

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

DAVID ESRATI : Case No. 2018 CV 00593
Plaintiff, : Judge Richard Skelton
v. :
DAYTON CITY COMMISSION, ET AL. :
Defendants. :

**ANSWER OF DEFENDANTS, THE DAYTON BOARD OF EDUCATION AND
MOHAMED AL-HAMDANI, TO THE COMPLAINT OF DAVID ESRATI, FILED
FEBRUARY 5, 2018; WITH JURY DEMAND ENDORSED HEREON**

Now come Defendants, the Dayton Board of Education and Mohamed Al-Hamdan, to answer as follows the Complaint of Plaintiff, David Esrati:

FIRST DEFENSE

1. The Preface of Plaintiff's Complaint is a commentary, not an averment stating a claim for relief. As such, these Answering Defendants have no obligation to answer. To the extent the Court disagrees or determines otherwise, these Answering Defendants deny as stated the commentary set forth in the Preface of the Plaintiff's Complaint.
2. As to the portion of Plaintiff's Complaint between the ending of the Preface and the beginning of the Jurisdiction heading, these Answering Defendants deny any allegation that they violated the Open Meetings Act and deny any allegation that they failed to carry out "duties of their offices." Any other allegations set forth in that part of the Complaint are denied for lack of information.
3. Paragraph 1 of the Plaintiff's Complaint sets forth legal conclusions, to which these Answering Defendants have no obligation to provide an answer. Additionally, the statute speaks for itself. To the extent the Court determines that an answer is required, these Answering Defendants admit that R.C. 121.22(I)(1) states, in part, as follows: "Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions."
4. Answering Defendants admit the allegations set forth in paragraph 2 of the Plaintiff's Complaint.

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5. Answering Defendants admit the allegations set forth in paragraph 3 of the Plaintiff's Complaint.
6. Answering Defendants admit that Plaintiff has a blog at Esrati.com. All other allegations set forth in paragraph 4 of the Plaintiff's Complaint are denied as stated and/or for lack of knowledge.
7. In response to paragraph 5 of the Plaintiff's Complaint, Answering Defendants admit that Plaintiff has blog posts at Esrati.com that concern varied topics. Answering Defendants further admit that Plaintiff has blogged about the Dayton Board of Education. Any other allegations set forth in paragraph 5 are denied as stated and/or for lack of knowledge.
8. Answering Defendants are presently without sufficient information to form a belief as to the validity of the allegations set forth in paragraph 6 of the Plaintiff's Complaint, and the allegations are therefore denied.
9. In response to paragraph 7 of the Plaintiff's Complaint, Answering Defendants admit that Plaintiff sent an email to the indicated individuals and that the content of the email, which is attached to the Complaint, speaks for itself. Any other allegations set forth in paragraph 7 are denied as stated and/or for lack of knowledge.
10. In response to paragraph 8 of the Plaintiff's Complaint, Answering Defendants admit that Plaintiff sent an email, a copy of which is attached to the Complaint, and that the email speaks for itself. Any other allegations set forth in paragraph 8 of the Complaint are denied as stated and/or for lack of knowledge.
11. In response to paragraph 9 of the Plaintiff's Complaint, Answering Defendants admit that Marsha Bonhart replied to the Plaintiff's email, that a copy of the reply is attached to the Complaint, and that the content of the reply speaks for itself. Defendants deny all other allegations set forth in paragraph 9 of the Plaintiff's Complaint.
12. In response to paragraph 10 of the Plaintiff's Complaint, Answering Defendants admit that Superintendent Lolli and others came together on the morning of January 9, 2018 with the intention of holding a Task Force meeting. Defendants are presently without sufficient information to form a belief as to the validity of the remaining allegations in paragraph 10, and the same are therefore denied.
13. In response to paragraph 11 of the Plaintiff's Complaint, Answering Defendants admit that, initially, the plan was for the first meeting of the School Facilities Task Force to be held in private. Answering Defendants further admit that the first meeting was to be held on January 9, 2018, but it did not go forward. Answering Defendants admit that the meeting was set to be held in the community room in the administrative building of Dayton Public Schools. Answering Defendants further admit that members of the media were instructed of the plan to conduct the first meeting privately, and a conversation ensued. As to any other allegations, these Answering Defendants are presently without sufficient information to form a belief, and the same are therefore denied.

