4709 Cornus Drive

Wilmington, NC 28412

November 19, 2021

New Hanover County Superior Court

Attn: Jan Kennedy, Clerk

PO Box 2023

Wilmington, NC 28402

Dear Ms. Kennedy:

Today I am submitting the Plaintiff's Objection to the Defendant's Motion for an Extension of Time. I request that you have a judge review my objection before any action is taken or Order issued on Defendant New Hanover County Board of Education's Motion for an Extension of Time.

If you have any questions, then please let me know. I can be reached via phone at: 910-617-2873 or via email at: dperrync@icloud.com

Sincerely,

David A. Perry, Pro Se

STATE OF NORTH CAROLINA

NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 003915

DAVID A. PERRY,

PLAINTIFF,

vs.

NEW HANOVER COUNTY BOARD OF EDUCATION;

NEW HANOVER COUNTY SHERIFF'S OFFICE;

DEFENDANTS;

OBJECTION TO THE DEFENDANT'S MOTION FOR EXTENSION OF TIME

HERE COMES THE PLAINTIFF, David A. Perry, Pro Se, who hereby objects to the Motion for Extension of Time filed by the Defendant, the New Hanover County Board of Education, on November 16, 2021.

In support of this objection, the Plaintiff makes the following points:

1. The Plaintiff filed this action on October 14, 2021. Contrary to the Defendant's motion, the Affidavit of Service clearly indicates that all Defendants in this case were served on October 18, 2021 (not October 19, 2021).
2. Pursuant to NC Rules of Civil Procedure, G.S. 1A-1, Rule 12(a)(1) the Defendant has 30 days to answer a complaint. Therefore, the Defendant had until November 17, 2021 to file an answer. However, since the Defendant was served the complaint by mail, NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(e) is applicable, and 3 days of additional time must be allowed. Therefore, the Defendant had until November 20, 2021 to file an answer. However, since November 20, 2021 is a Saturday, NC Rules of Civil Procedure,

G.S. 1A-1, Rule 6(a) applies, and therefore the Defendant had until November 22, 2021 to file an answer.

3. However, since the Defendant filed a Motion to Dismiss, the time computations for filing an answer to the complaint have changed. NC Rules of Civil Procedure, G.S. 1A-1, Rule 12(a)(1)(a) states:

> The responsive pleading shall be served within 20 days after notice of the court's action in ruling on the motion or postponing its disposition until the trial on the merits;

As correctly stated in the Defendant's motion, Judge Harrell denied the Defendant's Motion to Dismiss at the November 2, 2021 hearing on the matter. Therefore, the Defendant is required to not only file an answer by November 22, 2021, but that answer also needs to be served upon the Plaintiff by then. Since Judge Harrell personally served his Order to the Defendant on November 2, 2021, NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(e) is inapplicable, and since November 22, 2021 does not fall on a weekend or on a holiday, NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(a) is also inapplicable.

4. NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(b) does empower this Court with the discretion to extend the time period for the Defendant to answer to the complaint. However, this does NOT automatically grant the Defendant the right to additional time. This Court MAY grant additional time, but as Rule 6(b) states, it should be based on "cause shown." The Defendant's motion simply states that "Counsel for Defendant Board requires additional time to prepare a responsive pleading." No reason as to why the Defendant's Counsel is unable to submit a timely answer to the complaint is even proffered. Nor is any reason given why they need a whopping 30 days of additional time to complete this task. The Defendant, the New Hanover County Board of Education, is

defended by two attorneys from a very large law firm, Tharrington Smith, LLP. In addition to attorneys Shive and Weinstein, this law firm has 16 additional attorneys on staff in their education law practice alone! This does not even take into account the numerous law clerks and paralegals who work for the firm. In short, there is no reason short of inattentiveness, that Counsel for the Defendant should need more time to prepare a responsive pleading. And since no reason was proffered, this Court should not assume there is any good cause to extend the Defendant's time to file an answer.

5. Whether or not the Defendant's motion is "made in good faith and not made for the purpose of delay," is irrelevant. The fact is that is if this Court decides to grant this motion, it will cause an unnecessary delay in this case. The New Hanover County Board of Education decided on November 15, 2021 to extend their mask mandate until at least December by a 5-2 vote. As is apparent from the discussion held during this meeting, it is the intention of the majority of school board members to extend their mask mandate until at least January 2022. This means that the Defendant, and all those similarly situated individuals who cannot or will not wear a mask, will not be able to fully participate in school board meetings until at least after the January 4, 2022 regular meeting of the New Hanover County Board of Education. The result will be that the Plaintiff, and those similarly situated, will lose their petition, assembly, and Open Meetings rights for an additional two months for no good reason.

6. The Plaintiff firmly believes that there are little to no issues of fact in this case that will need to be resolved once the Defendants answer this complaint. This is a case about the law and our state and federal constitutions, and not about facts. Once answers are received in this case, the Plaintiff plans to quickly file a brief in support of the case and a

motion for this Court to rule on the pleadings. If any facts are in dispute, the Plaintiff would simply ask for a quick hearing on the very limited set of facts that still might be contested. If the Defendant's Motion for Extension of Time is denied, there might be time to get a final resolution on this case by the end of 2021. If the motion is granted, especially if it is for the full 30 days requested, this case will most certainly not be fully adjudicated until at least late January or February of 2022.

THEREFORE, the Plaintiff beseeches this honorable Court to:

1. DENY the Motion for Extension of Time submitted by the Defendant, the New Hanover County Board of Education, and order that the Plaintiff be served with an answer to the complaint by November 22, 2021.
2. IN THE ALTERNATIVE, since the Defendant is currently under a 20-day time limit to file an answer, reduce the requested extension of time from 30 to 20 days, and order that the Plaintiff be served with an answer to the complaint by December 13, 2021.
3. Grant whatever other relief this Court finds just and equitable.

Dated this 19th day of November 2021.

David A. Perry, Pro Se

CERTIFICATE OF SERVICE

I certify that a copy of the attached **OBJECTION TO THE DEFENDANT'S MOTION FOR EXTENSION OF TIME** was served upon all Defendants in this case on this date, via USPS Priority Mail and electronic mail addressed to:

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Attorney for New Hanover County Sheriff's Office

Dated this 19th day of November 2021.

David A. Perry, Pro Se