student education records. The Board must protect such records or risk losing federal funding.

- **New Jersey Pupil Records Act (NJPRA, N.J.S.A. 18A:36-19):** Which mandates confidentiality of student records, with regulations (N.J.A.C. 6A:32-7.4, 7.5) limiting access to authorized persons only.

- **Juvenile Justice Records (N.J.S.A. 2A:4A-60):** Which requires strict safeguarding of records related to juveniles charged as delinquent. The subject video is considered part of the juvenile's legal record and is protected from public inspection.

- **District Regulations/Policies:** The BOE's internal regulations and policies (Regulation 8330, Policy 7441, Policy 8467) implement and reinforce these statutory obligations, treating surveillance footage as confidential student and disciplinary records.

As to the latter, the Plaintiff through the Certifications of Dr. Aubrey A. Johnson, Superintendent of Schools for the NBBE, detailed how the District complies with all federal and state laws regarding the security and confidentiality of student records, referencing District Regulation 8330 (Johnson Supp. Certif. at Exhibit A) and Policy 8335 (Johnson Suppl. Certif. at Exhibit B). A student's identity and likeness are considered confidential student records.

The BOE authorizes electronic surveillance for safety and security. Surveillance content may be considered a student record and is subject to confidentiality policies (Policy 7441, Johnson Supp. Certif. at Exhibit C). Students possessing weapons are subject to stringent discipline. Surveillance video of such incidents is treated as a confidential student record (Policy 8467, Johnson Supp. Certif. at Exhibit D). The use of metal detectors is authorized to protect health and safety. The police are contacted if a weapon is found (Policy 7444, Johnson Supp. Certif. at Exhibit E). A more in-depth description of the BOE's policies and regulations follows and provides clarity and context for the actions the Board took from the outset.

As to "District Regulation 8330 – Student Records", the regulation clearly defines what constitutes a student record, personally identifiable information, and access rights. It emphasizes the security and confidentiality of student records, including photos and video that could identify a student. It further outlines who may access records, under what conditions, and the process for challenging or amending records; and, specifies how long records are kept and the process for their destruction. The regulation requires annual notification to parents and students about their rights. Thus, if a surveillance video contains a student's image, it is treated as a confidential record and access is tightly controlled.

As to "District Policy 8335 – Family Educational Rights and Privacy Act (FERPA)", the regulation affirms the District's compliance with FERPA, granting parents and adult students rights to inspect, amend, and control disclosure of education records. It allows disclosure to school officials with legitimate interests and to other districts where a student enrolls, with notification requirements. It provides a process for filing complaints with the U.S. Department of Education, and if a parent believes a record is inaccurate, they can request an amendment under this policy.

As to "District Policy 7441 – Electronic Surveillance", the regulation permits and authorizes electronic surveillance in its district schools for safety and security. Surveillance content may become a student record if used in disciplinary proceedings. It requires a Memorandum of Understanding with law enforcement for live video access during emergencies, and mandates signage and notification to staff, students, and parents about surveillance. Thus, if a fight is recorded, or, as here, a student is detected as having a weapon, the video may be used as evidence in disciplinary, juvenile and criminal proceedings, and treated as a confidential student record.

As to the latter, namely, "District Policy 8467 – Weapons", the regulation strictly prohibits weapons on school property, with exceptions only for authorized personnel. It requires immediate reporting to law enforcement and stringent

discipline for violations; details procedures for searching, confiscating, and securing weapons; and addresses procedures for students with disabilities. Thus, as happened here, if a student is found with a weapon, the incident is reported, the student is disciplined, law enforcement is notified to investigate (and, as appropriate and determined, initiates juvenile and/or criminal proceedings), and any related video is confidential.

As for "District Policy 7444 – Use of Metal Detectors", this regulation allows use of metal detectors at school entrances and events to address security threats. It outlines when and how screenings may occur, including refusal consequences; requires training for staff and record-keeping for equipment and incidents; and mandates immediate police contact if a weapon is found. Thus, as happened here, if a metal detector alerts to a weapon, police are called and the incident is documented per policy.

The two submitted Superintendent's Certifications assert, and the exhibits confirm, that the New Brunswick public schools within the BOE District have robust, legally compliant policies for student records, privacy, confidentiality, surveillance, and safety. Each policy is designed to protect students' rights and privacy interests while ensuring a secure school environment. These policies are actionable, with clear steps for handling records, responding to incidents, and involving law enforcement when necessary.

Consequently, the Board asserts standing by virtue of the statutory requirements imposed upon it by the above as the local governmental unit responsible for overseeing, regulating and administering the public schools within its District and safeguarding the privacy interests and safety of its students (including New Brunswick High School, the location of the subject incident), and under the doctrine of *in loco parentis*, with a duty to protect students' privacy and safety. (Frugis v. Bracigliano, 177 N.J. 250 (2003).

The unauthorized extraction, use, and publication of its confidential security/surveillance video footage of the incident at issue, and NBT's refusal to take the video down from its YouTube website challenge once discovered, left the BOE no choice to initiate this emergent action to seek injunctive relief from this court of equity. The action seeks to enjoin and restrain NBT's refusal to heed the BOE's demand, interfere with its enforcement responsibilities, and enable the BOE (i) to maintain and safeguard the confidentiality of what now constitutes an education record, as well as protect the privacy interests of the implicated minor student (and the identity of those others depicted), and to thereby (ii) fulfill its statutory obligations under state and federal law to protect against an imminent threat to public health or safety within the school and the District, and thereby ensure safety and compliance with its associated security policies, regulations, and protocols within the school in the face of the imminent threat the video's publication was posing.

