

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA HERNDEN,

Plaintiff,

Judge Mark A. Goldsmith
Magistrate David R. Grand
No. 22-12313

v

CHIPPEWA VALLEY SCHOOLS,
FRANK BEDNARD and ELIZABETH
PYDEN,

Defendants.

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SUPPLEMENTAL ANSWER PURSUANT TO FRCP 15

Defendants, CHIPPEWA VALLEY SCHOOLS, FRANK BEDNARD and ELIZABETH PYDEN, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., state their supplemental answer to Plaintiff's Complaint as follows:

INTRODUCTION AND PARTIES

1. In answer to paragraph 1, Defendants deny the allegations contained therein for the reason that they are untrue.

2. In answer to paragraph 2, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendant further denies this request for the following reasons. First, “special needs” is not an educational term under the IDEA or MARSE. Furthermore, the School District is prohibited from releasing what amounts to “educational records” under a federal law known as FERPA. Once an appropriate protective order is in place, the School District has no objection to producing such educational file to the extent it exists.**

3. In answer to paragraph 3, Defendants deny the allegations contained therein for the reason that they are untrue. Defendants affirmatively aver that Chippewa Valley Schools is a Michigan Public School District performing a governmental function in Macomb County, Michigan, to wit, providing a public education to students within the district and, as such, the School is a governmental agency and is immune from suit herein. **Supplemental Answer: The School District admits that the Board of Education is authorized to promulgate policies under the Revised School Code, and such policies are available at**

<https://go.boarddocs.com/mi/chip/Board.nsf/Public?open&id=policies>.

However, Plaintiff has not defined what she means by policies. In the colloquial sense, individual schools within the School District can and do adopt and implement practices and procedures at the building level.

4. In answer to paragraph 4, Defendants admit the allegations contained therein.

5. In answer to paragraph 5, Defendants admit the allegations contained therein.

6. In answer to paragraph 6, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: By way of supplement, Defendants admit that Plaintiff's Complaint speaks for itself. However, they are affirmatively state that all claims—whether in official or individual capacity—lack all legal merit and should be dismissed.**

7. In answer to paragraph 7, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: The School District admits that the Board of Education is authorized to promulgate**

policies under the Revised School Code, and such policies are available at <https://go.boarddocs.com/mi/chip/Board.nsf/Public?open&id=policies>.

However, Plaintiff has not defined what she means by policies. In the colloquial sense, individual schools within the School District can and do adopt and implement practices and procedures at the building level.

JURISDICTION AND VENUE

8. In answer to paragraph 8, Defendants hereby incorporate by reference their responses contained in paragraphs 1 through 7 inclusive, as if fully set forth herein.

9. In answer to paragraph 9, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: By way of supplement, Defendants admit that Plaintiff's Complaint speaks for itself. However, they are affirmatively state that all claims—whether in official or individual capacity—lack all legal merit and should be dismissed.**

10. In answer to paragraph 10, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer:**

Defendants admit that the Court has subject matter jurisdiction over claims asserting a violation of the US Constitution.

11. In answer to paragraph 11, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: Defendant admits that federal courts have authority to award declaratory relief and injunctive relief in certain cases. Defendants deny that Plaintiff is in anyway entitled to such relief here.**

12. In answer to paragraph 12, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: Defendants affirmatively state that they are not challenging venue.**

13. In answer to paragraph 13, Defendants deny the allegations contained therein for the reason that they are untrue.

GENERAL ALLEGATIONS

14. In answer to paragraph 14, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants**

reaffirm its prior answer. Defendants are not privy to Plaintiff's employment records and do not know her day-to-day employment status. Defendant further denies that "special needs" is the appropriate terminology for a child with an IEP. Defendant further states that, pursuant to FERPA and MARSE—it cannot simply include educational records/facts about a student in this Answer.

