

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

St. Joan Antida High School, Inc.
1341 North Cass St.
Milwaukee, WI 53202,

Plaintiff,

v.

Case No. 17-CV-413

Milwaukee Public School District
5225 W. Vliet St.
Milwaukee, WI 53208,

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES the Defendant, the Milwaukee Board of School Directors (“Board”) of the Milwaukee Public School District (“MPS”), by its attorney, Grant F. Langley, City Attorney, by Assistant City Attorney Naomi E. Gehling and Assistant City Attorney Calvin V. Fermin, as and for an Answer to Plaintiff’s Complaint, admits, denies, alleges and states to the court as follows:

Introduction

PARAGRAPH NO. 1: This case involves the transportation of school children who live within the Milwaukee Public School District (“MPS”).

ANSWERING PARAGRAPH NO. 1: Admit.

PARAGRAPH NO. 2: Prior to 1967, children who attended private schools were not entitled to public transportation to their schools. This created health and safety hazards for these children that were resolved by an amendment to the Wisconsin Constitution.

ANSWERING PARAGRAPH NO. 2: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent

that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 3: In 1967, the people of Wisconsin amended the Constitution to provide that “Nothing in this constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning.” *See* Wisconsin Constitution, Art. 1, § 23.

ANSWERING PARAGRAPH NO. 3: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 4: The amendment to the Constitution was then followed by legislation that required such transportation to be provided by the school districts in which these children live. Specifically, the legislature decided to provide for the transportation of children to parochial and other private schools by amending the existing statutes for public school transportation so as to provide for transportation for students attending private or parochial schools and to mandate that such students be transported on a reasonably uniform basis with public school students. This enabling legislation was created by chapters 68 and 313, Laws of 1967, *Cartwright v. Sharpe*, 40 Wis. 2d 494, 501, 162 N.W.2d 5, 8 (1968).

ANSWERING PARAGRAPH NO. 4: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 5: What the constitutional amendment and the enabling legislation accomplished was to provide that the same consideration of safety and welfare should apply to public and private students alike. *Cartwright v. Sharpe*, 40 Wis. 2d at 506.

ANSWERING PARAGRAPH NO. 5: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 6: The enabling legislation remains in effect (although it has been amended from time to time) and is contained in Wis. Stat. § 121.54.

ANSWERING PARAGRAPH NO. 6: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 7: Currently, under *inter alia* Wis. Stat. §121.54(1)(b), MPS must treat private school students and public school students with reasonable uniformity when it comes to transportation.

ANSWERING PARAGRAPH NO. 7: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 8: Further, the Fourteenth Amendment to the United States Constitution states that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

ANSWERING PARAGRAPH NO. 8: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 9: If MPS fails to provide transportation to students attending private religious schools on the same basis that it provides such transportation to students attending public schools, then MPS is denying the students at such private religious schools their right to equal protection of the laws.

ANSWERING PARAGRAPH NO. 9: Deny plaintiff’s assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions,

to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 10: Despite the requirement of §121.54 and despite its obligations to provide private school students similarly situated to public school students with equal protection under the law, MPS treats students who attend St. Joan Antida High School (a private religious school within the City of Milwaukee) differently than it does similarly situated students who attend public schools.

ANSWERING PARAGRAPH NO. 10: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 11: Thus, MPS has taken it upon itself to deny these students equal protection under the law and to subject these students to the health and safety risks that the 1967 amendment to the Wisconsin Constitution and §121.54 were designed to prevent.

ANSWERING PARAGRAPH NO. 11: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARTIES

PARAGRAPH NO. 12: St. Joan Antida is an independent private religious female-only high school in the Milwaukee Parental Choice Program operating at 1341 N. Cass Street, Milwaukee, Wisconsin with a city wide attendance area. St. Joan Antida asserts this claim on its own behalf and as the assignee of parents and students who have been adversely affected by the conduct of the Milwaukee Public School District as described more specifically below.

ANSWERING PARAGRAPH NO. 12: Admit as to the description and location of St. Joan Antida High School. Deny that plaintiff has been adversely affected by any conduct of defendant. The answering defendant lacks information or knowledge necessary to form a belief as to the truth or falsity of plaintiff's assertion regarding the assignment of rights of said parents and students, and so it denies the same.

PARAGRAPH NO. 13: The Defendant Milwaukee Public School District ("MPS") is a "school district" as that term is used in Chapters 115 through 121 of the Wisconsin Statutes. MPS has its central offices and principle place of business at 5225 W. Vliet St., Milwaukee, WI 53208.

