

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Case No.: 24-cv-380

C.M., a minor, through his parents, )  
LEAH McGHEE and CHAD )  
McGHEE, )  
)  
Plaintiff, )  
)  
v. )  
)  
DAVIDSON COUNTY BOARD OF )  
EDUCATION, and ERIC R. )  
ANDERSON, in his individual )  
capacity, )  
)  
Defendants. )

**DEFENDANT  
ERIC R. ANDERSON'S  
ANSWER**

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NOW COMES Defendant Eric R Anderson (“Defendant” or “Answering Defendant”), by and through counsel of record, and respond to the numbered allegations of Plaintiff’s Complaint as follows:

1. Admitted.
2. Denied.
3. Denied as stated.
4. Denied.
5. Denied.
6. Denied.
7. Denied.

8. The lawsuit's allegations speak for themselves and to the extent that the plain language of the lawsuit is inconsistent with the allegations of paragraph 8, the same are denied. It is specifically denied that the Plaintiff's free speech and due process rights under the First and Fourteenth Amendment of the U.S. Constitution or any rights under the North Carolina Constitution were violated. Except as admitted, denied.

### **PARTIES**

9. Defendant Anderson lacks information sufficient to deny this allegation but refrains from specifically admitting the allegation in order to comply with the Family Educational Rights and Privacy Act ("FERPA") pursuant to 20 U.S.C. § 1232(g) and 34 C.F.R. Part 99.

10. The allegations in paragraph 10 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied for lack of information and belief.

11. Admitted.

### **JURISDICTION AND VENUE**

12. The allegations of paragraph 12 are legal conclusions of the pleader and as such no response is required. To the extent a response is required denied for lack of knowledge or information sufficient to form a belief.

13. The allegations of paragraph 13 are legal conclusions of the pleader and as such no response is required. To the extent a response is required denied for lack of knowledge or information sufficient to form a belief.

## FACTUAL ALLEGATIONS

### *The Board's 2022-2024 Student Handbook*

14. It is admitted that Exhibit 1 is a portion of the Student Handbook, the same received by Plaintiff for the current 2023-2024 for academic school year and it includes the policies created by the Board. Except as admitted, denied.

15. The plain language of Exhibit 1 speaks for itself and is the best evidence of its contents. To the extent that the allegations of paragraph 15 are inconsistent with the plain language of Exhibit 1, the same are denied. Except as admitted, denied.

16. The plain language of Exhibit 1 speaks for itself and is the best evidence of its contents. To the extent that the allegations of paragraph 16 are inconsistent with the plain language of Exhibit 1, the same are denied. Except as admitted, denied.

17. The plain language of Exhibit 1 speaks for itself and is the best evidence of its contents. To the extent that the allegations of paragraph 17 are inconsistent with the plain language of Exhibit 1, the same are denied. Except as admitted, denied.

18. The plain language of Exhibit 1 speaks for itself and is the best evidence of its contents. To the extent that the allegations of paragraph 18 are inconsistent with the plain language of Exhibit 1, the same are denied. Except as admitted, denied.

19. The plain language of Exhibit 1 speaks for itself and is the best evidence of its contents. To the extent that the allegations of paragraph 19 are inconsistent with the plain language of Exhibit 1, the same are denied. Except as admitted, denied.

***C.M.'s Question to His English Teacher***

- 20. Denied.
- 21. Denied as stated.
- 22. Denied as stated.
- 23. Denied as stated.
- 24. Denied.
- 25. Denied.
- 26. Denied.
- 27. Denied for lack of knowledge or information sufficient to form a belief.
- 28. It is admitted upon information and belief that school officials did not advise

Plaintiff regarding specifics about what he could and could not say in class because the context under which words are stated typically determine their meaning and effect or potential effect on those listening to the words. Except as admitted denied.

***The Assistant Principal Meets with C.M. and R.***

- 29. Denied.
- 30. Denied as stated.
- 31. It is admitted that Plaintiff told his side of the story to Defendant Anderson.

To the extent that the quoted allegations in paragraph 31 reference quotes from a recording of a meeting with Defendant Anderson, the recording speaks for itself and to the extent the allegations of paragraph 31 are inconsistent with that recording, the same are denied. As to any remaining allegations the same are denied as stated.

32. Denied for lack of knowledge or information sufficient to form a belief.

*The School Suspends C.M. for His Speech*

33. Defendant Anderson specifically refrains from admitting the allegations contained in paragraph 33 in order to comply with FERPA. To the extent the allegations of paragraph 33 are inconsistent with Exhibit 2 of Plaintiff's Complaint, the same are denied. Except as admitted, denied.

