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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

New Public School District #8, Appellant, v. State Board of Public School Education, Hope Nauman and Jason Nauman, Appellees.	**Supreme Court No. 20160209** **District Ct. No. 53-2015-CV-01100**

Appeal from Amended Judgment Dated June 13, 2016
County of Williams, Northwest Judicial District
The Honorable David W. Nelson, Presiding

CONSOLIDATED WITH

New Public School District #8, Appellant, v. State Board of Public School Education, Mary Black, Marsha Hughes, Tanna Martinez, Nathan Black, and Richard Martinez, Appellees.	**Supreme Court No. 20160210** **District Ct. No. 53-2015-CV-01103**

Appeal from Judgment Dated June 15, 2016
County of Williams, Northwest Judicial District
The Honorable David W. Nelson, Presiding

BRIEF OF APPELLEE

State of North Dakota
Wayne Stenehjem
Attorney General

By: Douglas A. Bahr
Solicitor General
State Bar ID No. 04940
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300
Email dbahr@nd.gov

Attorneys for Appellee North Dakota State
Board of Public School Education.

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STATEMENT OF THE ISSUES

[¶1] Whether the district court correctly held the subject Petitions for Annexation of Property from One Public School District to Another (Petitions), considered and approved by the State Board of Public School Education (State Board), met the requirements of N.D.C.C. §§ 15.1-12-03 and 15.1-12-05.

[¶2] Whether the district court correctly held the Petitions met the contiguousness requirement set forth in N.D.C.C. § 15.1-12-03(1) because the properties sought to be annexed (Petitioned Properties) were expected to be contiguous with the school district at the time of annexation.

STATEMENT OF THE CASE

[¶3] The State Board accepts the Statement of the Case as written in the Brief of Appellant New Public School District # 8 (Appellant's Br.) ¶¶ 3-8. The State Board disputes ¶ 9 of Appellant's Brief, which presents argument rather than provides a statement of the case.

STATEMENT OF FACTS

[¶4] This is an administrative appeal. The facts, as found by the State Board, are at pages 120-30 and 369-86 of the Appendix of Appellant New Public School District #8 (App.). Relevant to the limited issues raised on appeal, the State Board found:

> The State Board's attorney, Assistant Attorney General Lea Ann Schneider, has advised the State Board that it does have the authority to approve this annexation. She advises that state law requires that "[t]he property to be annexed . . . [must be] contiguous to the school district [annexed to]." N.D.C.C. § 15.1-12-03(1). "Annexations . . . become effective on July first following final approval of the state board." N.D.C.C. § 15.1-12-06. On July 1, 2015, the effective date of this annexation, the petitioned property will be contiguous to the Williston School District, as required by N.D.C.C. § 15.1-12-03(1).

> The State Board agrees with Assistant Attorney General Lea Ann Schneider. The State Board has been applying this interpretation of the law since it first arose in approximately March of 2012 in relation to annexations of property from the Nedrose School District to the Minot School District. Since then, the State Board has approved many annexations of property from the Nedrose School District to the Minot School District when the petitioned property would be contiguous to the Minot School District through other property that has already been approved by the State Board to be annexed to the Minot School District.

App. 129, 385.

[¶5] Based on the above factual findings, the State Board made the following conclusion of law:

> State law requires that "[t]he property to be annexed . . . [must be] contiguous to the school district [annexed to]." N.D.C.C. § 15.1-12-03(1). "Annexations . . . become effective on July first following final approval of the state board." N.D.C.C. § 15.1-12-06. On July 1, 2015, the effective date of this annexation, the petitioned property will be contiguous to the Williston School District, as required by N.D.C.C. § 15.1-12-03(1). See also, Tovey v. City of Charleston, 117 S.E.2d 872 (S.Car. 1961) and In re Lancaster City Ordinance No. 20-1952, 98 A.2d 33 (Pa. 1953).

App. 131, 386-87.