Put simply, the BOE argues the TRO entered by the Court on May 29, 2026, is not an unconstitutional "prior restraint" because it is narrowly tailored: NBT can report on the incident but cannot publish footage identifying the minor or revealing security protocols. The BOE distinguishes this case from United States Supreme Court precedents (e.g., Smith v. Daily Mail, Oklahoma Publishing Co., cited infra) by emphasizing that the footage was not lawfully obtained through public means, despite having belatedly discovered its publication in the public domain without its knowledge or authorization. As it would learn, the video had been posted to NBT's YouTube channel which it refused to take down as demanded by the BOE in its cease-and-desist letter; and hence, this ensuing action.

The Board contends it meets all four (4) factors required by the Supreme Court in Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) by clear and convincing evidence: likelihood of success, irreparable harm (to student privacy and school safety), well-settled legal rights, and a favorable balance of harms.

As for the Defendant's motion to dismiss under UPEPA and its requested award of attorney's fees, the BOE argues that NBT is not entitled to attorney's fees under that statute, as this suit is not an anti-SLAPP action but a legitimate effort to perform and comply with its statutory duty to protect student privacy, to protect its students from the threat of imminent harm and safety posed by the apprehension and

identification of the implicated juvenile and other juveniles shown in the footage, and school security.

Thus, it further contends that UPEPA is inapplicable here under the two-step analysis the statute itself mandates, to wit:

- **Step One:** UPEPA protects speech on matters of public concern. The Board argues that while the school security incident is newsworthy, the identity of the minor and the internal security details are not matters of public concern and are affirmatively protected by law (N.J.S.A. 18A:36-19, N.J.S.A. 2A:4A-60).

- **Step Two:** Even if UPEPA applies, the Board claims it has stated valid causes of action for injunctive relief based on statutory duties to protect student privacy and security; NBT's refusal of its demand to remove the video footage of the incident it somehow obtained (which demand was triggered by its statutory duties to protect the privacy interests and safeguard security of the minor students depicted in it); and, which refusal evoked its need to pursue emergent injunctive relief in this court of equity; and thus, the case should not be dismissed.[10]

**Defendant's Contentions**

The Defendant contends in all of its submitted, reviewed and considered briefing (both here in the Appellate Division and above) that the Court's TRO of

[10] The Court has nevertheless determined that the BOE is expressly exempt and immune from the application of UPEPA in this instance by virtue of the explicit provisions of N.J.S.A. 2A:53A-50(2)(c)(2), which provides:

> **c. This act does not apply to a cause of action asserted:**
>
> * * *
>
> **(2) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety;** * * *"

*See* discussion, infra.

May 29, 2026 was and is improperly entered as an unconstitutional "prior restraint" upon the Defendant's protected rights of free speech and expression. It urges that there is a heavy presumption against prior restraints and emphasizes that prior restraints on speech are the "least tolerable infringement" on First Amendment rights (citing to Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976); New York Times Co. v. United States, 403 U.S. 713 (1971)). The United States Supreme Court has never upheld a prior restraint on pure speech, even in cases involving national security (i.e., the case of Daniel Ellsberg and the Pentagon Papers in New York Times Co., supra).[11]

NBT argues that once information is "lawfully obtained" and in the public domain, courts cannot constitutionally restrain its dissemination (citing to Smith v. Daily Mail Pub. Co., 443 U.S. 97 (1979); Oklahoma Pub. Co. v. District Ct., 430 U.S. 308 (1977); Florida Star v. B.J.F., 491 U.S. 524 (1989)). It claims, without disclosing how, that the video was "lawfully obtained" and then publicly posted before the Court's Order. It further argues that the fact the BOE did not authorize the video's release is irrelevant and immaterial under Supreme Court precedent

[11] Daniel Ellsberg was a former U.S. military analyst who leaked the "Pentagon Papers" in 1971, a classified 7,000-page Defense Department study of U.S. decision-making in Vietnam that had been previously commissioned by then Defense Secretary, Robert McNamara. The leak exposed decades of systemic government deceit and secret escalations regarding the Vietnam War, ultimately fueling the Watergate scandal and helping to end the conflict. *See* Wikipedia, "Pentagon Papers" at https://en.wikipedia.org.

(citing to New York Times Co., supra; Bartnicki v. Vopper, 532 U.S. 514 (2001); CBS, Inc. v. Davis, 510 U.S. 1315 (1994)).

As to the Plaintiff's statutory claims, i.e., under FERPA and N.J.S.A. 2A:4A-60 NBT argues as follows. First, that the "Family Educational Rights and Privacy Act" does not create a private right of action for the BOE or students (citing to Gonzaga University v. Doe, 536 U.S. 273 (2002)), and that FERPA's remedy is the withdrawal of federal funds from non-compliant institutions, not injunctive relief against third parties.

As to N.J.S.A. 2A:4A-60, NBT argues that this statute protects records of courts, probation, and law enforcement agencies regarding juveniles. It claims that the security video is not such a record, nor was it acquired in the course of court, probation, or police duties. The statute does not apply to New Brunswick Today, so it claims, and applying it to the press would violate the First Amendment (citing to G.D. v. Kenny, 205 N.J. 275 (2011)).

In addition, NBT argues that the temporary restraints imposed in the Court's May 29th OTSC, specifically, the Order's prohibition on any future publication of school security footage is overbroad and not narrowly tailored. Prior restraints can only be justified by interests "of the highest order" and only when less intrusive measures are insufficient (citing to CBS, Inc. v. Davis, supra).

The Defendant asserts that the Court erred in its application of the Crowe factors for injunctive relief, particularly by failing to conduct a First Amendment analysis and by mischaracterizing the "status quo." To the contrary, NBT claims that the loss of First Amendment freedoms, even temporarily, constitutes irreparable injury (citing to Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020); and Elrod v. Burns, 427 U.S. 347 (1976)). It further claims that the harm to New Brunswick Today and the public from "censorship" outweighs the privacy interests asserted by the BOE, especially since the BOE's own filings publicly described the incident.

