

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

FILED
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE # : 21-CVS-3915

NOV 2 2021

DAVID A. PERRY,

Plaintiff
By

[Signature]

am/pm
Dep/Asst CSC

v.

NEW HANOVER COUNTY BOARD OF
EDUCATION, NEW HANOVER , NEW
HANOVER COUNTY SHERIFF'S
OFFICE, et al.

Defendants.

ORDER ON MOTIONS TO DISMISS;
ORDER DENYING PRELIMINARY
INJUNCTION

THIS MATTER came before the undersigned Superior Court Judge in and for the County of New Hanover on motion of the defendants to dismiss pursuant to N.C. Gen. Stat. 1A-1, Rule 12(b)(1) and Rule 12(b)(6). The plaintiff appeared pro se. The defendant New Hanover County School Board was represented by Colin Shive of Tharrington Smith, LLP of the Wake County Bar. The defendant New Hanover County Sheriff was represented by Sharon Huffman, Deputy County Attorney for New Hanover County.

The Court in addressing the motion to dismiss considered only the allegations of the complaint. Having reviewed the complaint and having heard the arguments of counsel the court finds that:

1. That the individual defendants were all named in their official capacity. In their official capacity, naming of the county agency is sufficient to confer jurisdiction and the addition of the named individuals is unnecessary.
2. As to those claims set forth against the New Hanover County School Board and the New Hanover County Sheriff, taking all allegations as true and well plead, the complaint does state a claim upon which relief can be granted.

As to plaintiff's request for preliminary injunction, the Court finds:

1. What the plaintiff seeks is not to protect the status quo but to direct a county agency to take action in contradiction of an established order from that county agency. Plaintiff seeks an order that the established order is an unconstitutional infringement of this rights.

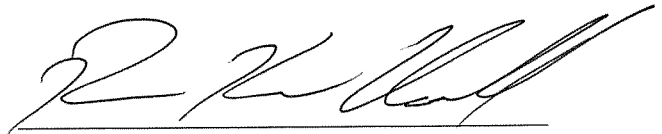
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CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
BY: *Leni M. Knowles*
Deputy Clerk

2. Issuance of a mandatory injunction may be an appropriate remedy if the court finds in favor of the plaintiff but entry of a preliminary injunction would be improper under these circumstances.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Defendants' motion to dismiss is granted as to the individual defendants named in their official capacity.
2. Defendants' motion to dismiss is denied as to the New Hanover County School Board and the New Hanover County Sheriff's Office.
3. Plaintiff's motion for preliminary injunction is denied.

This the 2nd day of November, 2021.



R. Kent Harrell
Superior Court Judge Presiding