ANSWERING PARAGRAPH NO. 13: Affirmatively allege that the Milwaukee Public School District is not a suable entity. Admit to defendant's location of its central offices and principal place of business. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

JURISDICTION AND VENUE

PARAGRAPH NO. 14: This case is brought under 28.U.S.C. §2201 and 42 U.S.C. §§ 1983 and 1988.

ANSWERING PARAGRAPH NO. 14: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 15: This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 because this action arises under the Fourteenth Amendment to the United States Constitution. This Court also has supplemental jurisdiction of the state law claim set forth in the second claim for relief.

ANSWERING PARAGRAPH NO. 15: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 16: Venue is proper in this Court pursuant to 28 U.S.C. §1391.

ANSWERING PARAGRAPH NO. 16: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

FIRST CLAIM FOR RELIEF

(Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution)

PARAGRAPH NO. 17: The Plaintiff realleges and incorporates by reference the allegations in the foregoing paragraphs.

ANSWERING PARAGRAPH NO. 17: Defendant realleges and incorporates by reference the answers in the foregoing paragraphs.

PARAGRAPH NO. 18: Wis. Stat. §121.54(2)(a) provides that school districts must provide transportation to all children attending public school who reside more than two miles from the public school they are entitled to attend.

ANSWERING PARAGRAPH NO. 18: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 19: Wis. Stat. §121.54(2)(b) provides that public school districts must provide transportation to children who live in the district and attend private school, so long as the private school is within the district (or not more than 5 miles from the district boundaries), the child lives more than 2 miles from the private school, and the child lives within the private school's attendance area.

ANSWERING PARAGRAPH NO. 19: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 20: Wis. Stat. §121.54(1) has an exception to both Section 121.54(2)(a) and (2)(b) referred to as the “City Option.” In certain cases, students who live within a city are not entitled to transportation from the school district to either public school or private school because of the existence of public bus transportation.

ANSWERING PARAGRAPH NO. 20: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 21: However, under *inter alia* Section 121.54(1)(b), if a school district that is not obligated to provide transportation because of the City Option elects to do so, then “*there shall be reasonable uniformity, in the transportation furnished to the pupils, whether they attend public schools or private schools.*”

ANSWERING PARAGRAPH NO. 21: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 22: There is no formal action that a school district must take to exercise the “City Option,” but MPS has done so. *Deutsch v. Teel*, 400 F. Supp. 598, 601 (E.D. Wis. 1975) (“A review of the transportation policy for Milwaukee public schools reveals that the Board of School Directors has utilized the ‘city option’ statute in allocating school bus service”).

ANSWERING PARAGRAPH NO. 22: Admit that defendant has exercised the “City Option.” Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the

answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 23: Because MPS is acting under the City Option it can determine its own transportation policies, but under Section 121.54(1)(b) it must provide transportation with *reasonable uniformity* to students in public and private schools.

ANSWERING PARAGRAPH NO. 23: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 24: The MPS transportation policies are set forth in MPS Administrative Policy 4.04 (a copy of which is attached hereto as Exhibit A).

ANSWERING PARAGRAPH NO. 24: Admit.

PARAGRAPH NO. 25: With respect to students in both public and private high schools, MPS Policy 4.04 states that they will only receive transportation from MPS if they live more than two miles from school **and** more than one mile walking distance from public transportation.

ANSWERING PARAGRAPH NO. 25: Deny plaintiff's allegation that this specific policy provision states the only scenario that such a student may receive transportation. Deny that plaintiff's assertion is a complete account of the applicable transportation policy provision. Admit that such transportation policy provision is the general determination of student transportation, but only to the extent that the transportation is to the designated school within the student's attendance area.

PARAGRAPH NO. 26: However, MPS Policy 4.04(5)(a)2 has an exception to the above for "City-Wide Schools." According to the exception, "Transportation service shall be provided to the public secondary school students whose residences are more than two miles or more walking distance from assigned city-wide schools." Under the exception, the requirement that the student live more than one mile from public transportation is eliminated.

ANSWERING PARAGRAPH NO. 26: Admit that the MPS policy has an exception to the general transportation policy provision for those MPS specialty schools designated as Citywide Schools; admit that plaintiff correctly asserts this policy provision.

PARAGRAPH NO. 27: So long as the student resides more than two miles from the public city-wide high school they attend, under MPS Policy 4.04(5)(a)(2), MPS provides transportation to its students to their city-wide public schools without regard to the race of the student and without regard to the racial composition of the attendance area in which they reside.