34. Denied for lack of knowledge or information sufficient to form a belief.

35. Defendant Anderson specifically refrains from admitting the allegations contained in paragraph 35 in order to comply with FERPA. To the extent the allegations of paragraph 35 are inconsistent with Exhibit 2 of Plaintiff's Complaint, the same are denied. Except as admitted, denied.

36. Defendant Anderson specifically refrains from admitting the allegations contained in paragraph 36 in order to comply with FERPA. To the extent the allegations of paragraph 36 are inconsistent with Exhibit 2 of Plaintiff's Complaint, the same are denied. Except as admitted, denied.

37. Defendant Anderson specifically refrains from admitting the allegations contained in paragraph 37 in order to comply with FERPA. To the extent the allegations of paragraph 37 are inconsistent with Exhibit 2 of Plaintiff's Complaint, the same are denied. Except as admitted, denied.

38. To the extent that the quoted allegations in paragraph 38 reference quotes from a recording of a meeting with Defendant Anderson, the recording speaks for itself

and to the extent the allegations of paragraph 38 are inconsistent with that recording, the same are denied. Except as admitted, denied as stated.

39. To the extent that the quoted allegations in paragraph 39 reference quotes from a recording of a meeting with Defendant Anderson, the recording speaks for itself and to the extent the allegations of paragraph 39 are inconsistent with that recording, the same are denied. Except as admitted, denied as stated.

40. The allegations in paragraph 40 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied.

41. The allegations in paragraph 41 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied.

42. The allegations in paragraph 42 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied.

43. The allegations of paragraph 43 reference emails that have been made part of the record by the Plaintiff and those emails are the best evidence of their content. To the extent the allegations of paragraph 43 are inconsistent with the plain language of the emails referenced, the same are denied. Except as admitted, denied.

***The Board's Authority over the School and Board Policy 6.11***

44. Admitted.

45. The allegations in paragraph 45 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied as stated.

46. The allegations in paragraph 46 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied as stated.

***“Alien,” “Illegal Alien,” and “Green Cards” are Commonly Used Words***

47. Admitted upon information and belief.

48. The allegations of paragraph 48 reference the U.S. Immigration and Naturalization Act and the U.S. Immigration and Naturalization Act is the best evidence of its content. To the extent the allegations of paragraph 48 are inconsistent with the U.S. Immigration and Naturalization Act, the same are denied. Except as admitted, denied.

49. The allegations of paragraph 49 reference Chapter 64, Article 1, entitled “Various Provisions Related to Aliens” and Chapter 64, Article 1 is the best evidence of its content. To the extent the allegations of paragraph 49 are inconsistent with Chapter 64, Article 1 entitled “Various Provisions Related to Aliens”, the same are denied. Except as admitted, denied.

50. The allegations of paragraph 50 reference Black’s Law Dictionary definition of “alien” and is the best evidence of its content. To the extent the allegations of paragraph 50 are inconsistent with Black’s Law Dictionary definition of “alien”, the same are denied. Except as admitted, denied.

51. The allegations of paragraph 51 reference the Oxford English Dictionary definition of “alien”, and is the best evidence of its content. To the extent the allegations

of paragraph 51 are inconsistent with the Oxford English Dictionary's definition of "alien", the same are denied. Except as admitted, denied.

52. The allegations of paragraph 52 reference the Oxford English Dictionary definition of "illegal alien", and is the best evidence of its content. To the extent the allegations of paragraph 52 are inconsistent with the Oxford English Dictionary's definition of "illegal alien", the same are denied. Except as admitted, denied.

53. The allegations of paragraph 53 reference the official Government website of the U.S. Citizenship Immigration Services definition of "alien", and is the best evidence of its content. To the extent the allegations of paragraph 53 are inconsistent with the official Government website of the U.S. Citizenship Immigration Services' definition of "alien", the same are denied. Except as admitted, denied.

54. Denied for lack of information sufficient to form a belief.

55. The plain language of the legal opinions cited are the best evidence of their content. To the extent the allegations of paragraph 55 are inconsistent with the opinions cited, the same are denied. Except as admitted, denied.

56. The plain language of the legal opinions cited are the best evidence of their content. To the extent the allegations of paragraph 56 are inconsistent with the opinions cited, the same are denied. Except as admitted, denied.

57. The plain language of the legal opinions cited are the best evidence of their content. To the extent the allegations of paragraph 57 are inconsistent with the opinions cited, the same are denied. Except as admitted, denied.



*C.M.'s Injury*

58. Defendant Anderson specifically refrains from admitting or denying the allegations contained in paragraph 58 in order to comply with FERPA.

