NOW COMES, the North Carolina Superintendent of Public Instruction Mark Johnson (hereinafter referred to as the “Superintendent”), by and through the undersigned counsel, and responding to the correspondingly numbered paragraphs contained in Plaintiff’s Verified Amended Complaint for Declaratory and Injunctive Relief and Motion for Preliminary Injunction (hereinafter referred to as the “amended complaint”), hereby answers as follows:

**FIRST DEFENSE AND FURTHER ANSWER**

**INTRODUCTION**

1. The allegations contained in paragraph 1 of the amended complaint do not require a response. To the extent a response is required, the allegations contained in paragraph 1 of the amended complaint are denied.

2. The terms of Article IX, Section 5 of the North Carolina Constitution speak for themselves. Except as specifically admitted, the remaining allegations contained paragraph 2 of the amended complaint are denied.

3. The allegations contained in paragraph 3 of the amended complaint are denied, in that the North Carolina General Assembly has enacted laws amending the powers and duties of the State Board of Education (hereinafter referred to as the “State Board”), most recently, less than 25 years
ago, with legislation that removed duties from the Hon. Bob Ethridge (the Superintendent at the time), and provided new duties to the State Board. The actions of previous bodies of the North Carolina General Assembly related to the duties of the State Board and the Superintendent were constitutional then, as they are today, pursuant to Article IX, Section 5 of the North Carolina Constitution.

4. The allegations contained in paragraph 4 of the amended complaint are denied. It is specifically admitted that there is no constitutional conflict between Session Law 2016-126 §4 and Article IX, Section 5 of the North Carolina Constitution when the entire text of Article IX, Section 5 of the North Carolina Constitution is considered:

   The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly. (Emphasis supplied).

5. The allegations contained in paragraph 5 of the amended complaint do not require a response. To the extent a response is required, the allegations contained in paragraph 5 of the amended complaint are denied.

PARTIES

6. It is admitted that the State Board is a constitutional body that derives its powers and duties directly from the people through the North Carolina Constitution. Except as specifically admitted, the remaining allegations contained in paragraph 6 of the amended complaint are denied.

7. The allegations contained in paragraph 7 of the amended complaint are admitted.

8. It is admitted that Mark Johnson is a resident of Raleigh and is the North Carolina Superintendent of Public Instruction. It is further admitted that he is a proper party to the instant
lawsuit. Except as specifically admitted, the remaining allegations contained in paragraph 8 of the amended complaint are denied.

**JURISDICTION AND VENUE**

9. The allegations contained in paragraph 9 of the amended complaint are admitted.

10. The allegations contained in paragraph 10 of the amended complaint are admitted.

**FACTUAL ALLEGATIONS**

**The Constitutional Powers and Duties of the State Board**

11. The terms of Article I, Section 15 of the North Carolina Constitution speak for themselves. The remaining allegations and editorial comments contained paragraph 11 of the amended complaint are denied.

12. The terms of Article IX, Section 2 and Article of the 1868 North Carolina Constitution speak for themselves. The remaining allegations and editorial comments contained paragraph 12 of the amended complaint are denied.

13. The terms of the 1868 North Carolina Constitution speak for themselves. The remaining allegations and editorial comments contained paragraph 13 of the amended complaint are denied.

14. The terms of the North Carolina Constitution, including Article IX, Section 5, speak for themselves. The remaining allegations and editorial comments contained paragraph 14 of the amended complaint are denied.

15. The terms of the North Carolina Constitution, including Article IX, Section 4, speak for themselves. The remaining allegations and editorial comments contained paragraph 15 of the amended complaint are denied.
16. The terms of Article IX, Section 4 of the North Carolina Constitution and the terms of the 1868 North Carolina Constitution speak for themselves. The remaining allegations and editorial comments contained paragraph 16 of the amended complaint are denied.

17. The allegations of paragraph 17 of the amended complaint are denied, in that all of the duties and powers of the State Board and the Superintendent are “subject to the laws enacted by the General Assembly” as stated in Article IX, Section 5 of the North Carolina Constitution.

**The Transfer Legislation**

18. The allegations contained in paragraph 18 of the amended complaint are admitted.

19. The allegations contained in paragraph 19 of the amended complaint are admitted.

20. The allegations contained in paragraph 20 of the amended complaint are admitted.

21. The allegations contained in paragraph 21 of the amended complaint are admitted. It is further admitted that a document entitled Session Law 2016-126 is attached to the amended complaint as Exhibit “A.”

22. The terms of Session Law 2016-126 speak for themselves.

23. The terms of the North Carolina Constitution and Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 23 of the amended complaint are denied.

24. The terms of the North Carolina Constitution and Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 24 of the amended complaint are denied.