14. In response to paragraph 12 of the Plaintiff's Complaint, Answering Defendants admit that Plaintiff was present on January 9, 2018 and appears to have video recorded certain conversations and posted a recording on YouTube. Any other allegations set forth in paragraph 12 are denied as stated.

15. In response to paragraph 13 of the Plaintiff's Complaint, Answering Defendants admit that Plaintiff refused to leave the community room and that the meeting did not happen. Any other allegations are denied as stated and/or for lack of knowledge.

16. In response to paragraph 14 of the Plaintiff's Complaint, Answering Defendants state that it does not contain a short plain statement of averments in support of a claim for relief. As such, these Answering Defendants are not obligated to provide an answer. To the extent the Court determines otherwise, Answering Defendants admit that Elizabeth Lolli is an experienced school district superintendent; William Harris, Robert Walker, and Mohamed Al-Hamdani are elected members of the Board of Education; Mohamed Al-Hamdani is an attorney; Jeff Mims is a Dayton City Commissioner and a former member of the Dayton Board of Education. All other allegations set forth in paragraph 14 of the Plaintiff's Complaint are denied as stated and/or for lack of knowledge.

17. In response to paragraph 15 of the Plaintiff's Complaint, Answering Defendants admit that Plaintiff refused to leave the community room. Answering Defendants further admit that Plaintiff appears to have recorded certain conversations and interactions and posted a recording to YouTube. Any other allegations set forth in paragraph 15 are denied as stated and/or for lack of knowledge.

18. In response to paragraph 16 of the Plaintiff's Complaint, Answering Defendants admit that the first planned meeting of the School Facilities Task Force did not happen. The meeting was postponed. Any other allegations set forth in paragraph 16 of the Plaintiff's Complaint are denied as stated and/or for lack of knowledge.

19. In response to paragraph 17 of the Plaintiff's Complaint, these Answering Defendants state that they deny the allegation that the Task Force is a public body, and they assert that the Task Force is not required to comply with the Open Meetings Act. Any other allegations set forth in paragraph 17 of the Plaintiff's Complaint are denied as stated and/or for lack of knowledge.

20. In response to paragraph 18 of the Plaintiff's Complaint, the allegations are denied as stated and/or for lack of knowledge.

21. In response to paragraph 19 of the Plaintiff's Complaint, Answering Defendants deny any alleged violation the Open Meetings Act. Answering Defendants admit that Plaintiff was told he could not attend and videotape a planned tour of school buildings to be held during school hours, due to student privacy concerns. Any other allegations set forth in paragraph 19 of the Plaintiff's Complaint are denied as stated and/or for lack of knowledge.

22. Answering Defendants admit the allegations set forth in paragraph 20 of the Plaintiff's Complaint.

23. Answering Defendants admit the allegations set forth in paragraph 21 of the Plaintiff's Complaint.

24. In response to paragraph 22 of the Plaintiff's Complaint, Answering Defendants admit that Jeffrey J. Mims Jr. is a member of the Dayton City Commission. Answering Defendants are presently without sufficient information to form a belief as to the validity of the remaining allegations set forth in paragraph 22, and the same are therefore denied.

25. Answering Defendants admit the allegations set forth in paragraph 23 of the Plaintiff's Complaint.

26. Answering Defendants are presently without sufficient information to form a belief as to the validity of the allegations set forth in paragraph 24 the Plaintiff's Complaint, and the allegations are therefore denied.

27. Answering Defendants admit the allegations set forth in paragraph 25 of the Plaintiff's Complaint.

28. In response to paragraph 26 of the Plaintiff's Complaint, Answering Defendants state that the Task Force is not a public body, and they admit that neither the Dayton City Commission nor the Dayton Board of Education passed a resolution "choosing Mims to be Co-Chair." Any other allegations set forth in paragraph 26 are denied as stated.

