

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JOHN FRESHWATER	)	CASE NO.: 2-11 CV 00190
	)	
Plaintiff,	)	JUDGE GREGORY L. FROST
	)	
v.	)	
	)	<b><u>DEFENDANT MOUNT VERNON CITY</u></b>
MOUNT VERNON CITY SCHOOL	)	<b><u>SCHOOL DISTRICT BOARD OF</u></b>
DISTRICT BOARD OF EDUCATION	)	<b><u>EDUCATION'S ANSWER</u></b>
	)	
Defendant.	)	

For their Answer to Plaintiff's Complaint, Defendant Mount Vernon City School District Board of Education ("Defendant"), states as follows:

**FIRST DEFENSE**

1. Numbered paragraph 1 of Plaintiff's Complaint, is a jurisdictional statement that does not require an answer. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies this paragraph.
2. Numbered paragraph 2 of Plaintiff's Complaint, is a jurisdictional statement that does not require an answer. To the extent Plaintiff proffers a legal conclusion, Defendant denies this paragraph. Further answering, Defendant avers Plaintiff is estopped from raising certain legal and/or factual issues and/or claims based upon the dismissal with prejudice he filed in *John Freshwater, et al. v. Mount Vernon City Sch. Dist. Bd. of Educ., et al.*, Case No. 2:09cv464, which is a related case previously before this Court and the Honorable Gregory L. Frost ("Freshwater Lawsuit #1").
3. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 3 of Plaintiff's Complaint. Further answering, Defendant avers it has a right to

file an answer to Plaintiff's Complaint.

4. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 4 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

5. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 5 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

6. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 6 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

7. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 7 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

8. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 8 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

9. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 9 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

10. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 10 of Plaintiff's Complaint. Further answering, Defendant avers the remaining allegation is a statement of a prayer for relief, which is denied, although it does not require an answer.

11. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 11 of Plaintiff's Complaint.

12. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 12 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

13. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 13 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

14. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 14 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

15. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 15 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically claimed violation of his due process rights in Freshwater Lawsuit #1 (¶39 and Count 3 ¶¶128-133). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

16. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered

paragraph 16 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims under the Master Contract referenced in this paragraph in Freshwater Lawsuit #1 (¶31, ¶35, ¶112 and Count 12 ¶¶192-194). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

17. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 17 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims under the Master Contract referenced in this paragraph in Freshwater Lawsuit #1 (¶31, ¶35, ¶112, Count 1 ¶¶116-122, Count 2 ¶¶123-127, Count 3 ¶¶128-133, Count 4 ¶¶134-149, Count 5 ¶¶150-160, Count 6 ¶¶161-168, Count 7 ¶¶169-171, Count 8 ¶¶172-175 and Count 12 ¶¶192-194). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

18. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 18 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims under the Master Contract referenced in this paragraph in Freshwater Lawsuit #1 (¶31, ¶¶35-38, ¶109, ¶112, Count 3 ¶¶128-133, and Count 12 ¶¶192-194). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with

prejudice he filed in Freshwater Lawsuit #1.

19. For its response to paragraph number 19 of Plaintiff's Complaint, Defendant admits the allegations.

20. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 20 of Plaintiff's Complaint. Further answering, Defendant admits Plaintiff was a licensed individual governed by the *Licensure Code of Professional Conduct for Ohio Educators*.

21. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 21 of Plaintiff's Complaint. Further answering, Defendant admits Plaintiff was a licensed individual governed by the *Licensure Code of Professional Conduct for Ohio Educators*. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that Defendant's actions were discriminatory and against public policy as referenced in this paragraph in Freshwater Lawsuit #1 (¶87, Count 1 ¶¶116-122, Count 2 ¶¶123-127, Count 4 ¶¶134-149, Count 5 ¶¶150-160, Count 6 ¶¶161-168, Count 7 ¶¶169-171, Count 8 ¶¶172-175, Count 9 ¶¶176-178 and Count 12 ¶¶192-194). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

22. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 22 of Plaintiff's Complaint.

23. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 23 of Plaintiff's Complaint. Further answering, Defendant avers Plaintiff

specifically based the claims he raised in Freshwater Lawsuit #1 on all of the exhibits and transcripts in the state administrative hearing as well as the *John Freshwater's Closing Statement Brief* and *John Freshwater's Reply Brief To the Employer's Post-Hearing Brief*. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

24. For its response to paragraph number 24 of Plaintiff's Complaint, Defendant denies the allegations. Further answering, Defendant avers the principle of *res judicata* bars Plaintiff's claims against Defendant.

25. For its response to paragraph number 25 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself.

26. For its response to paragraph number 26 of Plaintiff's Complaint, Defendant denies the allegations. Further answering, Defendant avers Plaintiff specifically based the claims he raised in Freshwater Lawsuit #1 on the exhibits from the state administrative hearing. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

27. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 27 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that Defendant violated the Establishment Clause as referenced in this paragraph in Freshwater Lawsuit #1 (Count 1 ¶¶116-122, Count 2 ¶¶123-127 and Count 3 ¶¶128-133). Further answering, Defendant avers Plaintiff is

estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

28. For its response to paragraph number 28 of Plaintiff's Complaint, Defendant denies the allegations.

29. For its response to paragraph number 29 and subsections A, B, C, D, and E of Plaintiff's Complaint, Defendant denies the allegations.

30. For its response to paragraph number 30 of Plaintiff's Complaint, Defendant denies the allegations.

31. For its response to paragraph number 31 and subsections A, B, C, and D of Plaintiff's Complaint, Defendant denies the allegations.

32. For its response to paragraph number 32 of Plaintiff's Complaint, Defendant denies the allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that Defendant violated the Establishment Clause as referenced in this paragraph in Freshwater Lawsuit #1 (Count 1 ¶¶116-122, Count 2 ¶¶123-127 and Count 3 ¶¶128-133). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

33. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 33 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that Defendant's action were unconstitutional and discriminatory as referenced in this paragraph in Freshwater Lawsuit #1 (¶87, Count 1 ¶¶116-122, Count 2 ¶¶123-127, Count 3 ¶¶128-133, Count 4 ¶¶134-149, Count 5 ¶¶150-

160, Count 6 ¶¶161-168, Count 7 ¶¶169-171, Count 8 ¶¶172-175 and Count 9 ¶¶176-178). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

34. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 34 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Board Policy 3218 titled *Academic Freedom of Teachers* as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

35. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 35 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Board Policy and exhibits from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

36. For its response to paragraph number 36 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself. Further answering, Defendant denies the remaining allegations.

37. For its response to paragraph number 37 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself. Further answering,

Defendant denies the remaining allegations.

38. For its response to paragraph number 38 of Plaintiff's Complaint, Defendant avers Employee Exhibit 96 speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Board Policy and exhibits from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

39. For its response to paragraph number 39 of Plaintiff's Complaint, Defendant avers each statement attributed to the Referee, Mr. Kuntz, Mr. Keib, and Mr. Maley within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Board Policy and the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

40. For its response to paragraph number 40 of Plaintiff's Complaint, Defendant avers each statement attributed to Mr. Maley within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in

Freshwater Lawsuit #1.