In a filing made on July 6, the evening before the hearing, NBT brought to the Court's attention a recently obtained screenshot of a text message that the BOE had sent to parents shortly after the lockdown of May 8, which, according to NBT's Editor, Charlie Kravotil, "explicitly and brazenly lied about the incident, claiming it was a routine security drill". As Mr. Kravotil asserted, "[t]his blatant misrepresentation to the parents is yet another reason for the public importance of showing the truth about what happened and public concern necessary in point out the lack of credibility demonstrated by the school district's representatives." (Kravotil Second Supplemental Certification dated July 6, 2026, at ¶4).

Finally, the Defendant asserts that UPEPA and its fee-shifting provisions apply here because the statute applies to communications on issues under

consideration in governmental proceedings (N.J.S.A. 2A:53A-50(b)(2)) and to matters of public concern (N.J.S.A. 2A:53A-50(b)(3)). The Defendant argues both prongs are satisfied: the video relates to ongoing proceedings and is a matter of public concern (school safety, public accountability). Accordingly, should the Court grant its motion to dismiss the Plaintiff's Verified Complaint, NBT contends it is entitled to an award of its attorney's fees, court costs, and litigation expenses as authorized under the statute.

## IV. Questions Presented.

1. Whether the Plaintiff was/is entitled to the imposition of the Temporary Restraints the Court imposed upon the Defendant by its May 29th OTSC, and a conversion of those restraints into a preliminary injunction against the Defendant, in furtherance of the Plaintiff's efforts to satisfy and comply with the statutory obligations it owed under N.J.S.A. 2A:4-60, et seq. and the federal Family Educational Privacy Act, 20 U.S.C. § 1232 ("FERPA") to the individual 16-year-old juvenile/student at New Brunswick High School, and his parents, and within its jurisdictional and regulatory oversight of public schools within its school district to safeguard and protect against the disclosure of the student's identity and personally identifiable information in its education records without his or his parents' consent?

2. Whether the Temporary Restraints imposed upon the Defendant by the Court's May 29th OTSC and any Order converting those restraints into a preliminary injunction would or did constitute an unconstitutional and unlawful "prior restraint" on the Defendant's First Amendment rights to free speech and expression?

3. Whether the Defendant is entitled to relief and remedy, i.e., an award of attorney's fees, costs, and reasonable litigation expenses, against the Plaintiff pursuant to N.J.S.A. 2A:53A-50(b)(3), N.J.S.A. 2A:53A-55(a)(1), (a)(3) and N.J.S.A. 2A:53A-58, of the Uniform Public Expression Protection Act, N.J.S.A. 2A:53A-51"("UPEPA")?

For the reasons discussed below, the Court finds and concludes that the short answer to Question No. 1 is "Yes", in part, but with modifications; the answer to Question No. 2 is "No" in part, but with qualifications; and the answer to Question to No. 3 is "No."

## V. <u>The Court's Analysis: Discussion of the Applicable Law</u>.

The BOE alleges that NBT obtained and published confidential surveillance footage from the District's internal system without authorization. The footage depicts a minor student engaged in conduct that has resulted in both school discipline and juvenile court involvement. The Board asserts that the footage contains personally identifiable information and reveals internal school security operations. The BOE relies on District Regulation 8330, Policy 7441 (and other regulations and policies cited above), and the Supplemental Certification of Dr. Aubrey Johnson (Exhibits A & C) to establish the confidential nature of the footage and the Board's policies regarding student records.

It is undisputed (and incontrovertible) that the NBBE is a "government" unit or agency that is the creation of New Jersey's public-school systems and charged, by statute and regulation, to oversee, supervise, and administer our state's public schools, and here, those within the City of New Brunswick school district. Thus, in addition to the District Regulations above referenced and that have been promulgated pursuant thereto, the incident and actions of the Board in question

implicate three (3) overlapping statutory schemes previously identified above, with greater explanation of them below:

- **Federal Law (FERPA):** The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, prohibits educational agencies from releasing education records or personally identifiable information without parental consent. The surveillance footage at issue is an education record under FERPA, as it is maintained by the school and directly relates to an identifiable student. The Board is legally obligated to prevent such disclosure.

  FERPA imposes a federal mandate on educational agencies to protect the confidentiality of education records, including any personally identifiable information about students. FERPA defines "education records" broadly to encompass records directly related to a student and maintained by an educational agency.

  The surveillance footage at issue depicts a specific minor student involved in conduct that has led to disciplinary and criminal juvenile judicial proceedings. As such, it falls squarely within FERPA's protections. Disclosure without parental consent is expressly prohibited, and the Board is legally obligated to prevent such unauthorized disclosures.

- **New Jersey Law:** The New Jersey Pupil Records Act (N.J.S.A. 18A:36-19) and its regulations (N.J.A.C. 6A:32-7.4 and -7.5) require confidentiality of pupil records and restrict access to authorized personnel. The footage qualifies as a pupil record, and the Board has standing to seek injunctive relief to fulfill its statutory duty.

  The Pupil Records Act and its implementing regulations require school districts to maintain the confidentiality of pupil records and restrict access to authorized personnel only. The surveillance footage, depicting an identifiable student in a disciplinary context, constitutes a pupil record under these provisions.

- **Juvenile Records Statute:** The Juvenile Records statute, N.J.S.A. 2A:4A-60, provides an additional layer of protection, mandating that all records pertaining to juveniles—including those held by law enforcement and educational institutions—be "strictly safeguarded from public inspection." This legislative mandate is rooted in the policy goal of promoting

rehabilitation and preventing the lasting stigma that public exposure can inflict on juveniles.

Thus, N.J.S.A. 2A:4A-60 mandates that records pertaining to juveniles be strictly safeguarded from public inspection. The footage in question is connected to pending juvenile and criminal proceedings, and its publication undermines statutory confidentiality protections.