29. Answering Defendants deny as stated the allegations set forth in paragraph 27 of the Plaintiff's Complaint.

30. In response to paragraph 28 of the Plaintiff's Complaint, Answering Defendants admit that, on January 9, 2018, before the first planned meeting of the Task Force, a conversation occurred with media members about the meeting being held privately. Any other allegations set forth in paragraph 28 of the Plaintiff's Complaint are denied as stated.

31. In response to paragraph 29 of the Plaintiff's Complaint, Defendants admit to the allegation to the extent that Commissioner Mims stated: "We're going to ask you to leave and then you can challenge this later." Otherwise, answering Defendants are presently without sufficient information to form a belief as to the validity of the allegations set forth in paragraph 29 the Plaintiff's Complaint, and the allegations are therefore denied.

32. Answering Defendants admit that the comment referenced in answer to paragraph 29 was recorded, but, otherwise, Defendants are presently without sufficient information to form a belief as to the validity of the allegations set forth in paragraph 30 of the Plaintiff's Complaint, and the allegations are therefore denied.

33. In response to paragraph 31 of the Plaintiff's Complaint, Answering Defendants admit that the Dayton Board of Education is a political subdivision of the State of Ohio and is the body corporate and politic for the Dayton City School District.

34. Answering Defendants admit the allegations set forth in paragraph 32 of the Plaintiff's Complaint.

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35. Answering Defendants admit the allegations set forth in paragraph 33 of the Plaintiff's Complaint.

36. In response to paragraph 34 of the Plaintiff's Complaint, Answering Defendants admit that Mohamed Al-Hamdani was elected to the Dayton Board of Education in November of 2017 and was sworn in as a Board member on January 9, 2018.

37. Answering Defendants admit the allegations set forth in paragraph 35 of the Plaintiff's Complaint.

38. In response to paragraph 36 of the Plaintiff's Complaint, Answering Defendants admit that Mr. Al-Hamdani is an attorney. Answering Defendants deny as stated the remaining allegations set forth in paragraph 36.

39. In response to paragraph 37 of the Plaintiff's Complaint, Answering Defendants state that the Task Force is not a public body, is not subject to the Open Meetings Act, and that no public body passed a resolution regarding Mr. Al-Hamdani's status as Co-Chair of the Task Force. Any other allegations set forth in paragraph 37 of the Plaintiff's Complaint are denied as stated.

40. Answering Defendants deny as stated the allegations set forth in paragraph 38 of the Plaintiff's Complaint.

41. In response to paragraph 39 the Plaintiff's Complaint, Answering Defendants state that, on January 9, 2018, before the first planned meeting of the Task Force, a conversation occurred with media members regarding the plan to hold the meeting privately. Answering Defendants further admit that media members stated their disagreement with the Task Force's plan to meet privately. Any other allegations set forth in paragraph 39 are denied as stated and/or for lack of knowledge.

42. In response to paragraph 40 of the Plaintiff's Complaint, Answering Defendants admit that Mr. Al-Hamdani made statements about the Task Force meeting being held privately. Answering Defendants further admit that certain interactions and conversations were video recorded. Answering Defendants are presently without sufficient information to form a belief as to the validity of any remaining allegations set forth in paragraph 40 the Plaintiff's Complaint.

43. Answering Defendants admit the allegations set forth in paragraph 41 of the Plaintiff's Complaint.

44. Answering Defendants deny the allegations set forth in paragraph 42 of the Plaintiff's Complaint.

45. In response to paragraph 43 the Plaintiff's Complaint, Answering Defendants reassert and incorporate by reference the admissions, denials, and denials by lack of knowledge as otherwise set forth herein.

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46. In response to paragraph 44 the Plaintiff's Complaint, Answering Defendants admit to the issuance of a January 4, 2018 press release titled: "Dayton Board of Education and Dayton City Commission Seat School Facilities Task Force." Any other allegations are denied as stated.