41. For its response to paragraph number 41 of Plaintiff's Complaint, Defendant avers each Board Resolution and Board Policy speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Board Policy as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

42. For its response to paragraph number 42 of Plaintiff's Complaint, Defendant avers each Board Resolution and all testimony from the state administrative hearing speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Board Policy and all testimony from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

43. For its response to paragraph number 43 of Plaintiff's Complaint, Defendant admits the legal and factual issue(s) raised in this paragraph were already adjudicated in Freshwater Lawsuit #1. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

44. For its response to paragraph number 44 of Plaintiff's Complaint, Defendant denies

the allegations. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

45. For its response to paragraph number 45 of Plaintiff's Complaint, Defendant avers each statement attributed to the Referee, Mr. Kuntz, and Mr. Millstone within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

46. For its response to paragraph number 46 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Mr. Maley within the transcript and the June 8, 2006 letter each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing and the June 8, 2006 letter as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

47. For its response to paragraph number 47 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself.

48. For its response to paragraph number 48 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Mr. Keib within the transcript and the film *Expelled: No*

*Intelligence Allowed* each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing and film *Expelled: No Intelligence Allowed* as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

49. For its response to paragraph number 49 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to students within the transcript and the video *Watchmaker* each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing and the video *Watchmaker* as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

50. For its response to paragraph number 50 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself.

51. For its response to paragraph number 51 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to students and Mr. Thompson within the transcript, Board Policy 8800B, and Employee Exhibits 112, 113, and 114 each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts and employee exhibits from the state administrative hearing and Board Policy as referenced in this paragraph in pursuit of

his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

52. For its response to paragraph number 52 of Plaintiff's Complaint, Defendant avers Employee Exhibits 112, 113, and 114 each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Employee Exhibits 112, 113, and 114 from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

53. For its response to paragraph number 53 of Plaintiff's Complaint, Defendant avers the scientific method as described within Employee Exhibits 112, 113, and 114 speaks for itself. Further answering, Defendant denies the remaining allegations.

54. For its response to paragraph number 54 of Plaintiff's Complaint, Defendant avers the Referee's Report, Board Resolutions, and the scientific method as described within Employee Exhibits 112, 113, and 114 each speaks for itself. Further answering, Defendant denies the remaining allegations.

55. For its response to paragraph number 55 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself.

56. For its response to paragraph number 56 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Mr. Stockdale within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant

avers Plaintiff specifically relied upon the transcripts from the state administrative hearing and Board Policy as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

57. For its response to paragraph number 57 of Plaintiff's Complaint, Defendant avers Employee Exhibit 176 speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Employee Exhibit 176 as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

58. For its response to paragraph number 58 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself.

59. For its response to paragraph number 59 of Plaintiff's Complaint, Defendant avers each employee exhibit from the state administrative hearing speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon employee exhibits from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that Defendant violated the Establishment Clause as referenced in this paragraph in Freshwater Lawsuit #1 (Count 1 ¶¶116-122, Count 2 ¶¶123-127 and Count 3 ¶¶128-133). Further answering, Defendant avers Plaintiff is estopped from raising this

factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

60. For its response to paragraph number 60 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Ms. Mahan within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing and Board Policy as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

61. For its response to paragraph number 61 and subsections A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, and JJ of Plaintiff's Complaint, Defendant denies the allegations. Further answering, Defendant avers Employee Exhibits 112, 113, and 114 each speaks for itself. Further answering, Further answering, Defendant avers Plaintiff specifically relied upon Employee Exhibits 112, 113, and 114 from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

62. For its response to paragraph number 62 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself.

63. For its response to paragraph number 63 of Plaintiff's Complaint, Defendant avers each resolution it adopted in regard to Plaintiff speaks for itself. Further answering,

Defendant denies the remaining allegations.

64. For its response to paragraph number 64 of Plaintiff's Complaint, Defendant denies the allegations.

65. For its response to paragraph number 65 of Plaintiff's Complaint, Defendant denies the allegations.

66. For its response to paragraph number 66 of Plaintiff's Complaint, Defendant avers *John Freshwater's Closing Brief* and each statement(s) attributed to Mr. Freshwater within the transcript each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing and *John Freshwater's Closing Brief* as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

67. For its response to paragraph number 67 of Plaintiff's Complaint, Defendant avers each statement(s) attributed to Ms. Darcy Miller and Ms. Lori Miller within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

68. For its response to paragraph number 68 of Plaintiff's Complaint, Defendant avers

Mr. White's performance evaluations each speaks for itself. Further answering, Defendant denies the remaining allegations.