STANDARD OF REVIEW

I. This Court's review of the State Board's decision is limited.

[¶6] "The [State] Board is an administrative agency." In re Lewis & Clark Pub. Sch. Dist. #161, 2016 ND 41, ¶ 5, 876 N.W.2d 40; see also N.D.C.C. § 28-32-01(2). Courts' review of administrative agencies' decisions is governed by N.D.C.C. § 28-32-46. Lewis & Clark Pub. Sch. Dist., 2016 ND 41, ¶ 5, 876 N.W.2d 40; New Town Pub. Sch. Dist. No. 1 v. State Bd. of Pub. Sch. Educ., 2002 ND 127, ¶ 5, 650 N.W.2d 813.

[¶7] This Court reviews the State Board's decision and the record compiled before the State Board, not the district court's decision. Lewis & Clark Pub. Sch. Dist., 2016 ND 41, ¶ 5, 876 N.W.2d 40; New Town Pub. Sch. Dist., 2002 ND 127, ¶ 5, 650 N.W.2d 813. The Court, however, gives "'due respect to the district court's analysis and review.'" Johnson v. N.D. Workforce Safety & Ins. Fund, 2012 ND 87, ¶ 6, 816 N.W.2d 74 (quoting Bergum v. N.D. Workforce Safety & Ins., 2009 ND 52, ¶ 8, 764 N.W.2d 178); see also Lewis & Clark Pub. Sch. Dist., 2016 ND 41, ¶ 5, 876 N.W.2d 40.

[¶8] In reviewing an administrative agency's findings of fact, courts "exercise restraint and do not make independent findings of fact or substitute [their] judgment for that of the agency; rather, [they] determine only whether a reasoning mind could have reasonably determined the agency's factual conclusions were supported by the weight of the evidence from the entire record." New Town Pub. Sch. Dist., 2002 ND 127, ¶ 5, 650 N.W.2d 813. A determination of an administrative agency is presumed to be correct. In re Annexation of a Part of Donnybrook Pub. Sch. Dist. No. 24, 365 N.W.2d 514, 518 (N.D. 1985); Barnes Cty. v. Garrison Diversion Conservancy Dist., 312 N.W.2d 20, 25 (N.D. 1981). Moreover, "[w]here the subject of an agency decision is a technical one, the expertise of the agency is entitled to respect." Turnbow v. JSND, 479 N.W.2d 827, 828 (N.D. 1992); see also New Town Pub. Sch. Dist., 2002 ND 127, ¶ 13, 650 N.W.2d 813 (explaining issues involving "technical questions regarding school district financing" are within the State Board's expertise and the Court gives "appreciable deference to agency expertise if the subject matter of the agency decision is technical").

LAW AND ARGUMENT

I. The State Board's order is in accordance with the law.

A. North Dakota law requires the property to be annexed to a school district be contiguous at the time of annexation.

[¶9] "Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears . . . ." N.D.C.C. § 1-02-02. "Words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language . . . ." N.D.C.C. § 1-02-03. North Dakota law requires that property to be annexed to a school district be contiguous when the property is annexed. N.D.C.C. § 15.1-12-03 provides: "Real property may be annexed to a school district provided: 1. The property to be annexed constitutes a single area that is contiguous to the school district . . . ." (Emphasis added.) N.D.C.C. § 15.1-12-06 provides when previously approved annexations will take place: "Annexations under this chapter become effective on July first following final approval by the state board." Property may not be annexed to a school district if it is not contiguous to the school district at the time of annexation, which is the July first following final approval by the State Board.

[¶10] On June 15, 2015, the State Board approved the Petitions. App. 132, 388. Under N.D.C.C. § 15.1-12-06 and the State Board's orders, the Petitioned Properties became annexed to Williston School District on July 1, 2015. App. 132, 388. When the Petitioned Properties were annexed on July 1, 2015, the Petitioned Properties were contiguous with the Williston School District because of other property previously approved by the State Board to be annexed on July 1, 2015. App. 128-29, 131, 384-85, 386-87.There never was a moment of time when there

was a lack of contiguity between the Williston School District and the annexed Petitioned Properties. See Tovey v. City of Charleston, 117 S.E.2d 872, 877 (S.C. 1961). There is nothing in N.D.C.C. §§ 15.1-12-03, 15.1-12-04 or 15.1-12-05 that prohibits annexation proceedings from being simultaneously commenced. It is sufficient if on July 1, 2015, when the Petitioned Properties were annexed, the Petitioned Properties were contiguous to property contiguous to Williston School District. N.D.C.C. §§ 15.1-12-03(1); 15.1-12-06.

