

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ST. AUGUSTINE SCHOOL,
JOSEPH and AMY FORRO,

Plaintiffs,

v.

Case No. 16-cv-575

TONY EVERS, in his official capacity as
Superintendent of Public Instruction,
FRIESS LAKE SCHOOL DISTRICT,

Defendants.

**AMENDED ANSWER AND AFFIRMATIVE DEFENSES
OF FRIESS LAKE SCHOOL DISTRICT**

NOW COMES the Defendant, Friess Lake School District, by its undersigned attorneys,
and for its Amended Answer to Plaintiffs' Complaint state as follows:

1. Denies the allegations contained in Paragraph 1 of Plaintiffs' Complaint.
2. In answering Paragraph 2 of Plaintiffs' Complaint, admits that Plaintiff St. Augustine School is a Wisconsin corporation with its offices and principal place of business as alleged therein. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, and therefore denies the same and puts Plaintiff to its proof thereon.
3. Admits, upon information and belief, the allegations contained in Paragraph 3 of Plaintiffs' Complaint.
4. In answering Paragraph 4 of Plaintiffs' Complaint, admits that Defendant Tony Evers is the Wisconsin Superintendent of Public Instruction and has his office and

principal place of business as alleged therein. The remaining allegations contained therein are legal conclusions for which no answer is necessary or required.

5. Admits the allegations contained in Paragraph 5 of Plaintiffs' Complaint.

6. The allegations contained in Paragraph 6 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.

7. The allegations contained in Paragraph 7 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

8. In answering Paragraph 8 of Plaintiffs' Complaint, admits that Article 1, § 23 of the Wisconsin Constitution was created in April of 1967, and that Plaintiffs' Complaint accurately quotes the text of that section of the Wisconsin Constitution. Denies any remaining allegations contained therein.

9. The allegations contained in Paragraph 9 are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

10. The allegations contained in Paragraph 10 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.

11. In answering Paragraph 11 of Plaintiffs' Complaint, admits that Wis. Stat. § 121.54 addresses transportation of children to and from parochial or private school. Denies any remaining allegations contained therein.

12. The allegations contained in Paragraph 12 are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

13. Denies the allegations contained in Paragraph 13 of Plaintiffs' Complaint.
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiffs' Complaint, and therefore denies the same and puts Plaintiffs to their proof thereon.
15. Denies the allegations contained in Paragraph 15 of Plaintiffs' Complaint.
16. Admits, upon information and belief, the allegations contained in Paragraph 16 of Plaintiffs' Complaint.
17. Admits, upon information and belief, the allegations contained in Paragraph 17 of Plaintiffs' Complaint.
18. Admits the allegations contained in Paragraph 18 of Plaintiffs' Complaint.
19. The allegations contained in Paragraph 19 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.
20. Denies the allegations contained in Paragraph 20 of Plaintiffs' Complaint.
21. In answering Paragraph 21 of Plaintiffs' Complaint, admits that the Friess Lake School District denied a request for a parent busing contract for the Forro family. Affirmatively alleges the decision speaks for itself, and denies any remaining or inconsistent allegations contained therein.
22. In answering Paragraph 22 of Plaintiffs' Complaint, admits that by letter dated September 22, 2015, the Friess Lake School District reaffirmed its decision denying St. Augustine School's request for a parent busing contract for the Forro family.
23. Denies the allegations contained in Paragraph 23 of Plaintiffs' Complaint.
24. Denies the allegations contained in Paragraph 24 of Plaintiffs' Complaint.

25. The allegations contained in Paragraph 25 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same.

26. Denies the allegations contained in Paragraph 26 of Plaintiffs' Complaint using the definition of "attendance area" contained in Wis. Stat. § 121.51(1). Denies any remaining allegations contained therein.

27. In answering Paragraph 27 of Plaintiffs' Complaint, admits that the Friess Lake School District has advised St. Augustine School that the attendance area of its school and St. Gabriel's School may not overlap pursuant to Wis. Stat. § 121.51(1). Denies any remaining allegations contained therein.

28. In answering Paragraph 28 of Plaintiffs' Complaint, admits that St. Gabriel is, based on its own representations, a catholic school. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, and therefore denies the same and puts Plaintiffs to their proof thereon.

29. Denies the allegations contained in Paragraph 29 of Plaintiffs' Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint, and therefore denies the same and puts Plaintiffs to their proof thereon.

31. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint, and therefore denies the same and puts Plaintiffs to their proof thereon.

32. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 32 of Plaintiffs' Complaint, and therefore denies the same and puts Plaintiffs to their proof thereon.

33. In answering Paragraph 33 of Plaintiffs' Complaint, admits that St. Augustine School identifies itself as a catholic school. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, and therefore denies the same and puts Plaintiffs to their proof thereon.

34. In answering Paragraph 34 of Plaintiffs' Complaint, admits only that Exhibit A attached to Plaintiffs' Complaint purports to be a letter from the Superintendent of Catholic Schools of the Archdiocese of Milwaukee dated April 5, 2016. Denies any remaining allegations contained therein.