ANSWERING PARAGRAPH NO. 27: Admit, as plaintiff asserts, that defendant does not discriminate in its application of the stated transportation policy provision.

PARAGRAPH NO. 28: For example, Golda Meir High School is a public city-wide high school located at 1555 M.L.K. Drive, Milwaukee, WI. MPS will provide transportation to all students who attend Golda Meir High School who live more than 2 miles from the school without regard to where in the City they live and without regard to their race.

ANSWERING PARAGRAPH NO. 28: Admit, as plaintiff asserts, that defendant does not discriminate in its application of the stated transportation policy provision. Admit, as plaintiff asserts, that defendant applies the transportation policy provision as it is so stated in the policy.

PARAGRAPH NO. 29: St. Joan Antida is less than a mile from Golda Meir High School and also has a city-wide attendance area, but MPS treats students at St. Joan Antida differently than students at Gold Meir. MPS provides no transportation for any student at St. Joan Antida.

ANSWERING PARAGRAPH NO. 29: Admit, as plaintiff asserts, that St. Joan Antida has an attendance area that covers the entire city of Milwaukee. Deny plaintiff's assertion that Golda Meir High School has a defined attendance area. Admit that no student of St. Joan Antida qualified for transportation services for the 2016-2017 school year, but deny that defendant has never provided transportation to any student of St. Joan Antida. Deny plaintiff's implication that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an

answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 30: St. Joan Antida currently has an enrollment of 143 students, at least 70 of whom have residences that are more than two miles walking distance from St. Joan Antida and, as a result, are similarly situated to public school students who are provided with transportation from MPS to public schools with city wide attendance area.

ANSWERING PARAGRAPH NO. 30: The answering defendant lacks information or knowledge necessary to form a belief as to the truth or falsity of St. Joan Antida's stated student enrollment and student residence information. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 31: These 70 students are entitled to transportation from MPS either under §121.54(2)(b) or, alternatively, under §121.54(1)(b), assuming that MPS is operating under the City Option. But even absent these statutory provisions, these students should be entitled to transportation under the Equal Protection Clause because they are similarly situated to public students who are being provided transportation.

ANSWERING PARAGRAPH NO. 31: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 32: However, MPS has willfully or negligently failed to provide transportation for any of these 70 students. These students will be referred to herein as the 70 students denied transportation by MPS.

ANSWERING PARAGRAPH NO. 32: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is

required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 33: On November 16, 2016, St. Joan Antida sent a Notice of Claim to MPS arising out of the facts that underlie this complaint. A roster of the 70 students who attend St. Joan Antida and who are entitled to transportation by MPS was attached to the Notice of Claim. The roster is not being attached hereto in accordance with state and federal laws on pupil confidentiality but because the roster was attached to the Notice of Claim MPS knows the identity and addresses of these 70 students.

ANSWERING PARAGRAPH NO. 33: Admit, except that defendant continues to deny that said students are entitled to transportation by MPS.

PARAGRAPH NO. 34: Because of MPS's failure to perform its obligations as required by law, St. Joan Antida is harmed in at least two ways. First, it is harder for St. Joan Antida to recruit students because of the difficulties caused by MPS's failure to provide transportation. This results in St. Joan Antida having fewer students than it would have if MPS met its legal obligations. Second, St. Joan Antida partially makes up for MPS's failure to provide transportation to its students by providing such transportation on its own. For example, St. Joan Antida is providing such transportation to the 70 students denied transportation by MPS at a cost to St. Joan Antida of \$108,200 for the 2016-2017 school year.

ANSWERING PARAGRAPH NO. 34: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 35: Students and their families are harmed by MPS's failure to meet its legal obligations because part of the money they pay in tuition must be used to provide transportation rather than for other educational programming and because the transportation provided by St. Joan Antida, in many causes, is less efficient and less convenient than transportation that would be provided by MPS, if MPS was meeting its legal obligations.

ANSWERING PARAGRAPH NO. 35: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is

required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 36: Students and their families are also harmed because they are being denied a benefit that MPS is legally obligated to provide with the harm being measured, at least in one way, by the cost of substitute services which in this case was \$108,200 for the 2016-2017 school year.

ANSWERING PARAGRAPH NO. 36: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 37: As consideration for receiving transportation from St. Joan Antida, the parents of each of the 70 students denied transportation by MPS have given an assignment of their transportation rights and benefits to St. Joan Antida.