- **District Policy:** District Regulation 8330 and Policy 7441 further codify these confidentiality requirements at the local level, specifically identifying surveillance footage containing personally identifiable information as a protected student record. *See* Supplemental Certification of Dr. Aubrey Johnson (Exhibits A & C), to establish the confidential nature of the footage and the Board's policies regarding student records.

  Thus, the Board's internal policies (Regulation 8330, Policy 7441, Policy 8467) treat surveillance footage as confidential student and disciplinary records. Unauthorized publication violates these policies and undermines the Board's statutory duty to protect student privacy and school security. Moreover, the Board acts *in loco parentis*, in the place of parents during school hours and has a legal and ethical obligation to protect students' privacy and safety (Frugis v. Bracigliano, supra).

The intent of both Congress and the New Jersey Legislature in enacting these statutes is clear: to protect juveniles from the adverse consequences of public exposure and to foster an environment conducive to rehabilitation and educational opportunity.

The First Amendment does not grant the press a license to violate privacy laws. Courts distinguish between reporting on matters of public concern and publishing confidential information that is protected by law. That said, injunctive relief must be narrowly tailored to avoid unconstitutional prior restraint. In this case, the Board seeks only to prevent publication of footage that identifies minors or reveals security protocols, not to bar all reporting on the incident.

If footage was obtained unlawfully or in violation of confidentiality statutes, First Amendment protections are significantly diminished (*see* Smith v. Daily Mail, Oklahoma Publishing Co.). Moreover, those involved in the unauthorized extraction of the footage in question here will also be susceptible to claims for damages and/or criminal prosecution. The Court would agree with the Defendant, to a certain extent, that **even if the video was unlawfully obtained, the claimed First Amendment protection for publication would generally remain intact.** It is acknowledged that the Supreme Court and other courts have consistently held that the press may publish truthful information of public concern, even if the source obtained it illegally, so long as the press did not participate in the unlawful acquisition. The remedy for any alleged illegality in obtaining the material is not a prior restraint or censorship, but rather civil or criminal action against the wrongdoer. However, if the press obtained the surveillance footage through a leak or an independent source – or if illegally obtained by others without its participation or direction - rather than an Open Public Records Act (OPRA) request, the court still must balance the juvenile's statutory right to confidentiality (N.J.S.A. 2A:4A-60) against the severe constitutional presumption against censorship.

Publishing footage that reveals the identity of other minor students, the location of cameras, staffing responses, and screening procedures can compromise school security and endanger students and staff and are factors that also must be

taken into consideration. It is true that the responsibility of ensuring against compromises of school security protocols lies with the BOE, and not the press or here, NBT. Yet, publicly identifying minor students involved in disciplinary or criminal matters can cause lasting reputational and emotional harm, which our referenced state and federal educational privacy laws are designed to prevent, especially where juveniles are involved and whose parents must be given notice and the right to consent or refuse to consent to the release of such a student's "education record".

Based on the briefing of the parties that the Court has now had the benefit of, as well as consideration given to the oral argument heard from counsel including the clarifications offered by BOE counsel, the requested injunction is narrowly tailored and does not constitute an impermissible prior restraint. It targets only the confidential footage, not broader reporting or commentary. The BOE distinguishes this case from Smith v. Daily Mail Publishing Co. and Oklahoma Publishing Co. v. District Court, as those cases involved lawfully obtained or public information, whereas here the footage was confidential and allegedly obtained without authorization.

In the Court's view, without some limitations, continued publication of the footage in question does and will inflict irreparable harm on the minor student(s), exposing them to embarrassment, stigma, intimidation, and potential retaliation. It

also compromises school security by revealing internal operations. These harms cannot be remedied by monetary damages. *See* Crowe v. DeGioia, 90 N.J, supra at 132–33.

Graphically depicted, the following table identifies the key legal limitations:

**Summary Table: Key Legal Implications**

| **Legal Authority** | **Implication of Unauthorized Publication** |
|---|---|
| FERPA (20 U.S.C. § 1232g) | Violation of federal privacy law; risk of lost funding |
| NJ Pupil Records Act (N.J.S.A. 18A:36-19) | Violation of state privacy law; supports injunctive relief |
| Juvenile Justice Records (N.J.S.A. 2A:4A-60) | Direct statutory violation; strict confidentiality required |
| Board Policies | Breach of institutional duty and policy |
| First Amendment | Protects rights to free speech and freedom of expression; does not protect unlawful or unauthorized disclosures (subject to certain exceptions). |

NBT disputes and affirmatively contends that this Court lacks the authority to balance what it claims are subordinate privacy interests of these juveniles against what it otherwise insists are the pre-emptive First Amendment rights to free speech and expression accorded to NBT, as the press, to publish this video footage without restriction.

With respect, this Court disagrees, for it cannot reconcile that notion with the legal obligations that the above-cited state **and** federal law imposed upon this government unit when it comes to ensuring the safety, privacy interests and protection of juvenile/minor students within its charge. Indeed, in the Court's view, there are less intrusive means available by which to balance both the statutory requirements and privacy interest protections for minor students imposed upon the BOE in this instance, with the undisputed First Amendment rights of NBT to free speech and expression; and, without detrimentally encroaching upon or violating either.

***As to NBT's Claims Under the Uniform Public Expression Protection Act* (“UPEPA”)**

While each of the parties provided their respective contentions and arguments as to if, and whether, the Defendant is entitled to a dismissal of the Plaintiff's Verified Complaint and related relief under the UPEPA, the short answer is “No”, it is not, and precisely because the Plaintiff is explicitly exempt and insulated from the Act. Thus, the Uniform Public Expression Protection Act explicitly provides as follows:

**2A:53A-50 Definitions; scope.**

**2. Scope.**

a. In this section:

(1) "Goods or services" does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

(2) **"Governmental unit"** means a public corporation or government or governmental subdivision, agency, or instrumentality.

