

EXAMINERS' ANALYSIS OF QUESTION NO. 2

Under Michigan law, "[i]njunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Pontiac Fire Fighters Union Local v City of Pontiac*, 482 Mich 1, 8 (2008) (citations and internal quotation marks omitted).

In determining whether to grant a preliminary injunction, the court must consider four factors: "whether (1) the moving party made the required demonstration of irreparable harm, (2) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, (3) the moving party showed that it is likely to prevail on the merits, and (4) there will be harm to the public interest if an injunction is issued." *Detroit Fire Fighters Ass'n v City of Detroit*, 482 Mich 18, 34 (2008).

Applying the preliminary injunction factors, the court should deny P.T.'s parents' motion. The analysis begins and ends with the first factor – irreparable harm. P.T.'s parents cannot show that they would suffer irreparable harm because while they fear prosecution *if* they remove P.T. from school again, a hypothetical threat of prosecution is not an immediate, irreparable injury. See *Pontiac Fire Fighters*, 482 Mich at 9 ("The mere apprehension of future injury or damage cannot be the basis for injunctive relief."). The claimed injury "must be both certain and great, and it must be actual rather than theoretical." *Thermatool Corp v Borzym*, 227 Mich App 366, 377 (1998). Here, any future prosecution is inherently uncertain. It would only potentially occur *if* P.T.'s parents chose to disenroll him again, *if* they failed to re-enroll him at a state-approved school, and *if* the Declan Board of Education chose to pursue truancy charges again. That theoretical series of events does not give rise to irreparable harm.

The inability to show irreparable harm is fatal to P.T.'s parents' request for preliminary injunctive relief because the Michigan Supreme Court has held that this requirement is "an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters*, 482 Mich at 9 (quotation omitted). Without such a showing, a plaintiff's likelihood of success on the merits is irrelevant. See *id.* at 13 n 21 (declining to address the

plaintiff's likelihood of success on the merits because it failed to demonstrate irreparable harm).

The remaining factors do not change the analysis. Since P.T.'s parents cannot show irreparable harm, a balancing of the equities (factor (2)) is not called for. In no event would their mere apprehension of future prosecution justify a prior restraint on the Declan School Board's ability to seek enforcement of Michigan's truancy law. Even if P.T.'s parents are likely to succeed on their claim that IDEA preempts Michigan law (factor (3)), it still does not warrant entry of a preliminary injunction. The issue is one of timing. *Preliminary* injunctive relief should only be granted to avoid irreparable harm. Without such a showing, P.T.'s parents must first prevail on the merits of their claim, and then they can ask the court to issue a permanent injunction. Finally, the public interest factor (factor (4)) is either neutral or weighs in favor of denying preliminary injunctive relief, as the public interest arguably favors enforcement of valid state laws concerning compulsory school attendance.