B. The State Board's interpretation of the laws under which it operates is entitled to deference.

[¶11] As previously noted, "[w]here the subject of an agency decision is a technical one, the expertise of the agency is entitled to respect." Turnbow, 479 N.W.2d at 828. Additionally, the interpretation of a statute by an administrative agency charged with its execution is entitled to weight and courts "will defer to a reasonable interpretation of that agency unless it contradicts clear and unambiguous statutory language." Frank v. Traynor, 1999 ND 183, ¶12, 600 N.W.2d 516; see Turnbow, 479 N.W.2d at 830 ("We will normally defer to a reasonable interpretation placed on a statute by the agency responsible for enforcing it, especially when that interpretation does not contradict the statutory language" (citing Schaefer v. Job Serv. N.D., 463 N.W.2d 665, 667 (N.D. 1990)). An agency's expertise in applying the statutory schemes under which it operates is entitled to special deference when the subject matter is complex or technical. Americana Healthcare Ctr. v. N.D. Dep't of Human Servs., 540 N.W.2d 151, 153 (N.D. 1995); Cass Cty. Elec. Coop. v. N. States Power Co., 518 N.W.2d 216, 220 (N.D. 1994) ("deference to an agency's interpretation of a statute 'is an important consideration when an agency interprets and implements a law that

is complex and technical.'" (quoting W. Gas Res., Inc. v. Heitkamp., 489 N.W.2d 869, 872 (N.D.1992)).

[¶12] Annexations of property to a school district become effective on the July 1, following final approval by the State Board. N.D.C.C. § 15.1-12-06. The property to be annexed must be a single area that is contiguous to the school district. N.D.C.C. § 15.1-12-03(1). The State Board's interpretation that the aforementioned statutes require the property to be annexed to a school district be contiguous at the time of annexation is reasonable. The State Board's interpretation and practical application does not contradict the plain and unambiguous language of N.D.C.C. § 15.1-12-03(1). The State Board's interpretation that the significant date for contiguousness is the effective date of the annexation also does not contradict the purpose of the statute.

C. Prohibiting the State Board from considering new annexation petitions before actual annexation of previously granted petitions would go against sound public policy.

[¶13] North Dakota law does not require that petitioned property be contiguous with a school district when a petition is submitted or a hearing to consider a petition for annexation is held. N.D.C.C. § 15.1-12-04 contains requirements for a petition for annexation of property to a school district, and N.D.C.C. § 15.1-12-05 contains procedures for hearings regarding annexation of property to a school district. N.D.C.C. § 15.1-12-04 does not require that petitioned property be contiguous with a given school district when a petition is submitted to the county superintendent. N.D.C.C. § 15.1-12-05 does not require that petitioned property be contiguous with a given school district when a hearing on annexation is held. There is no state law

which requires that petitioned property be contiguous to a given school district during the petition and hearing processes.

[¶14] Requiring the State Board to wait to take action on new petitions for annexation of land affected by the annexation of lands already approved by the State Board would go against sound public policy. A situation could arise where several properties' contiguity with a given school district are dependent on each other applying for annexation in the same year. If the Appellant's position was adopted, it would require the State Board to wait to consider each successive request until the preceding property was actually annexed to the school district. This could potentially take years of waiting for successive July 1 annexation dates to resolve all the pending petitions. Fortunately, under the law, the State Board is allowed to consider all petitions before the State Board in a given year before each July 1 in order to find that otherwise noncontiguous property is contiguous when considered together.

[¶15] Additionally, if the State Board is not allowed to consider previously granted petitions for annexation of property to establish the contiguity of succeeding petitions, to establish contiguity each succeeding petitioner would be forced to include the already granted property or possibly additional larger properties in its new petition. This would require a great deal of additional work for all involved, and each time a successive petition is brought the county committees and State Board would need to reconsider land it had already considered and approved for annexation. This result would not only waste time but also unreasonably and unnecessarily expend administrative and taxpayer resources.

