

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CODY MICHAEL JOCK, TANNER RILEY JOCK, JACK TYLER JOCK, MICHAEL L. JOCK AND COLLEEN FARWELL as parents and legal guardians of Cody Michael Jock, Tanner Riley Jock and Jake Tyler Jock, LAYLA WHITE, and CHARLES WHITE as parent and legal guardian of Layla White,

Plaintiffs,

FILED ELECTRONICALLY

-against-

**Civil Case No.: 7:05-cv-01108
TJM-GJD**

JAMES RANSOM, KATHLEEN LAUZON, EMILY LAUZON, BEN KELLY, STACEY ADAMS, DARLENE BROCKWAY, ROBERT DURANT, MARION ELLIOT, JUDITH STARK, CORRINA BERO individually and as members of the Salmon River Central School District Board of Education, THE SALMON RIVER CENTRAL SCHOOL DISTRICT, GLENN R. BELLINGER, Superintendent of the Salmon River Central School District, in his official and individual capacity, IRVING PAPINEAU, Principal of St. Regis Mohawk School, JOHN SIMMONS, Principal of Salmon River Central School, and JOHN AND JANE DOES 1-10,

Defendants.

ANSWER

As and for their Answer to Plaintiffs' September 2005 Complaint in the above-captioned action, Defendants, the Salmon River Central School District (hereinafter "District"), the Board of Education of the District (hereinafter "Board"), James Ransom, Kathleen Lauzon, Emily Lauzon, Ben Kelly, Stacey Adams, Darlene Brockway, Robert Durant, Marion Elliot, Judith Stark, Corrina Bero, Glenn R. Bellinger, Irving Papineau, and John Simmons (hereinafter collectively referred to as "District Defendants"), by and through their counsel, Girvin & Ferlazzo, P.C., respond as follows:

1. As to the allegations contained in paragraph "1" of the Complaint herein: acknowledge that Plaintiffs seek declaratory, injunctive, and monetary relief; admit that the District includes two schools, namely, the Salmon River Central School and the St. Regis Mohawk School; admit that the District is located on and/or adjacent to land that is recognized as the Mohawk land claim; deny knowledge or information sufficient to form a belief as to the history regarding the Mohawk land claim; and deny all remaining allegations, statements, and inferences contained therein.

2. As to the allegations contained in paragraph "2" of the Complaint herein: acknowledge that the identified Plaintiffs purport to advance a claim under 42 U.S.C. § 1983; acknowledge that Plaintiffs purport to advance claims for a variety of relief, including injunctive, declaratory, and monetary relief; admit that the District has facilitated the recitation of a Prayer of Thanksgiving, referred to in various ways, including "Thanksgiving Prayer," "Thanksgiving Address," and "OHÊN:TON KARIHWATÊHKWEN" (hereinafter "Thanksgiving Prayer"); and deny all remaining allegations, statements, and inferences contained therein.

3. Deny all allegations, statements, and inferences contained in paragraph "3" of the Complaint herein.

4. Deny all allegations, statements, and inferences contained in paragraph “4” of the Complaint herein.

5. Admit, upon information and belief, the allegations contained in paragraph “5” of the Complaint herein.

6. Admit, upon information and belief, the allegations contained in paragraph “6” of the Complaint herein.

7. As to the allegations contained in paragraph “7” of the Complaint herein: admit that Cody Michael Jock is a student of the District; admit that the District has successfully served, supported, and educated thousands of Mohawk students; and deny all remaining allegations, statements, and inferences contained therein.

8. As to the allegations contained in paragraph “8” of the Complaint herein: admit that Tanner Riley Jock is a student of the District; admit that the District has successfully served, supported, and educated thousands of Mohawk students; and deny all remaining allegations, statements, and inferences contained therein.

9. As to the allegations contained in paragraph “9” of the Complaint herein: admit that Jake Tyler Jock is a student of the District; admit that the District has successfully served, supported, and educated thousands of Mohawk students; and deny all remaining allegations, statements, and inferences contained therein.

10. Admit, upon information and belief, the allegations contained in paragraph “10” of the Complaint herein.

11. As to the allegations contained in paragraph “11” of the Complaint herein: admit that Layla White is a student of the District; admit that the District has successfully served, supported,

and educated thousands of Mohawk students; and deny all remaining allegations, statements, and inferences contained therein.