15. In answer to paragraph 15, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendant further states that, pursuant to FERPA and MARSE—it cannot simply include educational records/facts about a student in this Answer. If Defendants responded to this allegation, it would constitute a privacy violation of the student, and would jeopardize federal funding. Once an appropriate protective order is in place, such records can be produced and filed in accordance with said Order.**

16. In answer to paragraph 16, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs.

17. In answer to paragraph 17, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants admit**

that Plaintiff vocalized herself in a wide variety of mediums. Defendants affirmatively state that such speech was not protected speech—especially speech that constitute threatening, harassing, and obstructing public meetings.

18. In answer to paragraph 18, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants are not clairvoyant and cannot answer how Plaintiff perceived things. Furthermore Elizabeth Pyden acted appropriately and civilly—contrasted with Plaintiff's abusive and threatening behavior. For example, Plaintiff sending an email saying she was interrupted and then saying “the 1st 2 were free. . .” That language is concerning and threatening.**

19. In answer to paragraph 19, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: It is admitted that emails from a public official—which are public under FOIA—were made sent. Defendants affirmatively state that such action is protected First Amendment Speech.**

20. In answer to paragraph 20, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs.

21. In answer to paragraph 21, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs.

22. In answer to paragraph 22, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants are not clairvoyant and cannot answer how Plaintiff perceived things. Furthermore, Elizabeth Pyden acted appropriately and civilly—contrasted with Plaintiff’s abusive and threatening behavior. For example, Plaintiff sending an email saying she was interrupted and then saying “the 1st 2 were free. . .” That language, when coupled with her behavior, was concerning and threatening. Defendants affirmatively state that they did not violate the Open Meetings Act in any manner.**

23. In answer to paragraph 23, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: It is admitted that the attached emails are accurate.**

24. In answer to paragraph 24, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: It is admitted that**

the attached emails are accurate. It is further affirmatively stated that it appropriate for an individual to alert law enforcement agencies to potential criminal violations.

25. In answer to paragraph 25, Defendants deny the allegations contained therein for the reason that they are untrue.

COUNT 1
Against all Defendants
VIOLATION OF PLAINTIFF'S FIRST AMENDMENT
RIGHTS BY RETALIATION

26. In answer to paragraph 26, Defendants hereby incorporate by reference their responses contained in paragraphs 1 through 25 inclusive, as if fully set forth herein.

27. In answer to paragraph 27, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: It is admitted that the attached emails are accurate.**

28. In answer to paragraph 28, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: Defendants further state this allegation is confusing and inartful. Defendants admit that the Board of Education is authorized promulgate policies, which are**

publicly posted on the District's webpage. Defendants further admit that a school district is a governmental entity.

29. In answer to paragraph 29, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: Defendant denies this allegation because it is untrue. Plaintiff's speech was not protected activity. Defendants further state that Plaintiff cannot prove a cause of action for First Amendment Retaliation.**

30. In answer to paragraph 30, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants cannot state who actually sent any such email as they are not physically present to observe the sender. It is Plaintiff's burden to authenticate and show she sent an email. Defendants do admit that they received emails that purport to be sent by Plaintiff.**

31. In answer to paragraph 31, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants admit that the email sent by Defendant Pyden speaks for itself, and its authenticity is**

not disputed.

32. In answer to paragraph 32, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants cannot state who actually sent any such email as they are not physically present to observe the sender. It is Plaintiff's burden to authenticate and show she sent an email. Defendants do admit that they received emails that purport to be sent by Plaintiff.**

33. In answer to paragraph 33, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants admit that the email sent by Defendant Pyden speaks for itself, and its authenticity is not disputed.**

34. In answer to paragraph 34, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants cannot state who actually sent any such email as they are not physically present to observe the sender. It is Plaintiff's burden to authenticate and show she sent an email. Defendants do admit that they received emails that purport to be sent by Plaintiff.**

35. In answer to paragraph 35, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants admit that the email sent by Defendant Pyden speaks for itself, and its authenticity is not disputed.**