69. For its response to paragraph number 69 of Plaintiff's Complaint, Defendant denies the allegations.

70. For its response to paragraph number 70 and subsections A, B, C, D, E, F, G, H, I, J, and K of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations each speaks for itself. Further answering, Defendant denies the remaining allegations.

71. For its response to paragraph number 71 of Plaintiff's Complaint, Defendant denies the allegations.

72. For its response to paragraph number 72 of Plaintiff's Complaint, Defendant denies the allegations.

73. For its response to paragraph number 73 of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations and the statement(s) attributed to Mr. Freshwater within the transcript each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

74. For its response to paragraph number 74 of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations and the statement(s) attributed to Mr. Freshwater within the transcript each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied

upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

75. For its response to paragraph number 75 of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations and the statement(s) attributed to Mr. Freshwater within the transcript each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

76. For its response to paragraph number 76 of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations and Board Policy 9130 each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon Board Policy as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

77. For its response to paragraph number 77 of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations and the statement(s) attributed to Mr. Freshwater within the transcript each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied

upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

78. For its response to paragraph number 78 of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations and the statement(s) attributed to Mrs. Miller, Mr. Thompson, and Mr. Elifritz within the transcript each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon the transcripts from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

79. For its response to paragraph number 79 of Plaintiff's Complaint, Defendant denies the allegations. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that Defendant actions were discriminatory in Freshwater Lawsuit #1 (§§87, Count 1 §§116-122, Count 2 §§123-127, Count 4 §§134-149, Count 5 §§150-160, Count 6 §§161-168, Count 7 §§169-171, Count 8 §§172-175, Count 9 §§176-178 and Count 12 §§192-194). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

80. For its response to paragraph number 80 of Plaintiff's Complaint, Defendant denies the allegations.

81. For its response to paragraph number 81 of Plaintiff's Complaint, Defendant avers the Referee Report and Employee Exhibits 145 and 146 each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on Employee Exhibits 145 and 146 as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

82. To the extent Plaintiff proffers a legal conclusion(s), Defendant denies numbered paragraph 82 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations.

83. For its response to paragraph number 83 of Plaintiff's Complaint, Defendant avers Employee Exhibits 145 and 146, testimony from the state administrative hearing, and Board Policy 2270 and 3218 each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on Employee Exhibits 145 and 146, testimony from the state administrative hearing, and Board Policy 2270 and 3218 as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that Defendant violated the Establishment Clause as referenced in this paragraph in Freshwater Lawsuit #1 (Count 1 ¶¶116-122, Count 2 ¶¶123-127 and Count 3 ¶¶128-133). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

84. For its response to paragraph number 84 of Plaintiff's Complaint, Defendant admits

Plaintiff raised arguments in *John Freshwater's Closing Brief* that are consistent with the arguments he raises in paragraphs 68-78 of Plaintiff's Complaint. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied upon *John Freshwater's Closing Brief* as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

85. For its response to paragraph number 85 of Plaintiff's Complaint, Defendant avers Mr. White's performance evaluations each speaks for itself. Further answering, Defendant denies the remaining allegations.

86. For its response to paragraph number 86 of Plaintiff's Complaint, Defendant avers any resolution it adopted in regard to Plaintiff and the Referee's Report each speaks for itself. Further answering, Defendant denies the remaining allegations.

87. For its response to paragraph number 87 of Plaintiff's Complaint, Defendant avers the Referee's Report speaks for itself. Further answering, Defendant denies the remaining allegations.