12. As to the allegations contained in paragraph “12” of the Complaint herein: acknowledge that Cody Michael Jock, Tanner Riley Jock, Jake Tyler Jock, Colleen Farwell, Michael L. Jock, Layla White, and Charles White are named Plaintiffs in the above-captioned action; and deny all remaining allegations, statements, and inferences contained therein.

13. As to the allegations contained in paragraph “13” of the Complaint herein: admit that the Board is authorized by New York State Education Department Law to establish certain official policies for the District; admit that the Board is a lawfully constituted body of elected members in accordance with State Law; admit that the Board has a legally defined role in influencing and overseeing certain aspects of the educational services provided by the District; and deny all remaining allegations, statements, and inferences contained therein.

14. As to the allegations contained in paragraph “14” of the Complaint herein: admit that James Ransom was a member of the Board during the relevant time period; admit that James Ransom was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

15. As to the allegations contained in paragraph “15” of the Complaint herein: admit that Kathleen Lauzon was a member of the Board during the relevant time period; admit that Kathleen Lauzon was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

16. As to the allegations contained in paragraph “16” of the Complaint herein: admit that Ben Kelly was a member of the Board during the relevant time period; admit that Ben Kelly was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

17. As to the allegations contained in paragraph “17” of the Complaint herein: admit that Stacey Adams was a member of the Board during the relevant time period; admit that Stacey Adams was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

18. As to the allegations contained in paragraph “18” of the Complaint herein: admit that Darlene Brockway was a member of the Board during the relevant time period; admit that Darlene Brockway was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

19. As to the allegations contained in paragraph “19” of the Complaint herein: admit that Robert Durant was a member of the Board during the relevant time period; admit that Robert Durant was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

20. As to the allegations contained in paragraph “20” of the Complaint herein: admit that Marion Elliot was a member of the Board during the relevant time period; admit that Marion Elliot

was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

21. As to the allegations contained in paragraph “21” of the Complaint herein: admit that Judith Stark was a member of the Board during the relevant time period; admit that Judith Stark was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

22. As to the allegations contained in paragraph “22” of the Complaint herein: admit that Corrina Bero was a member of the Board during the relevant time period; admit that Corrina Bero was a voting member of the Board; admit that the Board, as an entity, possesses certain authority to establish certain policies of the District in accordance with State law; and deny all remaining allegations, statements, and inferences contained therein.

23. As to the allegations contained in paragraph “23” of the Complaint herein: admit that Glenn R. Bellinger was the Superintendent of Schools during the relevant time period; admit that Superintendent Bellinger communicates with the Board regarding, *inter alia*, policy issues; admit that Bellinger, as Superintendent of Schools, presents proposals to the Board; admit that as Superintendent of Schools, Bellinger has certain responsibilities regarding the implementation of some District policies; admit that Bellinger obtained legal advice in an attempt to ensure that the District not engage in or facilitate unlawful activities on its premises; and deny all remaining allegations, statements, and inferences contained therein.

24. As to the allegations contained in paragraph “24” of the Complaint herein: admit that Irving Papineau was the acting Principal of the St. Regis Mohawk School during the relevant time period; admit that as Principal, Mr. Papineau had certain responsibilities regarding the implementation of some policies at the St. Regis Mohawk School facility; and deny all remaining allegations, statements, and inferences contained therein.

25. As to the allegations contained in paragraph “25” of the Complaint herein: admit that John Simmons was the Principal of the Salmon River Central School during the relevant time period; admit that as Principal, Mr. Simmons had certain responsibilities regarding the implementation of some policies at the Salmon River Central School facility; and deny all remaining allegations, statements, and inferences contained therein.

26. Deny all allegations, statements, and inferences contained in paragraph “26” of the Complaint herein.

27. As to the allegations contained in paragraph “27” of the Complaint herein: admit that James Ransom, Kathleen Lauzon, Ben Kelly, Stacey Adams, Darlene Brockway, Robert Durant, Marion Elliot, Judith Stark, Corrina Bero, Glenn R. Bellinger, Irving Papineau, John Simmons, and John and Jane Does 1-10 are currently named as Defendants in the above-captioned action; and deny all remaining allegations, statements, and inferences contained therein.