(3) **"Person"** means an individual, estate, trust, partnership, business or nonprofit entity, **governmental unit**, or other legal entity.

**b. Except as otherwise provided in subsection c**., this act applies to a cause of action asserted in a civil action against a person based on the person's:

(1) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(3) exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United States Constitution or the New Jersey Constitution, on a matter of public concern.

**c. This act does not apply to a cause of action asserted:**

(1) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

**(2) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety;** or

> (3) against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services.

(Emphasis added).

In New Jersey, local school boards are corporate bodies politic and function legally as arms of the state or local government – and here, the City of New Brunswick. Therefore, the NBBE falls squarely within this exemption. As a result, under N.J.S.A. 2A:53A-50(2)(c)(2), UPEPA explicitly states that the anti-SLAPP dismissal mechanism does not apply to any claim brought against a government entity, public official, or public employee acting in their official capacity "to enforce a law to protect against an imminent threat to public health or safety" – and thus, to the minor students depicted in the video and in safeguarding disclosure of security measures in place and taken to protect them.

Therefore, the NBBE falls squarely within this exemption, NBT does not even get to "Step One" in the analysis of the UPEPA, nor does the Court need to otherwise assess the viability of such an exempt claim. NBT's application for an order to show cause on the UPEPA claim and request for attorney's fees and cost will thus be denied and dismissed in its entirety as non-actionable.

## VI. **Conclusions & Decision**.

For certain, the rights to freedom of speech and freedom of expression are guaranteed by the First Amendment to our Constitution, as are the rights and privacy interests of minors. However, the rights to freedom of speech and expression were never intended to provide unbridled license to anyone – be it an individual, news organization, or government entity – to exercise those rights in a way that would either actually or even foreseeably imperil the safety of a juvenile.

The Board alleges that NBT obtained and published surveillance footage from the District's internal system without authorization. The footage depicts a minor student engaged in conduct that resulted in both school discipline and now juvenile court involvement. The Board asserts that the footage contains personally identifiable information and reveals internal school security operations. The Board relies on District Regulation 8330, Policy 7441, and the Supplemental Certification of Dr. Aubrey Johnson (Exhibits A & C) to establish the confidential nature of the footage and the Board's policies regarding student records.

### Likelihood of Success on the Merits

In the Court's view, the Plaintiff's request for continued injunctive relief, but in a more tailored fashion, is well-supported and has enabled it to successfully argue a likelihood of success on the merits, and for these reasons. Despite some

redundancy, this case is unique and thus it is worth repeating, for context's sake, the overlapping obligations under federal and state law that the BOE shoulders:

- **Federal Law (FERPA):** The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, prohibits educational agencies from releasing education records or personally identifiable information without parental consent. FERPA requires educational agencies and institutions to protect the privacy of student education records. While the brief argues FERPA does not create a private right of action or authorize injunctive relief against the press, it is undisputed that FERPA imposes a clear duty on school districts to safeguard student information and prevent unauthorized disclosures. The Board of Education, as a government agency with regulatory oversight, is obligated to take reasonable steps to prevent the public dissemination of confidential student records, including video footage that identifies a minor student in a sensitive disciplinary context.

  The surveillance footage at issue is an education record under FERPA, as it is maintained by the school and directly relates to an identifiable student. The Board is legally obligated to prevent such disclosure.

- **New Jersey Law:** The New Jersey Pupil Records Act (N.J.S.A. 18A:36-19) and its regulations (N.J.A.C. 6A:32-7.4 and -7.5) require confidentiality of pupil records and restrict access to authorized personnel. The footage qualifies as a pupil record, and the Board has standing to seek injunctive relief to fulfill its statutory duty.

- **Juvenile Records Statute:** N.J.S.A. 2A:4A-60. This New Jersey statute mandates that records pertaining to juveniles, including those maintained by schools, must be "strictly safeguarded from public inspection." Subsection (h) makes it a disorderly persons offense to knowingly disclose or permit unauthorized use of information concerning a particular juvenile derived from protected records. Even if the statute is primarily directed at government agencies, it underscores the state's compelling interest in protecting juvenile privacy and preventing harm from public disclosure.

  The footage at issue has become part of the affected student's education record, is connected to pending juvenile and criminal proceedings, and its publication undermines statutory confidentiality protections.

This is especially so where – like here - both federal and state statute entrust a state, local or federal government agency(ies) with the responsibility – and explicitly require such agency(ies) - to safeguard and ensure against such a possibility, especially when the interests and privacy rights of minors are implicated.

As this case demonstrates, there is a delicate constitutional line that was encroached upon that this Court was emergently compelled to assess in order to safeguard and ensure against a crossing over of that line (whether deliberately or inadvertently) in favor of NBT, by authorizing resumed publication anew - or worse yet, turning a blind eye to - what would be tantamount to unwarranted, if not sensationalized and video-depicted disclosure of an event that could, would, or even did imperil the safety of a minor and those fellow minor students; and, along the way, reveal and adversely impugn the integrity of the security mechanisms and operations this school District had in place that, if exposed, could foreseeably invite further harm.

As to the latter, however, New Jersey courts have ruled in analogous cases under the "Open Public Records Act" (OPRA), N.J.S.A. 47:1A-1, et seq., like Gilleran v. Township of Bloomfield, 227 N.J. 159 (2016) and subsequent appellate school board decisions (e.g., Zezza v. Evesham Township Board of Education, 2023 N.J. Super. Unpub. LEXIS 1095* (App. Div., Decided June 29, 2023)) that **there is no blanket exemption for all surveillance video**.

Though this did not occur here, but by way of analogy, if the press or this Defendant brought an OPRA lawsuit, the court would likely force the school board to prove that disclosing the video footage tape jeopardizes active security measures. If the security argument fails, the court would typically mandate the school to **blur or redact the juvenile faces** to comply with privacy laws, rather than allowing the board to withhold the video completely.