59. Defendant Anderson specifically refrains from admitting the allegations contained in paragraph 59 in order to comply with FERPA. Except as admitted, denied for lack of knowledge or information sufficient to form a belief.

60. Denied for lack of knowledge or information sufficient to form a belief.

61. Denied for lack of knowledge or information sufficient to form a belief.

62. Defendant Anderson specifically refrains from admitting the allegations contained in paragraph 62 in order to comply with FERPA. Except as admitted, denied for lack of knowledge or information sufficient to form a belief.

63. Denied for lack of knowledge or information sufficient to form a belief.

64. Denied for lack of knowledge or information sufficient to form a belief.

65. Defendant Anderson specifically refrains from admitting the allegations contained in paragraph 65 in order to comply with FERPA. To the extent the allegations of paragraph 65 are inconsistent with Exhibit 2 of Plaintiff's Complaint, the same are denied. Except as admitted, denied.

66. Denied for lack of knowledge or information sufficient to form a belief.

67. It is admitted upon information and belief that Plaintiff is not a racist. The remaining allegations are denied as stated.

68. Denied.

69. Denied as stated.

70. Denied as stated.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

**(Against the Board and Anderson)**

**42 U.S.C. § 1983 – First Amendment Free Speech**

**C.M.’s use of “alien” or “illegal alien” or “green cards” in class is protected speech because they are factual, nonthreatening words that did not cause substantial disruption in class or to School activities and functions**

71. The responses to the number the allegations of paragraphs 1 through 70 are realleged and reincorporated as though fully set forth herein.

72. The plain language of the legal opinions cited are the best evidence of their content. To the extent the allegations of paragraph 72 are inconsistent with the opinions cited, the same are denied. Except as admitted, denied.

73. The allegations of paragraph 73 are legal conclusions of the pleader and as such, no response is required. To the extent a response is required, denied for lack of knowledge or information sufficient to form a belief.

74. The plain language of the legal opinions cited are the best evidence of their content. To the extent the allegations of paragraph 74 are inconsistent with the opinions cited, the same are denied. Except as admitted, denied.

75. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 75 are inconsistent with the opinion cited, the same are denied. Except as admitted, denied.

76. Denied.

77. The allegations in paragraph 77 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied.

78. The allegations in paragraph 78 are not directed toward Answering Defendant and are legal conclusions of the pleader. If a response is deemed necessary for this Answering Defendant, denied.

79. To the extent that the quoted allegations in paragraph 79 reference quotes from a recording of a meeting with Defendant Anderson, the recording speaks for itself and to the extent the allegations of paragraph 79 are inconsistent with that recording, the same are denied. As to the remaining allegations the same are denied.

80. Denied.

81. Denied as stated and to the extent that the allegations of paragraph 81 are intended to imply that this Answering Defendant violated the law or Plaintiff's rights, the allegations and implications are denied.

82. Denied as stated and to the extent that the allegations of paragraph 82 are intended to imply that this Answering Defendant violated the law or Plaintiff's rights, the allegations and implications are denied.

83. Denied as stated and to the extent that the allegations of paragraph 83 are intended to imply that this Answering Defendant violated the law or Plaintiff's rights, the allegations and implications are denied.

84. Denied as stated and to the extent that the allegations of paragraph 84 are intended to imply that this Answering Defendant violated the law or Plaintiff's rights, the allegations and implications are denied.

85. Denied as stated and to the extent that the allegations of paragraph 85 are intended to imply that this Answering Defendant violated the law or Plaintiff's rights, the allegations and implications are denied.

86. Denied.

87. Denied.

88. Denied as stated and to the extent that the allegations of paragraph 88 are intended to imply that this Answering Defendant violated the law or Plaintiff's rights, the allegations and implications are denied.

## **COUNT TWO**

**(Against the Board and Anderson)**

**42 U.S.C. § 1983 – First and Fourteenth Amendments**

**The Board's student speech policies are unduly vague because C.M. must guess at what words the Board deems "racially insensitive," and there is no due process afforded to the appeal of the suspension**

89. The responses to the number the allegations of paragraphs 1 through 88 are realleged and reincorporated as though fully set forth herein.

90. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 90 are inconsistent with the opinion cited, the same is denied. Except as admitted, denied.

91. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 91 are inconsistent with the opinion cited, the same is denied. Except as admitted, denied.

92. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 92 are inconsistent with the opinion cited, the same is denied. Except as admitted, denied.

93. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 93 are inconsistent with the opinion cited, the same is denied. Except as admitted, denied.

94. The allegations of paragraph 94 are legal conclusions of the pleader and as such, no response required. To the extent a response is required, denied.

95. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 95 are inconsistent with the opinion cited, the same is denied. Except as admitted, denied.

