

STATE OF WISCONSIN

CIRCUIT COURT
Branch 5

OUTAGAMIE COUNTY

STATE OF WISCONSIN ex rel. JOHN KRUEGER,

Plaintiff

-v-

APPLETON AREA SCHOOL DISTRICT
BOARD OF EDUCATION

Case No.: 13-CV-868

and

Case Code: 30701

COMMUNICATION ARTS 1 MATERIALS
REVIEW COMMITTEE,

Defendants.

**DEFENDANTS APPLETON AREA SCHOOL DISTRICT BOARD OF EDUCATION'S
AND COMMUNICATION ARTS 1 MATERIALS REVIEW COMMITTEE'S ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

NOW COME the Defendants, Appleton Area School District Board of Education and Communication Arts 1 Materials Review Committee ("Defendants"), by their attorneys, Phillips Borowski, S.C., and as and for their Answer and Affirmative Defenses to the Plaintiff's Complaint in the above-captioned matter, allege and show the court as follows:

PRELIMINARY STATEMENT

Named Party Defendant Communication Arts 1 Materials Review Committee ("CAMRC") is not a separate legal entity capable of bringing suit or being sued. CAMRC is not a "governmental body" as defined in Wis. Stat. § 19.82. Nothing in this Answer shall constitute a waiver of such defenses.

GENERAL OBJECTION

Defendants Appleton Area School District Board of Education (“Board of Education”) and CAMRC object to the entirety of the Plaintiff’s Complaint, as the Plaintiff’s Complaint is replete with legal conclusions, statements of law, and improper allegations. To the extent not otherwise noted herein, the Defendants object to each and every allegation of the Plaintiff’s Complaint containing a legal conclusion or statement of law as inappropriate.

ANSWER

1. Responding to paragraph 1, the Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, deny the same and put the Plaintiff to his proof thereon.

2. Responding to paragraph 2, admit that the Appleton Area School District is a unified school district organized under Chapter 120 of the laws of the State of Wisconsin. Further responding to paragraph 2, Defendants admit that the Board of Education’s principal place of business is located at 122 East College Avenue, Suite 1A, Appleton, Wisconsin 54911. The Defendants deny the remaining allegations of paragraph 2.

3. Responding to paragraph 3, admit.

4. Responding to paragraph 4, deny the CAMRC was created by the Board. Responding further to paragraph 4, the Defendants deny that CAMRC is a separate legal entity capable of maintaining a legal identity, and therefore, a place of business, separate and apart from the Board of Education. The Defendants deny the remaining allegations of paragraph 4.

5. Responding to paragraph 5, deny.

6. Responding to paragraph 6, deny.

7. Responding to paragraph 7, admit the CAMRC includes, but is not limited to, Appleton Area School District employees. The Defendants deny the remaining allegations of paragraph 7.

8. Responding to paragraph 8, admit the CAMRC includes, but is not limited to, Appleton Area School District employees. The Defendants deny the remaining allegations of paragraph 8.

9. Responding to paragraph 9, deny the characterization of the CAMRC's purpose.

10. Responding to paragraph 10, deny.

11. Responding to paragraph 11, deny. Affirmatively allege the Board of Education, Meeting Minutes, April 23, 2012, document is itself the best evidence of its contents and deny any characterization inconsistent therewith.

12. Responding to paragraph 12, deny. Affirmatively allege the Board of Education, Meeting Minutes, April 23, 2012, document is itself the best evidence of its contents and deny any characterization inconsistent therewith.

13. Responding to paragraph 13, object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *Wis. Stat. §§ 121.02, 118.03 and 118.015* speak for themselves.

14. Responding to paragraph 14, deny. Affirmatively allege Board of Education Rule 361.1 is itself the best evidence of its contents and deny any characterization inconsistent therewith.

15. Responding to paragraph 15, deny that the Board of Education has delegated any of its authority whatsoever. Further responding to paragraph 15, deny Plaintiff's characterization

of Board of Education Rule 361.1, and further affirmatively allege Board of Education Rule 361.1 is itself the best evidence of its contents and deny any characterization inconsistent therewith.

16. Responding to paragraph 16, deny. Affirmatively allege Board of Education Rule 361.1 is itself the best evidence of its contents and deny any characterization inconsistent therewith.

17. Responding to paragraph 17, deny as pled.

18. Responding to paragraph 18, deny each and every allegation therein. Affirmatively allege that the Assessment, Curriculum and Instruction Department of the Appleton Area School District may create policies and procedures for the assessment and development of course curricula in the District. Responding further to paragraph 18, affirmatively allege the Assessment, Curriculum and Instruction Handbook is itself the best evidence of its contents and deny any characterization inconsistent therewith.

19. Responding to paragraph 19, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *State v. Swanson*, 92 Wis.2d 310, 284 N.W.2d 655 (1979) speaks for itself.

20. Responding to paragraph 20, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *78 Op. Att'y Gen.* 67, 68-69 (1989) speaks for itself.

21. Responding to paragraph 21, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. Further responding to paragraph 21, the Defendants lack information sufficient to form a belief as to the truth of the allegations

contained in paragraph 21, and therefore, to the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *Wisconsin Attorney General, Sherrod Correspondence*, October 17, 1991, speaks for itself.