Following federal First Amendment standards, the New Jersey Supreme Court considers a prior restraint—an injunction blocking the press from publishing information it already possesses—to be one of the most extraordinary and least tolerated restrictions on free speech. The state constitution uses even broader, more affirmative phrasing than the U.S. Constitution to protect the right to "freely speak, write and publish". When a party (such as a school board) seeks a temporary restraining order or injunction to block a news outlet from publishing video or information, New Jersey courts apply a highly demanding multi-step analysis.

**The Requirement of "Lawfully Obtained" Information**

If the media outlet obtained the school surveillance video or information lawfully—meaning they did not break into a building or hack a server themselves—the court will almost never allow a prior restraint.

- **The Independent Source Rule:** Under U.S. and New Jersey Supreme Court precedents (such as Bartnicki v. Vopper), if an anonymous whistleblower leaks a video to a journalist, the journalist cannot be penalized or censored for publishing it, even if the whistleblower obtained it illegally.

- **The Government's Burden:** Here, the Court does agree with the Defendant that it is, and has been, the BOE's separate obligations to protect the sanctity of its security protocols and video surveillance modalities – and not that of the press or NBT. And thus, even if the video footage at issue was obtained illegally – and without the participation of NBT in its illegal procurement – it is immaterial to a First Amendment analysis especially where, as here, the subject matter is indeed of public interest and concern. As noted by free-speech advocates in recent high-profile New Jersey media litigation, when a government entity fails to secure its own data or information, courts assume the government had better ways to prevent the leak than resorting to censoring the press after the fact.

**Balancing Juvenile Privacy vs. Public Interest**

Clearly, the video footage at issue depicting the apprehension of a juvenile student at a local high school for having set off metal detectors that revealed his having a gun on his person implicates, if not itself heightens, the public interest and need for public disclosure. When the underlying reason for the prior restraint is protecting a minor (e.g., a juvenile caught with a weapon at school), New Jersey courts weigh statutory privacy protections against the public's right to know:

- **The "Specific and Extraordinary Harm" Standard:** For official court or juvenile delinquency records, New Jersey statute at N.J.S.A. 2A:4A-60(f) sets a presumption of public disclosure for serious offenses (like an adult equivalent of a 1st, 2nd, or 3rd-degree weapons charge) ***unless*** the defense proves a "substantial likelihood that specific and extraordinary harm would result".

- **Redaction Over Censorship:** Rather than granting a flat injunction to block a video's release entirely, New Jersey appellate courts favor **redaction**. In landmark transparency cases involving minors (such as Digital First Media v. Ewing Township, 462 N.J. Super. 389 (App. Div. 2020)[12], courts ruled that

[12] Which held: *Cont'd on next page . . . . .*

> blurring or blocking out a juvenile's face and identifying details satisfies the minor's right to privacy while preserving the public's right to inspect the conduct of public officials and school security.

In retrospect, now that time has permitted a constitutional analysis of the issues joined, in the first instance, the Court agrees that certain of its temporary restraints may have been overbroad. Therefore, rather than imposing a sweeping prior restraint on all reporting or future publication, the Court will narrowly tailor its Order to prohibit only the publication of the specific video footage that directly reveals the identity and disciplinary circumstances of the minor student, as well as the identities of the other students depicted in the footage. Such a restraint would be limited in scope, focused solely on preventing irreparable harm to the juvenile's privacy interests while allowing the press to report on the underlying incident using other sources or redacted materials.

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> "**The legislative history of N.J.S.A. 2A:4A-60, and Governor's statement issued when the statue was enacted, both indicate that the provisions regarding confidentiality were intended to balance the public's right to be informed against the rehabilitation of the juvenile, a balance readily accomplished here by the redaction of the juvenile's name**. *Senate Judiciary Committee Statement to A. 643* (L. 1982, c. 79); *Governor's Conditional Veto Message to A. 1913* (L. 2001, c. 407). Nor does a juvenile UFR [use of force report] fall within the exceptions to availability of government records deemed confidential enumerated within OPRA itself self. *See* N.J.S.A. 47:1A-1. The simple redaction of the subject's name accomplishes the goal of both statutes."

Id. at 399 (emphasis).

The Supreme Court has recognized that privacy interests of minors are significant, even if not always "of the highest order." A narrowly tailored restraint, limited to the specific video and for a defined location – i.e., New Brunswick High School - is here justified as a means to balance the First Amendment rights of the press with the statutory and ethical obligations of the school district to protect its students.

The BOE is not merely a passive custodian of records but has an affirmative duty under both federal and state law to prevent unauthorized disclosures. Failure to act could expose the District to federal penalties (loss of funding under FERPA) and state criminal liability. Seeking a court order, even if limited, is a reasonable and necessary step to fulfill these statutory obligations.

While the Defendant in its briefs cites Supreme Court cases striking down broad prior restraints, courts have occasionally recognized the appropriateness of limited, temporary restraints to protect compelling privacy interests, especially involving minors. For example, in cases involving sexual assault victims or juvenile defendants, courts have sometimes permitted redactions or temporary non-disclosure orders to prevent irreparable harm.

And then there are practical considerations for harm prevention, and on this score the Court wholeheartedly agrees with the Plaintiff. The public dissemination of the video footage depicting a minor in a disciplinary or potentially criminal

context can have lasting reputational, psychological, and safety consequences for the student(s) and his/their family(ies). A narrowly tailored restraint is a proportionate response to prevent such harm, especially when alternative means of reporting are available to the press.

The Court will order that New Brunswick Today refrain from publishing or distributing the specific security video that clearly identifies the apprehended minor student, and other depicted minor students, **without redaction or blurring** of the student(s) to shield their identity(ies), but will permit reporting on the incident using written descriptions, interviews, or redacted footage that does not reveal the student's identity(ies).