47. Answering Defendants admit the allegations set forth in paragraph 45 of the Plaintiff's Complaint.

48. In response to paragraph 46 of the Plaintiff's Complaint, Answering Defendants deny that the Task Force was labeled as a "committee," but they admit that the term "committee" was used in the press release.

49. In response to paragraph 47 of the Plaintiff's Complaint, Answering Defendants admit that the first meeting of the Task Force was set to convene on January 9, 2018 in the community room of the administrative building of the Dayton Public Schools. Any other allegations set forth in paragraph 47 are denied as stated.

50. In response to paragraph 48 of the Plaintiff's Complaint, Answering Defendants admit that Dayton City Manager Shelley Dickstein and Dayton Public Schools Acting Superintendent Elizabeth Lolli were present on January 9, 2018 for the planned first meeting of the Task Force. Answering Defendants further admit that City Manager Dickstein and Superintendent Lolli conversed with the media and others. Any other allegations set forth in paragraph 48 are denied as stated.

51. In response to paragraph 49 of the Plaintiff's Complaint, Answering Defendants state that the planned first meeting of the Task Force did not occur and that the Plaintiff refused to leave the community room.

52. In response to paragraph 50 the Plaintiff's Complaint, Answering Defendants admit that the Dayton Daily News published an article on January 24, 2018, indicating that Superintendent Lolli had stated that Task Force meetings would be open to the public. Answering Defendants deny as stated any other allegations set forth in paragraph 50 of the Plaintiff's Complaint.

53. Answering Defendants admit the allegations set forth in paragraph 51 of the Plaintiff's Complaint.

54. In response to paragraph 52 of the Plaintiff's Complaint, Answering Defendants admit that the Dayton Daily News reported as alleged. Any other allegations set forth in paragraph 52 are denied as stated.

55. Answering Defendants deny the allegations set forth in paragraph 53 of the Plaintiff's Complaint.

56. In response to paragraph 54 of the Plaintiff's Complaint, Answering Defendants admit that Plaintiff has quoted from a news article. The remaining allegations set forth in paragraph 54 are denied.

57. In response to paragraph 55 of the Plaintiff's Complaint, Answering Defendants state that the Plaintiff has set forth legal conclusions which require no response. To the extent the Court

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determines otherwise, Defendants admit that Plaintiff has quoted a portion of the Open Meetings Act.

58. In response to paragraph 56 of the Plaintiff's Complaint, Answering Defendants state that Plaintiff has set forth legal conclusions, no answer is therefore required, and the statute speaks for itself. To the extent the Court determines that an answer is required, these Answering Defendants admit that Plaintiff has quoted from a portion of the Open Meetings Act.

59. In response to paragraphs 57 and 58, Answering Defendants state that the Plaintiff has set forth legal conclusions, that no answer is therefore required, and that the statute speaks for itself. To the extent the Court determines an answer is required, Answering Defendants admit that Plaintiff is quoting portions of the Open Meetings Act.

60. In response to paragraph 60 of the Plaintiffs' Complaint, Answering Defendants state that the said paragraph sets forth legal conclusions, that no answer is required, and that any decision of the Ohio Attorney General speaks for itself. To the extent the Court determines an answer is required, the Plaintiff's allegations are denied as stated.

61. In response to paragraph 61 through 68 of the Plaintiff's Complaint, the Plaintiff has set forth legal conclusions to which no answer is required. To the extent the Court determines otherwise, these Answering Defendants generally deny the Plaintiff's allegations as stated.

62. Answering Defendants deny the allegations set forth in paragraphs 69 and 70 of the Plaintiff's Complaint.

*Note: On the 9th unnumbered page of Plaintiff's Complaint, under the "Second Action," Plaintiff restarts the numbering process for the paragraphs of his Complaint, beginning with paragraph 1 on page 9 and continuing through paragraph 21 on page 11. The answer paragraphs that follow this note are in response to these duplicatively numbered paragraphs.