36. In answer to paragraph 36, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants admit that the email sent by Defendant Pyden speaks for itself, and its authenticity is not disputed.**

37. In answer to paragraph 37, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court.

38. In answer to paragraph 38, Defendants deny the allegations contained therein for the reason that they are untrue.

39. In answer to paragraph 39, Defendants deny the allegations contained therein for the reason that they are untrue.

40. In answer to paragraph 40, Defendants deny the allegations contained therein for the reason that they are untrue.

41. In answer to paragraph 41, Defendants deny the allegations contained therein for the reason that they are untrue.

42. In answer to paragraph 42, Defendants deny the allegations contained therein for the reason that they are untrue.

43. In answer to paragraph 43, Defendants deny the allegations contained therein for the reason that they are untrue.

44. In answer to paragraph 44, Defendants deny the allegations contained therein for the reason that they are untrue.

45. In answer to paragraph 45, Defendants deny the allegations contained therein for the reason that they are untrue.

46. In answer to paragraph 46, Defendants deny the allegations contained therein for the reason that they are untrue.

47. In answer to paragraph 47, Defendants deny the allegations contained therein for the reason that they are untrue.

48. In answer to paragraph 48, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants deny the allegation in the manner stated. Much of Plaintiff's speech was not protected under the First Amendment**

49. In answer to paragraph 49, Defendants neither admit nor deny the

allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants cannot state who actually sent any such email as they are not physically present to observe the sender. It is Plaintiff's burden to authenticate and show she sent an email. Defendants do admit that they received emails that purport to be sent by Plaintiff.**

50. In answer to paragraph 50, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants cannot state who actually sent any such email as they are not physically present to observe the sender. It is Plaintiff's burden to authenticate and show she sent an email. Defendants do admit that they received emails that purport to be sent by Plaintiff and Defendants admit that the content of said email speaks for itself.**

51. In answer to paragraph 51, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs.

52. In answer to paragraph 52, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants admit that the email sent by Defendant Bednard speaks for itself, and its authenticity**

is not disputed.

53. In answer to paragraph 53, Defendants neither admit nor deny the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiffs to her proofs. **Supplemental Answer: Defendants admit that the email sent by Defendant Bednard speaks for itself, and its authenticity is not disputed.**

54. In answer to paragraph 54, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: Denied because it is untrue.**

55. In answer to paragraph 55, Defendants deny the allegations contained therein for the reason that they are untrue.

56. In answer to paragraph 56, Defendants deny the allegations contained therein for the reason that they are untrue.

57. In answer to paragraph 57, Defendants deny the allegations contained therein for the reason that they are untrue.

58. In answer to paragraph 58, Defendants deny the allegations contained therein for the reason that they are untrue.

59. In answer to paragraph 59, Defendants neither admit nor deny the

allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: Denied in the manner alleged. As the Supreme Court has explained in *City of Tahlequah v. Bond*, the operative inquiry requires examining highly analogous facts—not simply saying the First Amendment is clearly established.**

60. In answer to paragraph 60, Defendants neither admit nor deny the allegations contained therein for the reason that they constitute conclusions of law, rather than allegations of fact, and, therefore, leave Plaintiff to her proofs thereon with a final determination to be made by the Court. **Supplemental Answer: Defendants further state that an email sent by an individual board member does not constitute board action. Board action requires a public meeting, a quorum, and a majority vote.**

61. In answer to paragraph 61, Defendants admit the allegations contained therein.

62. In answer to paragraph 62, Defendants deny the allegations contained therein for the reason that they are untrue.

RELIEF REQUESTED

WHEREFORE, Defendants, CHIPPEWA VALLEY SCHOOLS, FRANK BEDNARD and ELIZABETH PYDEN, respectfully request that this Honorable

Court enter an order of no cause of action as to Defendants, together with costs and attorney fees so wrongfully sustained.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