ANSWERING PARAGRAPH NO. 37: The answering defendant lacks information or knowledge necessary to form a belief as to truth or falsity of plaintiff's assertions, and so it denies the same.

PARAGRAPH NO. 38: Although St. Joan Antida has asked MPS to provide a written explanation as to why MPS is not providing transportation for the 70 students denied transportation by MPS, MPS has not done so.

ANSWERING PARAGRAPH NO. 38: Deny that St. Joan Antida was not provided an explanation as to why MPS is not providing transportation to said students. The answering defendant lacks information or knowledge necessary to form a belief as to the truth or falsity of plaintiff's assertion that it did not receive *written* explanation, except that MPS's transportation policy is in writing and was made available to St. Joan Antida, and so it denies the same.

PARAGRAPH NO. 39: The Fourteenth Amendment's equal protection guarantee provides a right to be free from invidious discrimination in statutory classifications as well as governmental activity.

ANSWERING PARAGRAPH NO. 39: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 40: Violations of the Fourteenth Amendment's equal protection clause are enforceable under 42 U.S.C. § 1983 which provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

ANSWERING PARAGRAPH NO. 40: Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 41: MPS acted under color of law in depriving the 70 students attending a private religious school of their right to equal protection under the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

ANSWERING PARAGRAPH NO. 41: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 42: Upon information and belief, MPS has adopted policies (including but not limited to MPS Policy 4.04) and acted according to those policies in denying students who attend a private religious school of equal access to transportation.

ANSWERING PARAGRAPH NO. 42: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions,

to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 43: In addition, upon information and belief, MPS has adopted a wide-spread practice of denying students who attend a private religious school of equal access to transportation that is so permanent and well-settled as to constitute a custom or usage with the force of law.

ANSWERING PARAGRAPH NO. 43: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 44: By discriminating against these students who attend a private religious school, MPS is violating their rights to Equal Protection under the U.S. Constitution.

ANSWERING PARAGRAPH NO. 44: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 45: The 70 students denied transportation by MPS and their families along with St. Joan Antida have suffered harm as a result of the denial of transportation by MPS.

ANSWERING PARAGRAPH NO. 45: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is

required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 46: Under Section 1983, the remedies for such violation include those contained in 42 U.S.C. § 1988.

ANSWERING PARAGRAPH NO. 46: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

SECOND CLAIM FOR RELIEF
(Violation of Wis. Stat. § 121.54)

PARAGRAPH NO. 47: The Plaintiff realleges and incorporates by reference the allegations in the foregoing paragraphs.

ANSWERING PARAGRAPH NO. 47: Defendant realleges and incorporates by reference the answers in the foregoing paragraphs.

PARAGRAPH NO. 48: By discriminating against the 70 students denied transportation by MPS because these students attend a private religious school, MPS is violating its statutory obligation to treat them with reasonable uniformity with public school students as required by Wis. Stat. §121.54(1)(b).

ANSWERING PARAGRAPH NO. 48: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

PARAGRAPH NO. 49: The 70 students denied transportation by MPS and their families along with St. Joan Antida have suffered harm as a result of the denial of transportation by MPS.

ANSWERING PARAGRAPH NO. 49: Deny plaintiff's assertion that any federal or state laws were violated. Assert that the allegations contained therein call for legal conclusions, to which the answering defendant need not respond further. To the extent that an answer is required, the answering defendant lacks information or knowledge necessary to form a belief as to their truth or falsity, and so it denies the same.

AFFIRMATIVE DEFENSES

AS AND FOR AFFIRMATIVE DEFENSES, defendant Milwaukee Public School District alleges and states to the Court as follows:

1. Milwaukee Public School District is not a suable entity.
2. Plaintiff has failed to state a claim upon which relief can be granted.
3. Plaintiff has no private cause of action on its second claim for relief.
4. Defendant is entitled to immunity on the second claim for relief pursuant to Wis. Stat. § 893.80(4).
5. Upon information and belief, plaintiff may have failed to mitigate damages.
6. Upon information and belief, plaintiff may be barred by the statute of limitations for part of its second claim for relief.

WHEREFORE, defendant Milwaukee Public School District demands judgment as follows:

1. Dismissal of plaintiff's complaint on the merits, together with costs and disbursements; and
2. For such other and further relief as the court may deem just and equitable.

JURY DEMAND

Defendant Milwaukee Public School District demands a trial by jury of all issues so triable.

Dated and signed in Milwaukee, Wisconsin this 9th day of May, 2017.

GRANT F. LANGLEY
City Attorney

s/ CALVIN V. FERMIN
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