88. For its response to paragraph number 88 of Plaintiff's Complaint, Defendant avers Board Exhibit 21 and each statement(s) attributed to Father Hammond within the transcript each speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on Board Exhibit 21 and testimony from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff specifically raised factual and legal issues and/or claims that

Defendant violated his First Amendment Right to Freedom of Association as well as other constitutional rights, as referenced in this paragraph, in Freshwater Lawsuit #1 (Count 1 ¶¶116-122, Count 2 ¶¶123-127 and Count 3 ¶¶128-133). Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

89. For its response to paragraph number 89 of Plaintiff's Complaint, Defendant avers all testimony in the state administrative hearing speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

90. For its response to paragraph number 90 of Plaintiff's Complaint, Defendant denies the allegations.

91. For its response to paragraph number 91 of Plaintiff's Complaint, Defendant denies the allegations.

92. For its response to paragraph number 92 of Plaintiff's Complaint, Defendant avers all testimony in the state administrative hearing speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

93. For its response to paragraph number 93 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Ms. Frady within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from Ms. Frady in the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

94. For its response to paragraph number 94 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Ms. Frady within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from Ms. Frady in the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

95. For its response to paragraph number 95 of Plaintiff's Complaint, Defendant avers all testimony in the state administrative hearing speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

96. For its response to paragraph number 96 of Plaintiff's Complaint, Defendant avers all testimony in the state administrative hearing speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

97. For its response to paragraph number 97 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Mr. Ritchie within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from Mr. Ritchie in the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

98. For its response to paragraph number 98 of Plaintiff's Complaint, Defendant avers the statement(s) attributed to Mr. White within the transcript speaks for itself. Further answering, Defendant denies the remaining allegations. Further answering, Defendant avers Plaintiff specifically relied on testimony from Mr. White in the state administrative hearing as referenced in this paragraph in pursuit of his claims in Freshwater Lawsuit #1. Further answering, Defendant avers Plaintiff is estopped from raising this factual and legal issue(s) and/or claim(s) based upon the dismissal with prejudice he filed in Freshwater Lawsuit #1.

99. For its response to paragraph number 99 of Plaintiff's Complaint, Defendant denies the allegations.

100. For its response to paragraph number 100 of Plaintiff's Complaint, Defendant denies the allegations.

101. For its response to paragraph number 101 of Plaintiff's Complaint, Defendant denies the allegations.

102. Numbered paragraph 102 of Plaintiff's Complaint, is a prayer for relief that does not require an answer. To the extent an answer is required, Defendant denies this paragraph.

103. Defendant denies all allegations set forth in Plaintiff's Complaint not specifically admitted to be true.

#### **SECOND DEFENSE**

104. The applicable statute of limitations bars Plaintiff's claims in whole or in part.

#### **THIRD DEFENSE**

105. The Court lacks subject matter jurisdiction over all or part of Plaintiff's claims.

#### **FOURTH DEFENSE**

106. The Complaint fails to state a viable action, in whole or in part.

#### **FIFTH DEFENSE**

107. The Complaint fails to state claims, in whole or in part, upon which relief can be granted.

#### **SIXTH DEFENSE**

108. Plaintiff's claims are barred or right to monetary recovery is restricted based on the doctrines of *res judicata*, collateral estoppel, and/or judicial estoppel.

**SEVENTH DEFENSE**

109. Plaintiff's claims are barred or right to monetary recovery is restricted based on the Plaintiff's spoliation of evidence.

**EIGHTH DEFENSE**

110. Plaintiff is prohibited and/or restricted from raising claims in his Ohio Revised Code §3319.16 administrative appeal that are based on factual and legal issues disposed of in *John Freshwater, et al. v. Mount Vernon City Sch. Dist. Bd. of Educ., et al.*, Case No. 2:09cv464.

**NINTH DEFENSE**

111. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, for failure to comply with Ohio Revised Code §2721.12.

**TENTH DEFENSE**

112. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant has not deprived Plaintiff of any federally protected right and Defendant has not entered into any agreement or concerted action to commit an illegal act or effectuate a constitutional deprivation of Plaintiff's federally protected rights.

