

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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ST. AUGUSTINE SCHOOL, et al.,

Plaintiffs,

v.

Case No. 16-CV-575-LA

TONY EVERS, et. al.

Defendants.

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DEFENDANT TONY EVERS ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFFS' COMPLAINT

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The Defendant, State Superintendent Tony Evers, by his undersigned legal counsel, answers the plaintiffs' complaint as follows:

1. Admits the allegations contained in Paragraph 1 that this case involves decisions by the Friess Lake School District and Tony Evers, as State Superintendent of Public Instruction. Denies the remaining allegations contained in Paragraph 1, and affirmatively alleges the Plaintiff, St. Augustine School, describes itself as Roman Catholic. Attached hereto as Exhibit A is a true and correct copy of the Home, Academics, and Calendar parts of the St. Augustine School website on January 4, 2016.

**PARTIES**

2. Admits the allegations contained in Paragraph 2 alleging St. Augustine School is a Wisconsin corporation and has the address alleged. Admits, on information and belief, the allegations that St. Augustine School is operated and under the control of its own board of directors. Denies sufficient information and knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 2 and there denies the same.

3. Admits, upon information and belief, the allegations contained in Paragraph 3.

4. Admits the allegations contained in Paragraph 4 regarding the capacity in which Tony Evers is sued and the address of his principal place of business. The remaining allegations are legal conclusions for which no answer is necessary or required.

5. Admits the allegations contained in Paragraph 5.

6. The allegations contained in Paragraph 6 consist of legal conclusions for which no answer is necessary or required.

7. The allegations contained in Paragraph 7 consist of legal conclusions for which no answer is necessary or required; to the extent an answer is deemed necessary, denies the allegations.

8. Admits the allegations contained in Paragraph 8 that Article 1, § 23 of the Wisconsin Constitution was created in 1967 and that the quotation set forth is accurate.

9. The allegations contained in Paragraph 9 consist of legal conclusions for which no answer is necessary or required.

10. The allegations contained in Paragraph 10 consist of legal conclusions for which no answer is necessary or required.

11. The allegations contained in Paragraph 11 consist of legal conclusions for which no answer is necessary or required.

12. The allegations contained in Paragraph 12 consist of legal conclusions for which no answer is necessary or required. To the extent an answer to the allegations is deemed necessary, denies.

13. Denies the allegations in Paragraph 13.

14. Denies sufficient knowledge or information to form a belief and as to the truth of the allegations contained in Paragraph 14 and therefore denies the same.

15. Admits that St. Augustine School claims in Paragraph 15 that its attendance area is coextensive with the boundaries of the Friess Lake School District. Denies sufficient knowledge and information to form an opinion as to the truth of the assertion. Denies any remaining allegations contained in Paragraph 15.

16. On information and belief, admits the allegations contained in Paragraph 16.

17. Denies sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 17 and therefore denies the same.

18. Admits the allegation contained in Paragraph 18.

19. The allegations contained in Paragraph 19 are legal conclusions for which no answer is necessary or required.

20. Denies sufficient knowledge or information to form a belief as to whether the allegation in Paragraph 20 that a parent contract is the most logical form of transportation and therefore denies the same. Alleges Friess Lake School District stated the cost of a parent contract would be approximately \$1,500.00.

21. Admits the allegation contained in Paragraph 21 that on August 29, 2015, the Friess Lake School District denied a request to provide transportation to the Forro children and affirmative alleges that the School District's Decision speaks for itself.

22. Admits the allegations contained in Paragraph 22.

23. Denies the allegations contained in Paragraph 23.

24. Denies the allegations contained in Paragraph 24..

25. The allegations contained in Paragraph 19 are legal conclusions for which no answer is necessary or required.

26. Denies sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 26, and therefore denies the same.

27. Admits, upon information and belief.

28. Denies sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28, and therefore denies the same.

29. The allegations contained in Paragraph 19 are legal conclusions for which no answer is necessary or required.

30. The allegation contained in Paragraph 30 that St. Augustine School and St. Gabriel School are not “affiliated” is a legal conclusion for which no answer is necessary or required. Affirmatively alleges that both St. Augustine School and St. Gabriel School are Roman Catholic schools.

31. Denies sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 31 and therefore denies the same.

32. Admits the allegation contained in Paragraph 32 that St. Augustine School is a Wisconsin corporation and has its own articles of incorporation and bylaws. Denies sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 32, and therefore denies the same.

33. In answering Paragraph 33, admit St. Augustine School identifies itself as a Roman Catholic school. Denies knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 33.

34. Alleges that Exhibit A to the Complaint, referred to in Paragraph 34, speaks for itself. Also alleges Exhibit A to the Complaint was not part of the record reviewed by the State Superintendent in reaching his decision about which the Plaintiffs herein complain.

35. The allegations contained in Paragraph 35 are legal conclusions for which no answer is necessary or required.

36. The allegations in Paragraph 36 are legal conclusions for which no answer is necessary or required.

37. The allegations contained in Paragraph 37 are legal conclusions for which no answer is necessary or required.

38. The allegations contained in Paragraph 38 are legal conclusions for which no responsive pleading is necessary or required.

39. In answering Paragraph 39, affirmatively alleges the Friess Lake School District took the position that St. Augustine School and St. Gabriel School were Roman Catholic schools. Denies the remaining allegations contained in Paragraph 39.

40. Denies the allegations contained in Paragraph 40.

41. The allegations in Paragraph 41 are legal conclusions for which no answer is necessary or required.

42. The allegations in Paragraph 42 are legal conclusions for which no answer is necessary or required.

43. The allegations in Paragraph 43 are legal conclusions for which no answer is necessary or required.

44. Denies the allegations contained in Paragraph 44.

45. Denies the allegations contained in Paragraph 45.

46. Admits that Wis. Stat. § 121.51 allows the State Superintendent to make a final determination on “attendance area” only where the private school and school board cannot agree and both parties request the State Superintendent to make such a determination. Denies any remaining allegations contained in Paragraph 46.