96. The allegations of paragraph 96 are legal conclusions of the pleader and as such, no response required. To the extent a response is required, denied.

97. The plain language of the legal opinions cited are the best evidence of their content. To the extent the allegations of paragraph 97 are inconsistent with the opinions cited, the same are denied. Except as admitted, denied.

98. The allegations of paragraph 98 are legal conclusions of the pleader and as such, no response is required. To the extent a response is required, denied.

99. Denied.

100. Denied.

101. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 101 are inconsistent with the opinion cited, the same are denied. Except as admitted, denied.

102. Denied.

**COUNT THREE**  
**(Against the Board)**  
**North Carolina State Constitution – Right to Damages**  
**C.M. is entitled to damages under the state constitution for the Board’s violations of**  
**his rights to free speech, education, and due process**

103. The responses to the number the allegations of paragraphs 1 through 102 are realleged and reincorporated as though fully set forth herein.

104. The plain language of the legal opinions cited are the best evidence of their content. To the extent the allegations of paragraph 104 are inconsistent with the opinions cited, the same are denied. Except as admitted, denied.

105. The allegations of paragraph 105 are legal conclusions of the pleader and as such, no response is required. To the extent a response is required, denied.

106. The plain language of the legal opinion cited is the best evidence of its content. To the extent the allegations of paragraph 106 are inconsistent with the opinion cited, the same are denied. Except as admitted, denied.

107. The allegations in paragraph 107 are not directed toward Answering Defendant. If a response is deemed necessary for this Answering Defendant, denied.

108. Denied.

**ANY ALLEGATIONS NOT SPECIFICALLY ADMITTED, INCLUDING ANY AND ALL ALLEGATIONS IN PLAINTIFF'S PRAYER FOR RELIEF, ARE DENIED.**

**FIRST DEFENSE**

Answering Defendant pleads all applicable immunities to which it he entitled to by operation of law and in bar of Plaintiff's claims herein, including, but not limited to, governmental immunity, public officials' immunity, and qualified immunity.

**SECOND DEFENSE**

Defendant has complied in good faith with all applicable laws and regulations and having so complied, acted without improper motive, and any injury accruing to Plaintiff, the existence of which is specifically denied, is not actionable.

**THIRD DEFENSE**

Answering Defendant alleges that at all times relevant to this action, he was acting without malice and with a good faith belief that their duties were carried out in accordance with the Laws and the Constitutions of the United States and the State of North Carolina, and as such, are protected by the doctrine of governmental immunity and qualified immunity.

**FOURTH DEFENSE**

A rational relationship exists between the Defendant's decisions and a legitimate governmental objective.

#### **FIFTH DEFENSE**

To the extent not already asserted herein, Answering Defendant pleads qualified immunity as a defense to all applicable claims herein. At all relevant times, the Answering Defendants referred to in the Complaint acted in good faith, without malice, with reasonable belief that his actions were lawful and in accordance with the Plaintiff's constitutional rights and did not violate any clearly established right of the Plaintiff. Thus, pursuant to qualified immunity, all claims are barred.

#### **SIXTH DEFENSE**

Plaintiffs have failed to exhaust their administrative remedies regarding their claims.

#### **SEVENTH DEFENSE**

If Plaintiff suffered any damages, injuries or losses as alleged in the Complaint, which is again denied, said damages, injuries or losses were not caused by any act or omission of Answering Defendant.

#### **EIGHTH DEFENSE**

In the alternative, to the extent that Plaintiff has failed to exercise reasonable diligence and ordinary care to minimize damages, Plaintiff's claims are barred by the doctrine of avoidable consequences and failure to mitigate damages.

#### **NINTH DEFENSE**

Plaintiff's claims alleged are barred by the doctrines of waiver and estoppel as a complete defense to this suit.



## ADDITIONAL DEFENSES

Defendant reserves the right to amend this Answer and to assert additional affirmative defenses as the claims of the Plaintiff are more fully disclosed and additional evidence is discovered during the course of this litigation.

WHEREFORE, Defendant Eric R. Anderson, having fully responded to Plaintiff's Complaint, pray unto the Court as follows:

1. That Plaintiff has and recover nothing of this Answering Defendant;
2. That the costs of this action be taxed against the Plaintiff;
3. That attorneys' fees be awarded to Defendant pursuant to all applicable federal law;
4. That they have a trial by jury on all issues so triable; and
5. For such other and further relief as this Court deems just and proper.

This the 28th day of June, 2024.

CRANFILL SUMNER LLP

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Anderson*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2024, I electronically filed the foregoing **DEFENDANT ERIC R. ANDERSON'S ANSWER** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record.

CRANFILL SUMNER LLP

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