28. As to the allegations contained in paragraph “28” of the Complaint herein: acknowledge that Plaintiffs purport to invoke this Court’s subject matter jurisdiction pursuant to 42 U.S.C. § 1331(c) and 23 U.S.C. § 1343(a)(3); and deny all factual allegations, statements, and inferences contained therein.

29. As to the allegations contained in paragraph “29” of the Complaint herein: acknowledge that Plaintiffs purport to invoke this Court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a); and deny all factual allegations, statements, and inferences contained therein.

30. As to the allegations contained in paragraph “30” of the Complaint herein: acknowledge that Plaintiffs purport to establish venue of this action before this Court pursuant to 28 U.S.C. § 1391(b); and deny all factual allegations, statements, and inferences contained therein.

31. As to the allegations contained in paragraph “31” of the Complaint herein: admit, upon information and belief, that the Mohawk Nation has certain self-governance, which includes a traditional Long House system and tribal council; deny all remaining allegations, statements, and inferences contained therein; and note that the statements and/or allegations contained in said paragraph are irrelevant to the claims before this Court and in violation of Federal Rules of Civil Procedure 8(a) and (e).

32. As to the allegations contained in paragraph “32” of the Complaint herein: admit, upon information and belief, that the Mohawk Nation is comprised of multiple territories located within Canada and the United States; admit that Akwesasne is one of the Mohawk territories which straddles the Canadian and United States borders; deny knowledge or information sufficient to form a belief as to the remaining allegations, statements, and inferences contained therein; and note that the statements and/or allegations contained in said paragraph are irrelevant to the claims before this Court and in violation of Federal Rules of Civil Procedure 8(a) and (e).

33. As to the allegations contained in paragraph “33” of the Complaint herein: admit, upon information and belief, that North American Indians have their own unique traditions; deny knowledge or information sufficient to form a belief as to the remaining historical

opinions/allegations contained therein; and note that the statements and/or allegations contained in said paragraph are irrelevant to the claims before this Court and in violation of Federal Rules of Civil Procedure 8(a) and (e).

34. As to the allegations contained in paragraph “34” of the Complaint herein: admit that within the last 200 years, the U.S. government has pursued various initiatives and programs with respect to Native Americans; deny knowledge or information sufficient to form a belief as to the opinions and/or specific factual allegations contained therein; and note that the statements and/or allegations contained in said paragraph are irrelevant to the claims before this Court and in violation of Federal Rules of Civil Procedure 8(a) and (e).

35. As to the allegations contained in paragraph “35” of the Complaint herein: admit that the District affords its students the opportunity to learn English, Mohawk language, and other languages and dialects; deny knowledge or information sufficient to form a belief as to the opinions and historical allegations contained therein; and note that the statements and/or allegations contained in said paragraph are irrelevant to the claims before this Court and in violation of Federal Rules of Civil Procedure 8(a) and (e).

36. As to the allegations contained in paragraph “36” of the Complaint herein: admit that the District has and continues to provide a meaningful and culturally sensitive educational opportunity to its students, including specifically its Mohawk students; admit that the District’s success in encouraging, cultivating, and promoting, *inter alia*, the Mohawk cultures has been widely recognized and earned the District awards; admit that the District has a distinguished record supporting, cultivating, and encouraging the success of its students, including specifically, Mohawk students; and deny all remaining, allegations, statements, and inferences contained therein.

37. As to the allegations contained in paragraph “37” of the Complaint herein: admit that the District operates two facilities, known as the Salmon River Central School and the St. Regis Mohawk School; admit that the St. Regis Mohawk School is located in the area known as Akwesasne; admit that the Salmon River Central School is a K-12 facility; and deny all remaining, allegations, statements, and inferences contained therein.

38. As to the allegations contained in paragraph “38” of the Complaint herein: admit that the majority of the students served by the District identify themselves as Native American or ethnic Mohawk; and deny all remaining, allegations, statements, and inferences contained therein.