35. Admits the allegations contained in Paragraph 35 of Plaintiffs' Complaint.

36. The allegations contained in Paragraph 36 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

37. The allegations contained in Paragraph 37 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

38. The allegations contained in Paragraph 38 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

39. In answering Paragraph 39 of Plaintiffs' Complaint, admits only that Friess Lake School District denied St. Augustine School's request for a parent busing contract. Denies the remaining allegations contained therein.

40. Denies the allegations contained in Paragraph 40 of Plaintiffs' Complaint.

41. The allegations contained in Paragraph 41 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

42. The allegations contained in Paragraph 42 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

43. The allegations contained in Paragraph 43 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

44. The allegations contained in Paragraph 44 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary or required, denies the same and puts Plaintiffs to their proof thereon.

45. Denies the allegations contained in Paragraph 45 of Plaintiffs' Complaint.

46. In answering Paragraph 46 of Plaintiffs' Complaint, admits only that pursuant to Wis. Stat. § 121.51(1), if a private school and a school board cannot agree on the "attendance area," the State Superintendent shall make a final determination of the attendance area "upon the request of the private school and the board." Denies any remaining allegations contained therein.

47. In answering Paragraph 47 of Plaintiffs' Complaint, admits only that St. Augustine School requested DPI make a final determination on the attendance area of

St. Augustine School based on lack of agreement between St. Augustine School and the Friess Lake School District on the attendance area. Denies the remaining allegations contained therein.

48. In answering Paragraph 48 of Plaintiffs' Complaint, admits that Superintendent Evers, through his designee, Michael Thompson, Deputy Superintendent of Public Instruction, issued a decision upholding the Friess Lake School District determination that the attendance area of St. Augustine School and St. Gabriel overlap, and pursuant to Wis. Stat. § 121.51(1), the Friess Lake School District is not required to provide transportation to students attending St. Augustine School; further admits that a true and correct copy of the Superintendent's decision is attached as Exhibit B to Plaintiffs' Complaint. Denies any remaining allegations contained therein.

49. Denies the allegations contained in Paragraph 49 of Plaintiffs' Complaint.

50. Denies the allegations contained in Paragraph 50 of Plaintiffs' Complaint, and affirmatively alleges that Exhibit B to Plaintiffs' Complaint speaks for itself.

51. Denies the allegations contained in Paragraph 51 of Plaintiffs' Complaint.

52. Denies the allegations contained in Paragraph 52 of Plaintiffs' Complaint.

53. Denies the allegations contained in Paragraph 53 of Plaintiffs' Complaint.

54. Denies the allegations contained in Paragraph 54 of Plaintiffs' Complaint.

55. Denies the allegations contained in Paragraph 55 of Plaintiffs' Complaint.

56. Denies the allegations contained in Paragraph 56 of Plaintiffs' Complaint.

57. Denies the allegations contained in Paragraph 57 of Plaintiffs' Complaint.

58. In answering Paragraph 58 of Plaintiffs' Complaint, Defendant realleges and incorporates by reference the preceding Paragraphs as if fully set forth herein.

59. Denies the allegations contained in Paragraph 59 of Plaintiffs' Complaint.
60. Denies the allegations contained in Paragraph 60 of Plaintiffs' Complaint.
61. The allegations contained in Paragraph 61 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.
62. The allegations contained in Paragraph 62 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.
63. The allegations contained in Paragraph 63 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.
64. Denies the allegations contained in Paragraph 64 of Plaintiffs' Complaint.
65. The allegations contained in Paragraph 65 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.
66. The allegations contained in Paragraph 66 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.
67. Denies the allegations contained in Paragraph 67 of Plaintiffs' Complaint.
68. The allegations contained in Paragraph 68 of Plaintiffs' Complaint are legal conclusions for which no answer is necessary or required.
69. Denies the allegations contained in Paragraph 69 of Plaintiffs' Complaint.
70. In answering Paragraph 70 of Plaintiffs' Complaint, Defendant realleges and incorporates by reference the preceding Paragraphs as if fully set forth herein.
71. Denies the allegations contained in Paragraph 71 of Plaintiffs' Complaint.
72. Denies the allegations contained in Paragraph 72 of Plaintiffs' Complaint.
73. Denies the allegations contained in Paragraph 73 of Plaintiffs' Complaint.

74. Denies all allegations contained in Plaintiffs' Complaint that are not affirmatively admitted herein.

AFFIRMATIVE DEFENSES

Friess Lake School District further answering Plaintiffs' Complaint by way of an affirmative defense applicable to all claims for relief alleges as follows:

1. Defendant complied with all applicable state and federal laws in denying St. Augustine School's request for a parent busing contract for the Forro family.
2. One or more claims in Plaintiffs' Complaint fails to state a claim upon which relief can be granted against the School District.
3. Plaintiffs failed to exhaust their administrative remedies.
4. Plaintiffs are equitably estopped from bringing one or more claims in Plaintiffs' Complaint.

WHEREFORE, Defendant Friess Lake School District demands judgment dismissing Plaintiffs' Complaint and awarding this Defendant its costs, attorney's fees and such other relief the Court deems just and equitable.

Dated this 21st day of July, 2016.

s/ Sara K. Beachy
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