DATED: November 22, 2022

AFFIRMATIVE DEFENSES

Defendants, CHIPPEWA VALLEY SCHOOLS, FRANK BEDNARD and ELIZABETH PYDEN, by and through their attorneys, GIARMARCO, MULLINS & HORTON, P.C., state their Affirmative Defenses as follows:

1. Plaintiff has failed to state a claim or cause of action against these Defendants as to which relief can be granted as a matter of fact and/or law.
2. Defendants will show and rely upon at the time of trial that at all times pertinent hereto, Defendants were engaged in the performance of governmental functions and, therefore, are immune from suit for civil damages for this claim pursuant to the principles of governmental immunity as set forth in case law and the statutes of this State.
3. The individual Defendants, in whole or in part, are entitled to qualified immunity.
4. The individual Defendants, in whole or in part, are entitled to absolute immunity.

5. Defendants, FRANK BEDNARD and ELIZABETH PYDEN, are immune from suit because they took no individual action.

6. Defendants will show at the time of trial that Plaintiff has failed to mitigate her damages, if any.

7. Plaintiff has suffered no harm upon which an award of monetary damages may be based.

8. Defendant School District can face no liability for Plaintiff's claims because it had no policy, practice or custom that abridged any of Plaintiff's statutory or constitutional rights.

9. Defendant School District has the right to control the activities of its employees and to regulate the time, manner, place and duration of communications disruptive to the educational mission and environment of the school.

10. The policies adopted by Defendant School District concerning derogatory comments are a reasonable regulation imposed by the School District in order to maintain order within the district, and otherwise regulate conduct on school grounds during school activities in order to prevent disruption of the school's mission and educational environment.

11. Defendant School District has the authority under state law to determine the information disseminated and/or distributed to the school community.

12. Defendant School District does not discriminate against individuals'

free speech based on viewpoint.

13. The proposed expressive conduct by Plaintiff herein, if allowed to occur, would involve the District in allowing impressionable students and families to be exposed to offensive communications without the knowledge or consent of their parents, thereby creating an endorsement of such views by the District.

14. The students' attendance at Chippewa Valley Schools is involuntary, and the allowance of offensive statements creates an unlawful endorsement of such views.

15. Defendants will show at the time of trial that all actions complained of in Plaintiff's Complaint were absolutely or qualifiedly privileged pursuant to the Constitutions, statutes and common law of the State of Michigan and of the United States, and Defendants never acted or communicated with malice in reference to the Plaintiff.

16. Plaintiff's claims are not judiciable; Plaintiff's claims are, or will be, moot.

17. Plaintiff's claims are barred by estoppel.

18. Defendants will show at the time of trial that Plaintiff was guilty of negligence or other willful conduct which contributed to the incidents complained of, and her conduct in this regard was the sole or partial cause of any injury complained of, and Plaintiff's recovery should be barred or diminished to the extent

of such conduct.

19. Defendants will show at the time of trial that they were guided by and strictly observed all legal duties and obligations imposed by law or otherwise; and further, that all actions of any of Defendants' agents, servants, employees or associates were careful, prudent, proper and lawful.

20. Defendants will show and rely upon at the time of trial that there was no discriminatory intent.

21. Plaintiff may have failed to exhaust her administrative remedies.

22. Defendants' actions and speech herein is protected by the First Amendment.

23. Defendants reserve the right to amend their Answer, including additional affirmative defenses, upon completion of investigation and discovery of this cause.

/s/TIMOTHY J. MULLINS

GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

DATED: November 22, 2022

CERTIFICATE OF ELECTRONIC SERVICE

TIMOTHY J. MULLINS states that on November 22, 2022, he did serve a copy of the **SUPPLEMENTAL ANSWER PURSUANT TO FRCP 15** via the United States District Court electronic transmission.

/s/TIMOTHY J. MULLINS

GIARMARCO, MULLINS & HORTON, PC

Attorney for Defendants

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