[¶16] Appellant describes how, hypothetically, application of the law could lead to an absurd result, i.e., approved annexation of contiguous property being appealed and overturned leaving property subsequently approved for annexation non-contiguous to the school district. Appellant's Br. ¶¶ 34-39. But Appellant's scenario is purely hypothetical. Moreover, the same "absurd result" could result under Appellant's unprecedented interpretation of the law

[¶17] If, as Appellant argues, the State Board waits to rule on a petition involving property whose contiguity is established by the property of a prior petition, the annexation of the prior property could still be appealed after both properties have been annexed. For example, if the petition on the prior property establishing contiguity is submitted on April 15, and granted on June 10, and the second property's petition is submitted on June 11, and granted on June 25, both properties would be annexed on July 1 of that year. An appeal could still be brought regarding the first property, possibly leading to the creation of an island if the appeal regarding the first property is successful and the second property has already been annexed. Additionally, as the Appellant admits in its brief, "there is no prohibition on submission of a petition to re-annex property back into a district from which it was previously taken," id. ¶ 41, which could lead to similar results over different timelines.

[¶18] What Appellant has presented is a hypothetical legal issue that need not be addressed—an issue that, hypothetically, could exist under either interpretation of the law. What is the legal result if an approved annexation of contiguous property is judicially overturned, leaving non-contiguous property of another approved

annexation non-contiguous to the school district? Although academically interesting, this issue is not before the Court and has no bearing on the issue that is before the Court.

[¶19] The State Board is not prohibited from applying its reasonable interpretation of N.D.C.C. § 15.1-12-03 under which it operates. The State Board is allowed to consider previously granted petitions for annexation of property for purposes of establishing the contiguity of property in succeeding petitions for annexation.

II. The Williams County Committee and State Board had jurisdiction to consider the Petitions.

[¶20] The Williams County Committee and State Board had jurisdiction to consider the Petitions. That the Williams County Committee satisfied the requirements of N.D.C.C. § 15.1-12-05(3)(a)-(b) is not in dispute. The Williams County Committee also satisfied the requirements of N.D.C.C. § 15.1-12-05(3)(c), which states before the hearing the county committee shall "[e]nsure that all other statutory requirements regarding the petition have been met." (Emphasis added). The Williams County Committee is not required to ensure that all statutory requirements for final annexation have been met before holding the hearing - to hold otherwise would obviate the need for a hearing. Contiguity is a requirement for annexation itself and must exist before property is annexed, but is not a requirement for submission and consideration of a petition for annexation. See N.D.C.C. § 15.1-12-03(1) (listing prerequisites for annexation, not consideration of a petition for annexation). The requirements for consideration of a petition do not mention that the property be contiguous before a petition is considered. See N.D.C.C. § 15.1-12-05. The Williams County Committee had jurisdiction to consider the Petitions, and the School Board

also had jurisdiction to approve the Petitions. Id.

III. **Case law supports the State Board's position.**

[¶21] Multiple cases from other jurisdictions address when property sought to be annexed must be contiguous with the property it is being annexed to. The decisions in those cases are largely dependent on the specific state's laws, and provide little guidance here. For example, some state laws require the property to be annexed to be contiguous at the time the petition is submitted. See, e.g., McDowell & Craig v. City of Santa Fe Springs, 351 P.2d 344, 346 (Cal. 1960) (stating statute required property be contiguous at the filing of the signed petition or the initiation of annexation proceedings by the body's own motion); U.S. Cold Storage, Inc. v. City of Lumberton, 612 S.E.2d 415, 418 (N.C. Ct. App. 2005) (applicable statute defined "contiguous" to "mean any area which, at the time annexation procedures are initiated" (citation omitted)); City of Kannapolis v. City of Concord, 391 S.E.2d 493, 496 (N.C. 1990) (statute requires property be contiguous at the time the petition is submitted). At least one statute takes into account when the petitions are considered by the board. See Koch v. Cedar Cty. Freeholder Bd., 759 N.W.2d 464, 474-75 (Neb. 2009) ("Section 79-458(1) provides that '[f]or purposes of determining whether a tract of land is contiguous, all petitions currently being considered by the board shall be considered as a whole,'" meaning "all petitions [before the board] could be considered together in order to find that otherwise noncontiguous land is nevertheless contiguous"). Yet other statutes, like North Dakota's, require the property be contiguous at the time of annexation. See Pet'n to Annex Certain Property to City of Wood Dale, 244 Ill. App. 3d 820 (Ill. App. Ct. 1993) (holding fact

property was not contiguous at time owner's petition was filed did not render petition invalid as long as property became contiguous by time of annexation); People ex rel. Vill. of Northbrook v. Vill. of Glenview, 551 N.E.2d 235, 240 (Ill. Ct. App. 1989) (explaining law provides that territory may be annexed if it is "contiguous to a municipality at the *time of annexation*" (quoting Ill. Rev. Stat.1987, ch. 24, par. 7-1-8)).