63. Answering Defendants deny the allegations set forth in paragraphs 1, 2, 3, 4, and 5 of the Plaintiff's Complaint.

64. Answering Defendants deny as stated the allegations set forth in paragraph 6 of the Plaintiff's Complaint.

65. Answering Defendants admit that former Board of Education member Adil Baguirov resigned from the Board in 2017.

66. In response to paragraph 8 of the Plaintiff's Complaint, Answering Defendants state that the said paragraph sets forth legal conclusions to which no answer is required. To the extent the Court determines otherwise, Answering Defendants deny the allegations as stated.

67. In response to paragraph 9 of the Plaintiff's Complaint, Answering Defendants deny that Plaintiff is entitled to the relief requested.

68. Answering Defendants deny the allegations set forth in paragraphs 10, 11, 12, 13, 14, 15, and 16 of the Plaintiff's Complaint.

69. Answering Defendants deny the allegations set forth in paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint.

70. Answering Defendants deny all other allegations set forth in the Plaintiff's Complaint unless said allegations were specifically and expressly admitted above.

71. Answering Defendants deny that Plaintiff is entitled to the relief requested.

SECOND DEFENSE

72. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

73. The Task Force is not a public body, is not a decision-making body, has not and will not engage in deliberations, and is not subject to the Open Meetings Act.

FOURTH DEFENSE

74. Plaintiff has failed to comply with Civil Rule 65.

FIFTH DEFENSE

75. Plaintiff had actual notice of, and actually attended, Task Force meetings.

SIXTH DEFENSE

76. The Plaintiff did not suffer any harm or prejudice.

SEVENTH DEFENSE

77. Individual Board members, such as Mr. Al-Hamdani, are not subject to suit under R.C. 121.22(I). Alternatively, the statute does not authorize a Court to issue an injunction against a Board member in his individual capacity, an official capacity claim against a Board member is equivalent to a claim against the Board itself, and the claim against Mr. Al-Hamdani should be dismissed.

EIGHTH DEFENSE

78. Plaintiff's Complaint is barred and/or limited by the doctrines of waiver, estoppel, laches, and/or unclean hands.

NINTH DEFENSE

79. One or both of the Defendants may be immune from suit and /or liability under Ohio Revised Code Chapter 2744, or under other applicable law.

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TENTH DEFENSE

80. At all times, these Answering Defendants acted in good faith and with a reasonable belief that their conduct was appropriate and legally permissible.

ELEVENTH DEFENSE

81. Plaintiff seeks remedies not authorized by the Open Meetings Act, not authorized by any Ohio law, and/or beyond the authority and jurisdiction of the Court.

TWELFTH DEFENSE

82. The relief Plaintiff seeks is, in whole or in part, moot.

THIRTEENTH DEFENSE

83. The relief Plaintiff seeks, in whole or in part, infringes upon student privacy rights and upon the inherent authority of a board of education to create reasonable rules and regulations for the protection, well-being, and/or safety of students.

FOURTEENTH DEFENSE

84. Plaintiff's Complaint seeks an improper advisory opinion.

FIFTEENTH DEFENSE

85. The relief Plaintiff seeks is, in whole or in part, barred by the doctrines of separation of powers and/or comity.

SIXTEENTH DEFENSE

86. The Task Force had no decision-making authority.

SEVENTEENTH DEFENSE

87. These Answering Defendants reserve the right to seek leave of court to amend this answer so as to assert any additional affirmative defense that may come to light as this matter proceeds.

WHEREFORE, Answering Defendants, the Dayton Board of Education and Mohamed Al-Hamdani, pray that the Plaintiff's Complaint be dismissed with prejudice, with costs assessed against the Plaintiff.



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Respectfully submitted,

/s/ Brian L. Wildermuth

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*Attorney for Defendants Dayton Board of Education
and Mohamed Al-Hamdani*

JURY DEMAND

Now come the Defendants and hereby demand a trial by jury as to all issues raised herein.

/s/ Brian L. Wildermuth

Brian L. Wildermuth (0066303)

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the Court's authorized electronic filing system, which will send notification of such filing to the following:

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/s/ Brian L. Wildermuth

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