39. As to the allegations contained in paragraph “39” of the Complaint herein: admit that the District participated in an initiative known as the “Mohawk Education Project” which was designed, in part, to create standards for educating District students in the Mohawk language; refer the Court to the Mohawk Education Project documents for the true contents thereof; and deny all remaining, allegations, statements, and inferences contained therein.

40. Deny all allegations, statements, and inferences contained in paragraph “40” of the Complaint herein.

41. As to the allegations contained in paragraph “41” of the Complaint herein: refer the Court to the Mohawk Education Project documents for the true content thereof; acknowledge that the District has a distinguished Mohawk language program which it offers to its students; and deny all remaining, allegations, statements, and inferences contained therein.

42. As to the allegations contained in paragraph “42” of the Complaint herein: admit that the Thanksgiving Prayer has long been an important element of the Mohawk culture; and deny

knowledge or information sufficient to form a belief as to the remaining allegations, statements, and inferences contained therein.

43. As to the allegations contained in paragraph “43” of the Complaint herein: admit that there are various forms of the Thanksgiving Prayer; admit that the Thanksgiving Prayer incorporates acknowledgment and/or thanks to, *inter alia*, the “Creator”; and deny knowledge or information sufficient to form a belief as to the remaining allegations, statements, and inferences contained therein.

44. As to the allegations contained in paragraph “44” of the Complaint herein: admit that word or concept “Creator” is an integral part of the Thanksgiving Prayer; admit that there are multiple interpretations of the Thanksgiving Prayer; and deny knowledge or information sufficient to form a belief as to the remaining allegations, statements, and inferences contained therein.

45. As to the allegations contained in paragraph “45” of the Complaint herein: admit that the District has a distinguished program which provides education in the Mohawk language; admit that the District continues to provide nationally recognized initiatives to preserve, support, and facilitate education of the Mohawk history and culture; and deny the remaining allegations, statements, and inferences contained therein.

46. As to the allegations contained in paragraph “46” of the Complaint herein: admit that the District has facilitated and supported among, *inter alia*, the “Mohawk Club”; admit that the Mohawk Club has a faculty member advisor; admit that, among other things, the Mohawk Club pursues initiatives to preserve and support and promote Mohawk culture; admit, upon information and belief, a member of the District’s staff requested and was granted use of the Salmon River

Central School District's public address system for recitation of the Thanksgiving Prayer; and deny the remaining allegations, statements, and inferences contained therein.

47. As to the allegations contained in paragraph "47" of the Complaint herein: admit that the Thanksgiving Prayer was and continues to be recited in the Mohawk language; admit that the District has facilitated and supported the recitation of the Thanksgiving Prayer at the District in the Mohawk language to, *inter alia*, present the District students, including specifically Mohawk students, the opportunity to hear the Mohawk language; and deny the remaining allegations, statements, and inferences contained therein.

48. As to the allegations contained in paragraph "48" of the Complaint herein: admit that the District's distinguished program designed to teach the Mohawk language to District students is considered an important initiative; admit that there are unique characteristics of the Mohawk language; and deny the remaining allegations, statements, and inferences contained therein.

49. As to the allegations contained in paragraph "49" of the Complaint herein: admit that during the 2002–2003 school year, a member of the District's staff prepared and/or recited the Thanksgiving Prayer over the public address system at the Salmon River School District facility after proposing such presentation would facilitate and promote the Mohawk language programs at the District; admit that the Thanksgiving Prayer was an abridged version of the complete Thanksgiving Prayer; and deny the remaining allegations, statements, and inferences contained therein.

50. As to the allegations contained in paragraph "50" of the Complaint herein: admit that the District has and continues to support the recitation and presentation of the Thanksgiving Prayer in the Mohawk language, typically at the beginning and the close of the school week; admit that the

Thanksgiving Prayer has historically been recited, *inter alia*, at the beginning and conclusion of important events; and deny all remaining allegations, statements, and inferences contained therein.

51. Admit, upon information and belief, the allegations contained in paragraph “51” of the Complaint herein.

52. As to the allegations contained in paragraph “52” of the Complaint herein: admit that the word and/or concept “Creator” is an integral part of the Thanksgiving Prayer; and deny all remaining allegations, statements, inferences, and opinions contained therein.