47. In answering Paragraph 47, admits that St. Augustine and Friess Lake School District requested the State Superintendent to make a final determination in December 2015. Denies any remaining allegations.

48. In answering Paragraph 48, admits that Superintendent Evers, through his designee, Michael Thompson, issued a decision upholding the Friess Lake determination that St. Augustine School, Inc. and St. Gabriel School were both affiliated with the Roman Catholic denomination, that Friess Lake already provided transportation to St. Gabriel School whose attendance area is co-extensive with that of the Friess Lake School District, and therefore, Friess Lake School District was not required to provide transportation to students attending the St. Augustine School, Inc. Admit that Exhibit B to the Complaint is a true and correct copy of the State Superintendent’s decision. Denies any remaining allegations.

49. Denies the allegations contained in Paragraph 49.

50. Denies the allegations contained in Paragraph 50, and affirmatively alleges St. Augustine determined it was affiliated with the Roman Catholic denomination and the State Superintendent accepted that determination.

51. Denies the allegations contained in Paragraph 51 and affirmatively alleges St. Augustine determined it was affiliated with the Roman Catholic denomination and the State Superintendent accepted that determination.

52. Denies the allegations contained in paragraph 52 and affirmatively alleges alleges St. Augustine determined it was affiliated with the Roman Catholic denomination and the State Superintendent accepted that determination.

53. Denies the allegations contained in Paragraph 53.

54. Denies the allegations contained in Paragraph 54.

55. Denies the allegations contained in Paragraph 55..

56. Denies the allegations contained in Paragraph 56..

57. Denies the allegations contained in Paragraph 57. .

58. This defendant admits, denies, alleges, and incorporates by reference his responses as set forth above.

59. Denies the allegations set forth in Paragraph 59.

60. Denies the allegations set forth in Paragraph 60.

61. The allegations in Paragraph 61 are legal conclusions for which no answer is necessary or required.

62. The allegations in Paragraph 62 are legal conclusions for which no answer is necessary or required.

63. The allegations in Paragraph 63 are legal conclusions for which no answer is necessary or required.

64. Denies the allegations in Paragraph 64.

65. The allegations in Paragraph 65 are legal conclusions for which no answer is necessary or required.

66. The allegations in Paragraph 66 are legal conclusions for which no answer is necessary or required.

67. Denies the allegations set forth in Paragraph 67.

68. The allegations in Paragraph 66 are legal conclusions for which no answer is necessary or required.

69. Denies the allegation set forth in Paragraph 69.

70. This defendant admits, denies, alleges, and incorporates by reference his responses as set forth above.

71. Denies the allegations contained in Paragraph 71.

72. Denies the allegations contained in Paragraph 72.

73. Denies sufficient knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 73.

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

#### **RELIEF REQUESTED**

- A. Deny that Plaintiffs are entitled to declaratory relief.
- B. Deny that Plaintiffs are entitled to damages or injunctive relief.
- C. Deny that Plaintiffs are entitled to costs and attorneys' fees.
- D. Deny that Plaintiffs are entitled to any other or further relief.

#### **AFFIRMATIVE DEFENSES**

1. The complaint fails to state a claim upon which relief may be granted against Superintendent Evers.

2. Superintendent Evers, in his official capacity is immune from Plaintiff's claims under the Eleventh Amendment to the United States Constitution because suit against him in his

official capacity constitutes a suit against the State of Wisconsin and the State of Wisconsin is immune from suit in this matter.

3. Superintendent Evers in his official capacity is not a “person” as that term is used in § 1983, and Superintendent Evers in his official capacity may not be held liable for damages under § 1983.

4. The Plaintiffs are not entitled to damages because of qualified immunity, as they cannot show that Superintendent Evers violated clearly established law.

5. The Plaintiffs have not exhausted their administrative remedies.

6. The Plaintiffs are not entitled to damages, including compensatory or punitive damages, because they cannot show that Superintendent Evers engaged in intentional discrimination.

7. State Superintendent Evers complied with all applicable state and federal laws in determining that Friess Lake School District was not required to provide transportation to St. Augustine School.

8. State Superintendent Evers acted in accordance with Wis. Stat. § 121.51(1) and for legitimate, nondiscriminatory reasons grounded in the law and its factors.

9. The Plaintiffs are equitably estopped from bringing the claims set forth in the Plaintiffs’ Complaint because:

(a) St. Augustine represented on its public website that it is affiliated with the Roman Catholic denomination.

(b) The State Superintendent relied upon the representations contained on St. Augustine Schools’ public website in reaching his Decision that is being appealed herein.

(c) The Plaintiffs now assert St. Augustine School is not affiliated with the Roman Catholic denomination and that the State Superintendent was not legally permitted to consider St. Augustine Schools' website in reaching his Decision. As a result, Plaintiffs have filed the instant action against the State Superintendent alleging he violated Plaintiffs' rights and is thus subject to damages, costs, and attorneys' fees.

9. State Superintendent Evers reserves the right to name additional affirmative defenses as they became known through further discovery or otherwise in the action.

WHEREFORE, defendant Superintendent Evers demands judgment in his favor and against the plaintiffs, dismissal of the complaint in its entirety, an order awarding attorneys' fees to him, and any other relief the Court deems appropriate under the circumstances.

Dated this 9th day of June, 2016.

s/ Laura M. Varriale  
Laura M. Varriale  
State Bar No. 1035902  
Attorney for Defendant Tony Evers

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