[¶22] In City of Wood Dale, the court found the argument the petition was invalid because the property was not contiguous at the time the petition was filed "wholly without merit." 244 Ill. App. 3d at 830. The court stated the plain language of the statute "shows that contiguity in a proceeding under that section is required only 'at the time of annexation' and need not be contemporaneous with the filing of the petition." Id. (citations omitted). N.D.C.C. § 15.1-12-03 similarly focuses on contiguity at the time of annexation, not the filing of the petition.

[¶23] In People ex rel. County v. City of Belleville, 417 N.E.2d 125, 130 (Ill. 1981), the court held the applicable annexation statutes require property be contiguous at the time the petition for annexation is filed. In People ex rel. Village of Northbrook, the court explained the law was changed after the Belleville decision "eliminate[ing] the effect of Belleville's holding that the property must be contiguous 'contemporaneous with the filing of the petition.'" 551 N.E.2d at 240. The new language provided "that territory may be annexed if it is 'contiguous to a municipality at the *time of annexation*.'" Id. (quoting Ill. Rev. Stat.1987, ch. 24, par. 7-1-8). Based on the changed law, the court explained: "It is not required that each parcel be contiguous to the annexing municipality, where the parcels are contiguous to each

other and at least one tract is contiguous to the annexing municipality." Id. Accordingly, annexation of a parcel which did not have a common boundary with the annexing municipality was proper when the ordinance providing for annexation was adopted at the same meeting with the ordinance annexing the parcel having a common boundary with the disputed parcel and also with the annexing municipality. Id. at 241.

[¶24] In re Remonstrance Appealing Ordinance Nos. 98-004, 98-005, 98-006, 98-007 & 98-008, of Town of Lizton, 769 N.E.2d 622 (Ind. Ct. App. 2002), relied upon by Appellant, provides no assistance in this case. In Lizton, the annexation of the first contiguous property was actually grieved before annexation of the second property took place. In that case, a remonstrance had been filed regarding the annexation of the first property, the success or failure of which the contiguity of a second property depended because the second property was contiguous with the city in question only through the first property. Id. at 626, 633. A remonstrance is a "formal complaint or protest against governmental policy, actions, or officials." Remonstrance, Black's Law Dictionary (10th ed. 2014). The Lizton court stated that a remonstrance "abates the culmination of the annexation pending a review by the courts and places upon the municipality the burden of sustaining the annexation in the courts as provided by statute." Id. at 628.

[¶25] In the present appeal, no remonstrance, grievance, or appeal was filed regarding the previously granted petition for annexation. The contiguous property was actually annexed on July 1, 2015, satisfying the contiguity requirement for the Petitioned Properties when they were annexed. Because the annexation of the first

property, which provided contiguity to the Petitioned Properties, was never appealed or challenged, the central issue in Lizton, Lizton has no application to this case.

[¶26] Additionally, Indiana's statutory remonstrance period was determinative in the Lizton decision. See 769 N.E.2d at 632-33; Ind. Code § 36-4-3-7. North Dakota does not have such a law. Indiana law provides that ordinances for annexation of property to a city take effect a certain number of days after their publication unless a remonstrance and appeal is brought. Ind. Code § 36-4-3-7. North Dakota law does not contain such a restriction, stating only that "[a]nnexations under this chapter become effective on July first following final approval by the state board," and that property to be annexed must be contiguous to the school district in question at the time the annexation becomes effective. N.D.C.C. §§ 15.1-12-06, 15.1-12-03(1). In this case, the State Board's order approving the annexation of the property contiguous to the Williston School District was never challenged or appealed. Moreover, and even if it had been, the challenge or appeal would not have automatically prevented annexation of the previously approved property because North Dakota does not have a statue similar to Indiana Code § 36-4-3-7.