**ELEVENTH DEFENSE**

113. Defendant is immune pursuant to Ohio Revised Code Chapter 2744 and asserts all defenses contained in Ohio Revised Code Chapter 2744.

**TWELFTH DEFENSE**

114. Plaintiff's failure to exhaust his administrative remedies bars Plaintiff's claims or restricts Plaintiff's right to monetary recovery.

**THIRTEENTH DEFENSE**

115. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant would have taken the same employment action against Plaintiff even in the absence of any of his alleged protected activity.

**FOURTEENTH DEFENSE**

116. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant acted reasonably, in good faith, and with justification, without intent to contravene any rights, statutory, administrative, constitutional, or otherwise with regard to Plaintiff and, in fact, contravened no such rights.

**FIFTEENTH DEFENSE**

117. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant acted reasonably, in good faith, and with justification to meet its constitutional obligations under the Establishment Clause of the First Amendment and Fourteenth Amendment.

**SIXTEENTH DEFENSE**

118. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant did not selectively treat Plaintiff differently than similarly situated persons based on impermissible considerations, did not inhibit or punish the exercise of constitutional rights, and did not act with malicious or bad faith intent to injure Plaintiff.

**SEVENTEENTH DEFENSE**

119. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Plaintiff failed to timely file a charge of discrimination, harassment, or retaliation with the United States Equal Employment Opportunities Commission.

**EIGHTEENTH DEFENSE**

120. The doctrines of estoppel and/or waiver bar Plaintiff's claims or restrict Plaintiff's right to monetary recovery.

**NINETEENTH DEFENSE**

121. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant had plausible, legitimate and non-discriminatory justification for its conduct and would have taken the same actions for these reasons.

**TWENTIETH DEFENSE**

122. Defendant has no practice, pattern, policy, custom or usage permitting discrimination, harassment or retaliatory conduct by its members, agents, employees and/or representatives. Furthermore, Defendant has in place policies prohibiting the unlawful and retaliatory conduct alleged by Plaintiff.

**TWENTY-FIRST DEFENSE**

123. Based upon Plaintiff's failure to mitigate damages, Plaintiff's claims against Defendant are barred or Plaintiff's right to monetary recovery is restricted.

**TWENTY-SECOND DEFENSE**

124. The doctrines of unclean hands and/or after-acquired evidence bars Plaintiff's claims or restricts Plaintiff's right to monetary recovery.

**TWENTY-THIRD DEFENSE**

125. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Plaintiff failed to take advantage of Defendant's complaint mechanism for violation of Board policy.

**TWENTY-FOURTH DEFENSE**

126. Defendant was the same decision-maker who hired Plaintiff continuously for over twenty (20) years and made all decisions in regard to Plaintiff's employment status with the District.

**TWENTY-FIFTH DEFENSE**

127. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant would have taken the same employment action against Plaintiff even in the absence of any of the unlawful acts he has alleged.

**TWENTY-SIXTH DEFENSE**

128. Pursuant to Ohio Revised Code §2739.02, Plaintiff's claims are barred or his right to monetary recovery is restricted, to the extent the alleged defamatory statements are true.

**TWENTY-SEVENTH DEFENSE**

129. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as the alleged defamatory statements did not constitute an actionable publication(s).

**TWENTY-EIGHTH DEFENSE**

130. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as the Board did not act with actual malice, express or implied.

**TWENTY-NINTH DEFENSE**

131. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as the Board made any qualifiedly privileged statements in good faith, with a reasonable and honest belief in their truth.

**THIRTIETH DEFENSE**

132. The statements made, if any, concerning Plaintiff are non-actionable opinions and not statements of fact.

**THIRTY-FIRST DEFENSE**

133. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as the Board did not make any defamatory statements and did not cause an actionable publication(s).

**THIRTY-SECOND DEFENSE**

134. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as the alleged defamatory statements were absolutely or qualifiedly privileged statements.