53. As to the allegations contained in paragraph “53” of the Complaint herein: admit that there are unique characteristics of the Mohawk language; admit that direct translation of English words and Mohawk terms and concepts are often complex; and deny all remaining allegations, statements, inferences, and opinions contained therein.

54. As to the allegations contained in paragraph “54” of the Complaint herein: admit that there are unique characteristics of the Mohawk language; admit that direct translation of English words and Mohawk terms and concepts are often complex; and deny all remaining allegations, statements, inferences, and opinions contained therein.

55. As to the allegations contained in paragraph “55” of the Complaint herein: admit that there are unique characteristics of the Mohawk language; admit that direct translation of English words and Mohawk terms and concepts are often complex; and deny all remaining allegations, statements, inferences, and opinions contained therein.

56. As to the allegations contained in paragraph “56” of the Complaint herein: admit that, upon information and belief, the Thanksgiving Prayer is widely recited in the Mohawk culture; admit that Mohawks living in Akwesasne are affiliated with a variety of different churches and/or religions

and/or faiths; and deny all remaining allegations, statements, inferences, and opinions contained therein.

57. As to the allegations contained in paragraph “57” of the Complaint herein: admit that the Thanksgiving Prayer has been recited at the District on a regular basis since in or about October 2004; admit, upon information and belief, the Superintendent of Schools inquired about the use of the public address system in connection with the Thanksgiving Prayer at the behest of an individual who did not represent herself to be Mohawk; and deny all remaining allegations, statements, inferences, and opinions contained therein.

58. As to the allegations contained in paragraph “58” of the Complaint herein: admit that in response to an inquiry, Superintendent of Schools Bellinger sought a legal opinion regarding the appropriateness of the District’s continued use of the public address system at the Salmon River School District facility as a means of presenting the Thanksgiving Prayer during the school day; admit that the District in fact received a legal opinion from the Board’s legal counsel; and deny all remaining allegations, statements, inferences, and opinions contained therein.

59. Deny all allegations, statements, and inferences contained in paragraph “59” of the Complaint herein.

60. Deny all allegations, statements, and inferences contained in paragraph “60” of the Complaint herein.

61. Deny all allegations, statements, and inferences contained in paragraph “61” of the Complaint herein.

62. Deny all allegations, statements, and inferences contained in paragraph “62” of the Complaint herein.

63. Deny all allegations, statements, and inferences contained in paragraph “63” of the Complaint herein.

64. Deny all allegations, statements, and inferences contained in paragraph “64” of the Complaint herein.

65. Deny all allegations, statements, and inferences contained in paragraph “65” of the Complaint herein.

66. Deny all allegations, statements, and inferences contained in paragraph “66” of the Complaint herein.

67. As to the allegations contained in paragraph “67” of the Complaint herein: admit that in May 2005, the District modified the forum in which the Thanksgiving Prayer was recited on a regular basis, specifically providing time and space in the auditorium for the presentation and recitation of the Thanksgiving Prayer on the same schedule as previously recited rather than utilizing the public address system during the school day; and deny all remaining allegations, statements, and inferences contained therein.

68. As to the allegations contained in paragraph “68” of the Complaint herein: admit that a few District students briefly protested the District’s modification of the forum utilized to recite the Thanksgiving Prayer; admit that the District encouraged District students to attend class at scheduled class times; and deny all remaining allegations, statements, and inferences contained therein.

69. Deny all allegations, statements, and inferences contained in paragraph “69” of the Complaint herein.

70. Deny all allegations, statements, and inferences contained in paragraph “70” of the Complaint herein.

71. Deny all allegations, statements, and inferences contained in paragraph “71” of the Complaint herein.

72. Deny all allegations, statements, and inferences contained in paragraph “72” of the Complaint herein.

73. Deny all allegations, statements, and inferences contained in paragraph “73” of the Complaint herein.

74. As to the allegations contained in paragraph “74” of the Complaint herein: admit that at various times at the District, the Pledge of Allegiance is recited at District activities; admit that various anthems are sung at extracurricular events; admit that holiday celebrations of all types, including recognition of exclusively Mohawk holidays, are recognized at the District; admit that songs are sung during choral events which arise from various cultures and traditions; and deny all remaining allegations, statements, and inferences contained therein.