While the First Amendment imposes a heavy presumption against prior restraints, the unique statutory mandates of FERPA, N.J.S.A. 2A:4A-60 and other above cited law, combined with the government's affirmative duty to protect minors, provide a basis for the Court to consider a narrowly tailored, temporary restraint. Such an order would respect both the privacy rights of the student and the press's right to report on matters of public concern, provided it is limited in scope, duration, and subject matter.

By this analysis the Court seeks to balance the privacy interests of the minor student with the First Amendment rights of the Defendant news organization, New Brunswick Today. The approach and result is to deny the motion to fully lift the

temporary restraints, but to modify them to narrowly tailor the Order, minimizing the restraint on speech while protecting the juvenile's privacy. In the Court's view, this would be and is consistent with Supreme Court and New Jersey precedent, which require that any restraint on speech be the least restrictive or intrusive means to serve a compelling interest.

**In Summary**

The need and legal support for tailored, modified restraints is self-evident. There is a compelling interest in protecting and ensuring juvenile privacy. The privacy of minors involved in school incidents is a recognized and substantial interest (Smith v. Daily Mail Pub. Co., supra; Florida Star v. B.J.F., 491 U.S. 524 (1989)). New Jersey law (N.J.S.A. 2A:4A-60) reflects a strong policy of safeguarding juvenile records and information, even if the statute does not directly apply to the press in this context. And the Supreme Court has acknowledged that protecting the identity of juveniles is an important state interest, though not always "of the highest order" sufficient to justify a total prior restraint (Daily Mail, 443 U.S. at 104-05).

Viewing the circumstances from the vantage point of the Defendant news organization, the point is well-taken that prior restraints are presumptively unconstitutional and must be narrowly tailored (Near v. Minnesota, 283 U.S. 697 (1931); Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976)). However, courts have

recognized that in rare and compelling circumstances, narrowly tailored restraints may be permissible to protect privacy or fair trial rights (CBS, Inc. v. Davis, 510 U.S. 1315 (1994)). As a result, the Court's Order must not be broader than necessary and must allow for reporting on matters of public concern without unnecessary suppression of information (Florida Star, 491 U.S. at 540). Having discovered via metal detectors that a 16-year-old male student was attempting to enter this public school with a weapon, for certain, presents a matter of significant public interest and concern, and the Defendant should be permitted to resume reporting on the incident – but with tailored restrictions.

The Court acknowledges that the original Order was overbroad, enjoining all future publication of any school security video and prohibiting any reporting on the content of the video, regardless of whether the juvenile could be identified. The factual record shows the video was already published and in the public domain, but the juvenile's identity and image remain sensitive. Consequently, the Court can and will modify the Order to prohibit only the publication of the juvenile's name, face, or other identifying information (and that of the other juveniles depicted), while permitting reporting on the incident and the conduct of public officials.

This approach is consistent with Oklahoma Pub. Co. v. District Ct., supra, which struck down a total ban but left open the possibility of narrowly tailored restrictions. Moreover, in the Court's view, the Crowe v. DeGioia factors

(likelihood of success, irreparable harm, settled legal right, balancing of harms) support a limited restraint:

- **The BOE has a legitimate privacy interest, and commensurate statutory obligations, but not a right to total suppression**.
- **The news organization's First Amendment rights are preserved by allowing reporting on the incident, so long as the juvenile is not identified**.
- **The balance of harms favors a narrow order: the juvenile's privacy is protected, and the public's right to know about school safety and official conduct is not unduly burdened**.

By denying the motion to fully lift the restraints but modifying the Order as above, the Court protects the privacy interests of the minor student while respecting the First Amendment rights of the press. This approach is supported by Supreme Court and New Jersey precedent and is the least restrictive means to serve both compelling interests.

For sure, the incident in question presented this Court with extremely serious concerns pitting overlapping constitutional rights to free speech and journalistic expression against both state and federal statutory requirements for the protection of the privacy rights of juvenile students and efforts made by a local school board entrusted with the responsibility of safeguarding and protecting them to enforce public safety.

It was faced with an emergent order to show cause application that it was assigned at 3:00 p.m. on a Friday, and, with no formal briefing from the Defendant

and yet the presentation of a video footage link that had been already posted by NBT and the invasion of juvenile privacy and school security concerns its publication was both violating and jeopardizing, respectively, and in real-time going into a weekend. Hence, the imposition of temporary restraints pending full briefing and the July 7th return date which was set for later than it intended to schedule it – in accommodating NBT's attorney's vacation request – and as expeditiously as the Court's congested calendar could accommodate, and requiring full briefing on the serious constitutional issues raised that has since been made.

The Court candidly admits to its painful struggle in having to carefully weigh and balance those respective rights and interests in fashioning an appropriate remedy. It expresses here its appreciation to counsel for both sides, their vigorous advocacy, and exemplary briefing that the Court expected would ensue so as to enable it to provide, as the parties are rightfully entitled to, a reasoned and supported decision on the applications before it.

Having carefully assessed that briefing and considered the argument of counsel, the Court's decision now follows. For each of the foregoing reasons, the Court finds that the Defendant has failed to overcome and prove by clear and convincing evidence in the record that it is constitutionally or otherwise entitled to publish the video footage of the subject incident, "**as is**", that constitutes the affected juvenile student's education record. Nor has it proven that it is entitled to relief

under the UPEPA, which, by the very terms of the statute, this Plaintiff is expressly exempt from.