22. Responding to paragraph 22, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *DOJ, Wisconsin Open Meetings Law: A Compliance Guide 3 (2010)* speaks for itself.

23. Responding to paragraph 23, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *Wis. Stat. § 19.82(1)* speaks for itself.

CAMRC MET IN VIOLATION OF OPEN MEETINGS LAW

24. Responding to paragraph 24, the Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 24 and, therefore, deny the same and put the Plaintiff to his proof thereon.

25. Responding to paragraph 25, deny.

26. Responding to paragraph 26, deny.

27. Responding to paragraph 27, deny.

28. Responding to paragraph 28, deny. Affirmatively allege that the Open Meetings Law does not apply to CAMRC.

29. Responding to paragraph 29, deny. Affirmatively allege that the Open Meetings Law does not apply to CAMRC.

30. Responding to paragraph 30, admit Krueger wrote an e-mail to Superintendent Lee Allinger. Affirmatively allege that Krueger's communication to Superintendent Allinger speaks for itself and deny any characterization inconsistent therewith.

31. Responding to paragraph 31, the Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, deny the same and put the Plaintiff to his proof thereon.

32. Responding to paragraph 32, deny.

ALLEGATIONS

First Cause of Action – Violations of Wis. Stat. § 19.83(1); Failure to Give Notice

33. Responding to paragraph 33, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *Wis. Stat. §§ 19.83(1), 19.84* speaks for themselves.

34. Responding to paragraph 34, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *Wis. Stat. § 19.82(2)* speaks for itself.

35. Responding to paragraph 35, deny. Affirmatively allege that the Open Meetings Law does not apply to CAMRC.

36. Responding to paragraph 36, deny.

37. Responding to paragraph 37, deny.

**Second Cause of Action – Violations of Wis. Stat. § 19.83(1);
Failure to Meet in Open Session**

38. Responding to paragraph 38, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *Wis. Stat. §§ 19.83(1), 19.85(1)* speaks for themselves.

39. Responding to paragraph 39, the Defendants object because such allegation constitutes a legal conclusion to which no response is required. To the extent that a response is required, the Defendants deny all allegations therein. Affirmatively allege *Wis. Stat. § 19.82(3)* speaks for itself.

40. Responding to paragraph 40, the Defendants lack information sufficient to form a belief as to the truth of the allegations contained in paragraph 40, and therefore, to the extent that a response is required, the Defendants deny all allegations therein.

41. Responding to paragraph 41, deny.

42. Responding to paragraph 42, deny.

WHEREFORE CLAUSE

To the extent a response is required to the Plaintiff's wherefore clause at pages 7 through 8 of Plaintiff's Complaint, the Defendant deny each and every allegation contained therein and puts Plaintiff to his strict proof thereon.

AFFIRMATIVE DEFENSES

As and for its separate and distinct affirmative defenses, the Defendants Board of Education and CAMRC allege and show this Court as follows:

1. Upon information and belief, Plaintiff has failed to comply with the requirements of Wis. Stat. § 19.97 for bringing this action under Wisconsin's Open Meetings Law.

2. Plaintiff fails to state a claim for which relief may be granted under the Wisconsin Open Meetings Law.

3. Plaintiff fails to state a claim upon which relief may be granted for actual or necessary costs.

4. Plaintiff is not entitled to an award of reasonable attorneys' fees.

5. CAMRC is not a separate legal entity capable of suing or being sued, and is therefore not a proper party defendant.

6. CAMRC is not a "governmental body" subject to the Wisconsin Open Meetings Law.

7. Plaintiff has failed to allege facts sufficient to entitle Plaintiff to the relief requested.

8. Plaintiff's claims are barred by his failure to join necessary and indispensable parties.

9. Defendants are not liable for a forfeiture or for any damages because with respect to some or all of the actions alleged in the complaint, the Defendants acted in good faith reliance on the advice of counsel.

10. No individual member of the Board of Education or CAMRC may be liable for forfeiture or otherwise, as no member knowingly attended a meeting of the CAMRC held in violation of Wisconsin's open meetings law.

11. The relief sought by the Plaintiff may not be granted under Wisconsin's Open Meetings law.

12. The Court lacks personal jurisdiction relating to Defendant CAMRC.

13. Defendants adopt and incorporate herein by reference all affirmative defenses available under Wis. Stat. § 802.06 (or any applicable statute or regulation) to the extent the facts

known at this time would make any of said defenses available or facts developed in the future would make same available. No affirmative defense is waived.


WHEREFORE, the Defendants Board of Education and CAMRC demand judgment as follows:

1. Dismissing Plaintiff's claims on their merits and with prejudice;
2. Awarding costs and disbursements as permitted by law;
3. Awarding the Defendants their reasonable attorneys' fees; and
4. Ordering such other and further relief as the Court deems just and proper.

Dated this 26th day of August, 2013.

PHILLIPS BOROWSKI, S.C.
Attorneys for Appleton Area School District
Board of Education

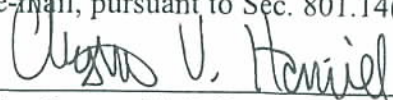
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I certify that on August 26, 2013, I served the within document on counsel of record by U.S. mail and e-mail, pursuant to Sec. 801.14(2). Wis. Stats.



Phillips Borowski, S.C.