25. The terms of Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 25 of the amended complaint are denied.
26. The terms of the North Carolina Constitution and Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 26 of the amended complaint are denied.

**COUNT 1 – DECLARATORY AND INJUNCTIVE RELIEF**  
*Article IX, Section 5 of the North Carolina Constitution*

27. The defenses and responses contained in paragraphs 1 – 26 of the Superintendent’s Answer and Defenses are re-alleged and incorporated herein as if fully set forth below.

28. The terms of the North Carolina Constitution and Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 28 of the amended complaint are denied.

29. The allegations contained in paragraph 29 of the amended complaint are denied.

**COUNT 2 – DECLARATORY AND INJUNCTIVE RELIEF**  
*Article IX, Section 5 of the North Carolina Constitution*

30. The defenses and responses contained in paragraphs 1 – 29 of the Superintendent’s Answer and Defenses are re-alleged and incorporated herein as if fully set forth below.

31. The terms of the North Carolina Constitution and Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 31 of the amended complaint are denied.

32. The allegations contained in paragraph 32 of the amended complaint are denied.

**COUNT 3 – DECLARATORY AND INJUNCTIVE RELIEF**  
*Article IX, Section 5 of the North Carolina Constitution*

33. The defenses and responses contained in paragraphs 1 – 32 of the Superintendent’s Answer and Defenses are re-alleged and incorporated herein as if fully set forth below.
34. The terms of the North Carolina Constitution and Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 34 of the amended complaint are denied.

35. The allegations contained in paragraph 35 of the amended complaint are denied.

**COUNT 4 – DECLARATORY AND INJUNCTIVE RELIEF**

*Article IX, Section 5 of the North Carolina Constitution*

36. The defenses and responses contained in paragraphs 1 – 35 of the Superintendent’s Answer and Defenses are re-alleged and incorporated herein as if fully set forth below.

37. The terms of the North Carolina Constitution and Session Law 2016-126 speak for themselves. The remaining allegations and editorial comments contained paragraph 37 of the amended complaint are denied.

38. The allegations contained in paragraph 38 of the amended complaint are denied.

**MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

39. The defenses and responses contained in paragraphs 1 – 38 of the Superintendent’s Answer and Defenses are re-alleged and incorporated herein as if fully set forth below.

40. The allegations contained in paragraph 40 of the amended complaint are denied.

41. The allegations contained in paragraph 41 of the amended complaint are denied.

42. It is admitted that the Court has issued a temporary restraining order. It is further admitted that the State Board seeks a preliminary injunction. The remaining allegations contained in paragraph 42 of the amended complaint are denied. It is expressly denied that the State Board is entitled to the requested injunctive relief.

**SECOND DEFENSE**

Some or all of the State Board’s claims may fail to state a cause of action for which relief may be granted pursuant to N.C.G.S. §1A-1, Rule 12(b)(6).
THIRD DEFENSE

The Superintendent expressly reserves his right to further respond to the State Board’s allegations and to amend his answer and defenses to assert other affirmative defenses.

FOURTH DEFENSE

In 1971, The People ratified the North Carolina Constitution. In doing so, pursuant to Article IX, Section 5, the People sought to limit the power and duties of the State Board, subject to laws enacted by the [North Carolina] General Assembly. Pursuant to Guthrie v. Taylor, 279 NC 703, 710, 185 S.E.2d 193, 198 (1971), the People unambiguously provided that any powers conferred upon the State Board would be subject to limitation and revisions by acts of the People’s elected representatives in the North Carolina General Assembly. Notably, since the ratification of the 1971 Constitution, the North Carolina General Assembly has revised and amended the duties and responsibilities of the State Board and Superintendent on multiple occasions, all of which have been subject to the power granted to the North Carolina General Assembly by the People.

FIFTH DEFENSE

Some of all of the State Board’s claims are or may be barred, in whole or in part, by the equitable doctrine of estoppel.

SIXTH DEFENSE

Some of all of the State Board’s claims are or may be barred, in whole or in part, by the equitable doctrine of waiver.

SEVENTH DEFENSE

Some of all of the State Board’s claims are or may be barred, in whole or in part, by the equitable doctrine of laches.

NOW WHEREFORE, the Superintendent prays for the following requested relief:
1. That the Court deny and dismiss all of the State Board’s claims asserted in this action with prejudice;

2. That all costs of this action, including any allowable attorneys’ fee, be assessed against the State Board; and

3. For such other and further relief as the Court deems just and proper.

This the 12th day of April, 2017.

BLANCHARD, MILLER, LEWIS & ISLEY, P.A.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ANSWER AND DEFENSES was served upon the following attorneys by U.S. Mail and e-mail to the following:

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This the 12th day of April, 2017.

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