Accordingly, the Court will enter an Order for Judgment, and specifically as follows:

**1.** That the Application for a preliminary injunction – and, in particular, the scope of the preliminary injunction - sought by the Plaintiff to be entered against the Defendants is hereby **DENIED**; ***subject, however***, to the following;

**2.** That the "Temporary Restraints" ("TRO") as defined in the Court's May 29th OTSC and imposed against the Defendant shall be and hereby are MODIFIED – and to the extent not modified, are hereby dissolved and vacated – as follows. In order to appropriately balance the 16-year-old juvenile's (and other depicted juveniles') privacy rights and identity protection under N.J.S.A. 2A:4A-60 against the "prior restraint" doctrine:

A. The Court will vacate the portion of the TRO the forbids the Defendant and the press from *writing* or posting about the content of the confidential school security/surveillance video footage of the 16-year-old juvenile/student and incident of May 8, 2026 specifically at issue in this matter, so long as the name(s) and **identity(ies)** of the 16-year-old juvenile/student, and of any and all other juvenile/student depicted in the video footage, is/are not revealed or identified in any way or manner whatsoever;

B. The Court will vacate the portion of the TRO that compelled the Defendant to remove the confidential school security/surveillance video footage of the 16-year-old juvenile/student and incident of May 8, 2026 specifically at issue in this matter that had been posted on the website and YouTube video site of ***New Brunswick Today***; and, to the latter end, subject to the following;

C. That, in order to protect the privacy interests of the 16-year-old juvenile/student, and of any and all other juvenile/student, depicted in the video footage at issue, the Defendant and the press shall be permitted to post the subject video footage ***but only on the express condition*** that the Defendant and the press redact, blur, or obscure the face and identifying markers of the minors in the video footage – in addition to withholding their names or identity(ies), rather than force a total takedown of the video and the reporting.

With respect to the Defendant's Related Application, insofar as the Defendant seeks relief or remedy, i.e., an award of attorney's fees, costs, and reasonable litigation expenses, against the Plaintiff pursuant to N.J.S.A. 2A:53A-50(b)(3), N.J.S.A. 2A:53A-55(a)(1), (a)(3) and N.J.S.A. 2A:53A-58, that application is **DENIED** in its entirety. The Court finds and concludes that the Uniform Public Expression Protection Act, N.J.S.A. 2A:53A-51"("UPEPA") does not apply to or cover the Plaintiff and, therefore, that the Plaintiff, including Dr. Aubrey A. Johnson, Ed.D., as Superintendent of Schools for the Plaintiff, is/are exempt from application

of that Act to it/them in this instance, pursuant to the statute's definitional criteria and exceptions set forth at N.J.S.A. 2A;53A-50a(2) and (c)(1), (2).

Stated differently, and to be clear, the Order to be entered is intended to grant the Plaintiff's application in part, deny it in part, and grants the Defendant's application to modify the Court's restraints in part while dissolving the balance in part, such that:

- The Defendant, New Brunswick Today, is ENJOINED from publishing, republishing, or otherwise disseminating the name, face, or any other information likely to identify the minor students depicted in the school security video at issue in this matter.

- The Defendant, New Brunswick Today, is PERMITTED to publish and post the subject video footage ***but only on the express condition*** that the Defendant and the press redact, blur, or obscure the face and identifying markers of the minors in the video footage – in addition to withholding their names or identity(ies), rather than force a total takedown of the video and the reporting. To the extent NBT seeks to immediately re-publish the video footage at issue, it must first modify the footage by redacting or blurring out the identities of all juvenile students depicted in it; and present the modified footage to Plaintiff and its counsel for review and approval, with copy to the Court.

- The Defendant is PERMITTED to report on the incident, including the conduct of school officials and the fact of the security incident, provided that such reporting does not disclose the identity of the minor students.

- The Defendant is NOT ENJOINED from publishing or reporting on other school security videos or incidents District-wide, except to the extent that such publication would reveal the identity of any minor student involved in a similar manner.

- Nothing in the Court's Order shall be construed to prohibit the Defendant from reporting on these proceedings or on matters of public concern, so long as the identity of the minor student(s) is/are protected as set forth above; and

- Insofar as the Defendant's application seeks relief or remedy under the UPEPA, that aspect of the application is denied in its entirety, the Court having found that the Defendant is explicitly exempt from that Act. However, although the Plaintiff, as the responding party, has prevailed on the Defendant's UPEPA Claim, it is not entitled to an award of its court costs, reasonable attorney's fees and reasonable litigation expenses related to the order to show cause under N.J.S.A. 2A:53A-51, in that the Court does not find that the order to show cause was frivolous or filed solely with intent the delay the proceeding, *see* N.J.S.A. 2A:53A-58.

By denying the motion to fully lift the restraints but modifying the Court's May 29th OTSC as above provided, the Court protects the privacy interests of the minor student(s) while respecting the First Amendment rights of the press. This approach is supported by Supreme Court and New Jersey precedent, and, in the Court's view, is the least restrictive means to serve both compelling interests.

Put bluntly, but with profound reverence to both sides: This was a tough call. As was aptly noted at oral argument, neither party nor the Court serves in the role as editor - rather, the law does serve as editor at times, like here. If it weren't, or doesn't, there'd be no such thing as an attorney-client privilege, physician-privilege, spousal immunity, the news media/news agency Shield Law (N.J.S.A. 2A:84A-21, et seq., and included in N.J.R.E. 508), and like judicial devices that have been designed to safeguard the confidentiality of things or matters deemed private, sacrosanct, and protected from publication or disclosure in furtherance of constitutional rights and/or societal mandate.

That said, if a higher court disagrees and determines that in fashioning the foregoing remedy, I abused my discretion or somehow or in some way misapplied the law, then so it will be and, of course, respected - though I remain firm in calling it as I saw it. But I will, even before then and after, still be at peace with my judicial conscience knowing, at the least, this Court has accorded each side a fair and robust airing of their conflicting views as expeditiously as time permitted to resolve the thorny questions posed.

A conformed Order for Judgment implementing the foregoing accompanies this Opinion.

**SO ORDERED**.