**THIRTY-THIRD DEFENSE**

135. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, pursuant to Ohio Revised Code §4123.74.

**THIRTY-FOURTH DEFENSE**

136. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, for failure to comply with Civ. R. 9(G).

**THIRTY-FIFTH DEFENSE**

137. Plaintiff is not entitled to punitive damages and all such relief must be denied as a

matter of law and equity.

**THIRTY-SIXTH DEFENSE**

138. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Plaintiff failed to exhaust the contractual remedies contained in a collective bargaining agreement between Defendant and the Mount Vernon Education Association.

**THIRTY-SEVENTH DEFENSE**

139. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant used reasonable or ordinary care at all relevant times.

**THIRTY-EIGHTH DEFENSE**

140. The doctrine of assumption of the risk bars Plaintiff's claims or restricts Plaintiff's right to monetary recovery.

**THIRTY-NINTH DEFENSE**

141. The doctrine of contributory fault and/or comparative negligence bars Plaintiff's claims or restricts Plaintiff's right to monetary recovery.

**FORTIETH DEFENSE**

142. The doctrine of consent bars Plaintiff's claims or restricts Plaintiff's right to monetary recovery.

**FORTY-FIRST DEFENSE**

143. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant complied with its statutory obligation to produce public records.

**FORTY-SECOND DEFENSE**

144. Plaintiff's claims are barred or right to monetary recovery is restricted, in whole or in part, as Defendant disclosed information of legitimate governmental interest.

**FORTY-THIRD DEFENSE**

145. Plaintiff is not entitled to attorneys' fees and costs and all such relief must be denied.

**FORTY-FOURTH DEFENSE**

146. Plaintiff is not entitled to the requested declaratory relief.

**FORTY-FIFTH DEFENSE**

147. To the extent this lawsuit contains is based on factual and/or legal issues resolved in *John Freshwater, et al. v. Mount Vernon City Sch. Dist. Bd. of Educ., et al.*, Case No. 2:09cv464, Plaintiff's claims are frivolous and known to Plaintiff to be without foundation in law or in fact. Furthermore, this suit is being pursued in bad faith and for vexatious reasons for the purpose of harassing Defendant. Accordingly, Defendant is entitled to attorneys' fees and other appropriate costs and expenses incurred in defending this action.

WHEREFORE, having fully answered, Defendant Mount Vernon City School District Board of Education respectfully requests that Plaintiff's Complaint be dismissed, with prejudice, at Plaintiff's costs.

Respectfully submitted,

*/s/ Sarah J. Moore*

---

David Kane Smith (0016208)  
Krista K. Keim (0067144)  
Sarah J. Moore (0065381)  
Paul J. Deegan (0085451)  
BRITTON SMITH PETERS &  
KALAIL CO., L.P.A.  
3 Summit Park Drive, Suite 400  
Cleveland, OH 44131  
Telephone: (216) 503-5055  
Facsimile: (216) 503-5065

Email: [dsmith@ohioedlaw.com](mailto:dsmith@ohioedlaw.com)  
[kkeim@ohioedlaw.com](mailto:kkeim@ohioedlaw.com)  
[smoore@ohioedlaw.com](mailto:smoore@ohioedlaw.com)  
[pdeegan@ohioedlaw.com](mailto:pdeegan@ohioedlaw.com)

*Attorneys for Defendant Mount  
Vernon City School District Board of  
Education*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of March, 2011, a copy of the foregoing *Defendant Mount Vernon City School District Board of Education's Answer* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Additionally, a true and correct copy of the foregoing was sent this 8th day of March 2011, upon the following:

John Freshwater  
7760 New Delaware Road  
Mount Vernon, OH 43050

*Pro Se Plaintiff*

/s/ Sarah J. Moore  
*One of the Attorneys for Defendant  
Mount Vernon City School District  
Board of Education*