75. As to the allegations contained in or incorporated into paragraph “75” of the Complaint herein, Defendants incorporate by reference their responses to paragraphs “1” through “74” of the Complaint.

76. Deny all allegations, statements, and inferences contained in paragraph “76” of the Complaint herein.

77. Deny all allegations, statements, and inferences contained in paragraph “77” of the Complaint herein.

78. Deny all allegations, statements, and inferences contained in paragraph “78” of the Complaint herein.

79. As to the allegations contained in paragraph “79” of the Complaint herein: acknowledge that Plaintiffs seek various forms of relief from this Court; and deny all remaining allegations, statements, and inferences contained therein.

80. Deny all allegations, statements, and inferences contained in paragraph “80” of the Complaint herein.

81. Deny all allegations, statements, and inferences contained in paragraph “81” of the Complaint herein.

82. Deny all allegations, statements, and inferences contained in paragraph “82” of the Complaint herein.

83. As to the allegations contained in or incorporated into paragraph “83” of the Complaint herein, Defendants incorporate by reference their responses to paragraphs “1” through “82” of the Complaint.

84. Deny all allegations, statements, and inferences contained in paragraph “84” of the Complaint herein.

85. Deny all allegations, statements, and inferences contained in paragraph “85” of the Complaint herein.

86. Deny all allegations, statements, and inferences contained in paragraph “86” of the Complaint herein.

87. Deny all allegations, statements, and inferences contained in paragraph “87” of the Complaint herein.

88. Deny all allegations, statements, and inferences contained in paragraph “88” of the Complaint herein.

89. As to the allegations contained in or incorporated into paragraph “89” of the Complaint herein, Defendants incorporate by reference their responses to paragraphs “1” through “88” of the Complaint.

90. Deny all allegations, statements, and inferences contained in paragraph “90” of the Complaint herein.

91. Deny all allegations, statements, and inferences contained in paragraph “91” of the Complaint herein.

92. Deny all allegations, statements, and inferences contained in paragraph “92” of the Complaint herein.

93. Deny all allegations, statements, and inferences contained in paragraph “93” of the Complaint herein.

94. Deny all allegations, statements, and inferences contained in paragraph “94” of the Complaint herein.

95. Deny all allegations, claims, statements, prayers for relief, and inferences contained in the “WHEREFORE paragraph” of the Complaint herein, including subparagraphs “A” through “F” thereunder.

96. Deny any and all other allegations, statements, and inferences contained in the Complaint herein, which are not specifically addressed by the foregoing paragraphs.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

97. Some or all of the allegations contained in the Complaint herein fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

98. Some of the claims asserted by the Plaintiffs are barred by the applicable statutes of limitation.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

99. The actions of the Defendants, if any, were made in good faith, without malice and/or performed in the reasonable belief that such actions were authorized by and in accord with existing law and authority.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

100. Defendants have not deprived Plaintiffs of any rights, privileges, or immunities secured under the Constitution or the Laws of the United States.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

101. Plaintiffs' claims must be dismissed as against all or some of the Defendants under the doctrine of qualified immunity in that the actions of Defendants James Ransom, Kathleen Lauzon, Emily Lauzon, Ben Kelly, Stacey Adams, Darlene Brockway, Robert Durant, Marion Elliot, Judith Stark, Corrina Bero, Glenn R. Bellinger, Irving Papineau, and John Simmons, if any, were discretionary and made in good faith.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

102. This Court does not have subject matter jurisdiction over some or all of the Plaintiffs' claims.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

103. Plaintiffs' claims are barred in whole or in part by their failure to satisfy conditions precedent to commencing the instant action and/or their failure to exhaust administrative remedies.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

104. To the extent that the Complaint seeks punitive or exemplary damages as against the District, such claims should be dismissed as the District is absolutely immune from such liability.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

105. Plaintiffs lack standing to bring the claims in the instant action.

WHEREFORE, Defendants request that the Complaint be dismissed and for such other and further relief in Defendants' favor as the Court deems appropriate.

DATED: October 26, 2005

GIRVIN & FERLAZZO, P.C.

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