

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

S.W., a minor by S.G., his parent, and
S.G., in her individual capacity;
Ca.R. a minor, and Ch.R, a minor, by D.R.,
their parent, and D.R. in her individual capacity;
P.F., a minor, by A.F., his parent, and
A.F., in his individual capacity;

R.W., a minor, by E.W., his parent, and
E.W., in her individual capacity,

S.B., a minor, by N.B. his parent, and
N.B. in her individual capacity.

Case No. 14-V-792

Plaintiffs,

vs.

Tony Evers, in his official capacity,
State of Wisconsin Department of Public Instruction,
Elkhorn Area School District,
Greendale School District,
Muskego-Norway School District,
Paris J1 School District,
Shorewood School District.

Defendants.

**DEFENDANT SHOREWOOD SCHOOL DISTRICT'S
ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT**

NOW COMES the defendant, SHOREWOOD SCHOOL DISTRICT (herein "Shorewood"), by its undersigned attorneys, and hereby sets forth the following as its Answer and Affirmative Defenses to the Amended Complaint filed by the Plaintiffs in the above-captioned case.

ANSWER

1. Admit that the State of Wisconsin has enacted Wis. Stat. § 118.51 governing open enrollment and that Wis. Stat. § 118.51 allows students to transfer to a school district other than the one in which they reside. As to the remaining allegations regarding quality and popularity of such open enrollment programs, Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

2. Deny the first three sentences. The remaining allegations contain a request for a legal ruling or determination which requires no answer.

PARTIES

3. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

4. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

5. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

6. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

7. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

8. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

9. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

10. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

11. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

12. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

13. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

14. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

15. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

16. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

17. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

18. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same

19. Admit that defendant, Tony Evers, is the Superintendent of the Department of Public Instruction and that his principal place of business is 125 S. Webster Street, Madison, WI 53707-7841, and that Superintendent Evers is being sued in his official capacity. The remaining allegations contain a request for a legal ruling or determination which requires no answer and/or

Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

20. Admit that DPI is an agency of the State of Wisconsin with its offices and principal place of business at 125 S. Webster Street, Madison, WI 53707-7841. The remaining allegations contain a request for a legal ruling or determination which requires no answer and/or Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

21. Admit.

22. Admit.

23. Admit.

24. Admit.

25. Admit.

26. The allegations contain a request for a legal ruling or determination which requires no answer and/or Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

JURISDICTION AND VENUE

27. The allegation contains a request for a legal ruling or determination which requires no answer, and therefore Shorewood denies the same.

28. The allegation contains a request for a legal ruling or determination which requires no answer, and therefore Shorewood denies the same.

29. The allegation contains a request for a legal ruling or determination which requires no answer, and therefore Shorewood denies the same.

**CAUSE OF ACTION FOR VIOLATION OF THE EQUAL PROTECTION CLAUSE OF
THE FOURTEENTH AMENDMENT, THE ADA, AND SECTION 504**

FACTUAL BACKGROUND

30. Deny that education as provided through and in accordance with the Open Enrollment Law is a service, program, or activity provided by the defendants. Admit that the DPI open enrollment website and the Legislative Fiscal Bureau website contain the stated references.

31. Deny.

32. Deny.

33. Deny that Shorewood sets separate quotas for children with disabilities, and Shorewood lacks knowledge or information sufficient to form a belief as to the number of children with disabilities who were rejected from open enrollment in 2013-2014, or whether Superintendent Evers or the DPI permit school districts to set separate quotas for children with disabilities or to deny appeals of such decisions by parents who have children with disabilities.. The remaining allegations contain a request for a legal ruling or determination which requires no answer, and therefore Shorewood denies the same.

34. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

35. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

36. Admit that the open enrollment form asks whether the pupil receives special education services and whether the pupil has an individualized education program (IEP). As to the remaining allegations, Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same

37. Deny that Wisconsin law permits discrimination against children with disabilities. The remaining allegations contain a request for a legal ruling or determination which requires no answer, and therefore Shorewood denies the same.

S.W.'s and S.G.'s experience with open enrollment

38. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

39. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

40. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

41. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

42. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

43. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

44. Deny that Wisconsin law permits discrimination against children with disabilities. The remaining allegations contain a request for a legal ruling or determination which requires no answer and/or Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

45. Deny that Wisconsin law permits discrimination against children with disabilities. The remaining allegations contain a request for a legal ruling or determination which requires no answer, and therefore Shorewood denies the same.

Ca.R.'s, Ch.R's AND D.R.'s experience with open enrollment

46. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

47. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

48. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

49. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

50. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

51. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

52. Deny that Wisconsin law permits discrimination against children with disabilities. The remaining allegations contain a request for a legal ruling or determination which requires no answer and/or Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

53. Deny that Wisconsin law permits discrimination against children with disabilities. The remaining allegations contain a request for a legal ruling or determination which requires no answer, and therefore Shorewood denies the same.

P.F.'s and A.F.'s experience with open enrollment

54. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

55. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

56. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

57. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

58. Deny that Wisconsin law permits discrimination against children with disabilities. The remaining allegations contain a request for a legal ruling or determination which requires no answer and/or Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

59. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

R.W.'s and E.W.'s experience with open enrollment.

60. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

61. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

62. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

63. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

64. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

65. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

66. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

67. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

68. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

69. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

N.B.'s and S.B.'s experience with open enrollment.

70. Admit that S.B. applied under the Open Enrollment Law to transfer into Shorewood School District. Deny that S.B.'s application to Shorewood was denied. As to the remaining allegations, Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

71. Admit that S.B. applied to transfer to a Shorewood school for the 2014-15 school year through open enrollment. As to the remaining allegations, Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

72. Admit that S.B.'s open enrollment application was accepted for the 2014-15 school year by Shorewood, and affirmatively assert that S.B.'s open enrollment application indicated that S.B. did not have any disability or that S.B. had any IEP requirements.

73. Deny the allegations as stated, and affirmatively assert that, on or about October 8, 2014, Shorewood informed N.B. that “[d]ue to inaccurate information provided on the application” Shorewood’s initial acceptance of S.B. under the open enrollment law had been revoked, and Shorewood informed N.B. that “[s]pace is not available in the special education or related services required in your child’s individualized education program.”

74. Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted and therefore denies the same.

75. Deny that Shorewood refused to allow S.B. to attend school in Shorewood because he was disabled. As to the remaining allegations, Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

76. Admit.

77. Admit as alleged, but affirmatively assert that DPI also ruled that S.B. was “no longer eligible to receive special education.”

78. Deny. Shorewood has contacted N.B. enrollment of S.B., and Shorewood has not refused to enroll S.B. after the DPI decision on December 17, 2014.

79. The allegations contain a request for a legal ruling or determination which requires no answer and/or Shorewood lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

80. Deny.

CLAIM FOR RELIEF

81. Deny that Wisconsin’s open Enrollment Law prevents the plaintiffs from being able to transfer to and receive an education from a school district other than the school district in

which they reside solely because of their abilities. The remaining allegations contain a request for a legal ruling or determination which requires no answer.

82. The allegations contain a request for a legal ruling or determination which requires no answer.

83. The allegations contain a request for a legal ruling or determination which requires no answer.

84. The allegations contain a request for a legal ruling or determination which requires no answer.

85. The allegations contain a request for a legal ruling or determination which requires no answer.

86. The allegations contain a request for a legal ruling or determination which requires no answer.

87. The allegations contain a request for a legal ruling or determination which requires no answer.

88. The allegations contain a request for a legal ruling or determination which requires no answer.

89. The allegations contain a request for a legal ruling or determination which requires no answer.

90. Admit that Shorewood adopted policies regarding open enrollment and acted according to those policies. Deny that Shorewood has deprived any children of their rights, privileges, or immunities secured by the Constitution and laws. The remaining allegations contain a request for a legal ruling or determination which requires no answer and/or Shorewood

lacks knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore denies the same.

91. Admit that Shorewood is a public entity and is a recipient of federal funding. The remaining allegations contain a request for a legal ruling or determination which requires no answer.

92. Deny.

93. The allegations contain a request for a legal ruling or determination which requires no answer.

94. The allegations contain a request for a legal ruling or determination which requires no answer.

95. Deny.

96. Deny that plaintiffs are entitled to any relief. The remaining allegations contain a request for a legal ruling or determination which requires no answer.

PRAYER FOR RELIEF

- A. Deny that plaintiff are entitled to such relief.
- B. Deny that plaintiffs are entitled to such relief.
- C. Deny that plaintiffs are entitled to such relief
- D. Deny that plaintiffs are entitled to such relief, and affirmatively assert that plaintiffs' request and claim is moot.
- E. Deny that plaintiffs are entitled to such relief.
- F. Deny that plaintiffs are entitled to such relief.

AFFIRMATIVE DEFENSES

As and for its Affirmative Defenses to the Complaint, the defendant, Shorewood, alleges as follows:

1. Plaintiffs are estopped from bringing their claims against Shorewood by their own actions or inactions.
2. Plaintiffs have waived their claims against Shorewood.
3. Plaintiffs have failed to state a claim upon which relief can be granted against Shorewood.
4. Plaintiffs have brought their claims against Shorewood in an improper venue.
5. Plaintiffs have not exhausted their administrative remedies before bringing this action against Shorewood.
6. Plaintiffs have failed to mitigate any damages they may have incurred, if any.
7. Defendant, Shorewood, has at all times acted according to the law and in a legitimate, non-discriminatory manner.
8. This Court lacks subject-matter jurisdiction over the claims asserted by Plaintiff.
9. Plaintiffs' claim against Shorewood is moot.
10. Defendant, Shorewood, reserves the right to name additional affirmative defenses as they may become known through further discovery or otherwise in this action.

WHEREFORE, defendant Shorewood School District, demands the following relief:

1. Judgment dismissing plaintiffs' Complaint in its entirety with prejudice;
2. For fees and costs incurred in this matter including attorneys' fees; and
3. Any other relief this Court deems just and equitable.

Dated this 27th day of March, 2015.

Respectfully submitted,

/s/ Kevin C. Pollard

Kevin C. Pollard

State Bar No. 1074929

Below Vetter Buikema Vliet & Olson, LLC

20855 Watertown Road, Suite 200

Waukesha, Wisconsin 53186

Attorneys for Shorewood School District