[¶27] Tovey v. City of Charleston, 117 S.E.2d 872 (S.C. 1961), is more analogous to the facts in this case than Lizton. In Tovey, the South Carolina Supreme Court addressed two separate petitions for annexation of two different properties to the City of Charleston. Id. at 873. The laws of South Carolina required the properties be contiguous before they could be annexed to the city and required an election of members of the properties to decide whether the properties should be annexed. Id. at 873-74. The first property for consideration was contiguous with the City of

Charleston, but the second property was not. The second property was contiguous with the first property, and if the first property was annexed, the second property would be contiguous and eligible for annexation. Id. at 876-77.

[¶28] The court held that the residents of the second property did not need to wait to receive the results of the election from the first property before commencing their election, because contiguity was only a requirement for annexation itself, not for commencing the election proceedings: "It is sufficient if at the time such areas are annexed, all are contiguous to each other, and one of them is contiguous to or adjoins the city." Id. at 877. The Court recognized that "if the election relating to the attachment of [the first area] had not been favorable, [the second area] could not have been annexed because there would have been a lack of contiguity between it and the City," but "[b]oth elections resulted favorably to annexation and the two areas were simultaneously declared parts of the City of Charleston. There was never a moment of time when there was lack of contiguity between the City and the entire area which was annexed." Id. The same is true in this case—there was never a moment of time when there was lack of contiguity between the Williston School District and the properties annexed on July 1, 2015.

[¶29] In re Lancaster City Ordinance No. 20-1952, 98 A.2d 33 (Pa. 1953), is also more analogous to this case than Lizton. In Lancaster the Supreme Court of Pennsylvania considered a situation where a first property contiguous to a city was annexed, and a petition for annexation of a second property that was separated from the city by the first property was filed during the pendency of an appeal regarding the annexation of the first property. The annexation of the first property

was affirmed on appeal, and the Court held that the second property gained contiguity through the first property. The Court found the second property could be annexed to the city even though the petition for annexation of the second property had been submitted before the first property's appeal was decided. Id. at 33.

[¶30] Similar to most of the above cases, the Petitioned Properties gained contiguity with the Williston School District through the contiguous property that had previously been approved and, on the same day as the Petitioned Properties, annexed to the Williston School District. The above cases did not require that the residents of the properties gaining contiguity through another property wait to submit petitions or commence annexation proceedings until the question of contiguity was definitively decided, but only that the areas be contiguous at the time of annexation, or when the annexation would go into effect. Because the Petitioned Properties were contiguous with the Williston School District on July 1, 2015, the effective date of the annexations, annexation of the properties was proper.

IV. Any issues raised by the possible appeal of the order approving annexation of the contiguous property are moot.

[¶31] The State Board's order approving annexation of the contiguous property was not appealed. Any issues that could have been raised if an appeal had been taken are moot because the contiguous property was annexed on July 1, 2015, making the Petitioned Properties contiguous with the Williston School District on July 1 when they were annexed.

[¶32] It is well-settled law that courts do not issue advisory opinions or grant injunctive relief where the plaintiff or appellant is no longer subjected to the conditions of which he complains. This Court has explained:

> Mootness is a threshold issue we decide before reaching the merits of an appeal. An appeal is moot when an appellate court is unable to render effective relief because of the lapse of time or because of the occurrence of an event prior to the appellate court's determination. Mootness may arise from an event which occurred after the district court's decision, but before oral argument.

Peters-Riemers v. Riemers, 2003 ND 96, ¶ 13, 663 N.W.2d 657 (citations omitted). See also Fercho v. Remmick, 2003 ND 85, ¶ 7, 662 N.W.2d 259. The Court "does not render advisory opinions," and "will dismiss an appeal if the issues become moot or academic so no actual controversy is left to be determined." Id. Because the State Board's order approving annexation of the contiguous property was not appealed, any opinion regarding how an appeal would have impacted the Petitioned Properties' contiguity with the Williston School District would be advisory, not impacting the outcome of the present appeal.

CONCLUSION

[¶33] The State Board respectfully requests that this Court affirm the District Court's June 13, 2016 Amended Judgment and June 15, 2016 Judgment.

Dated this 10th day of August, 2016.

State of North Dakota
Wayne Stenehjem
Attorney General

By:

Douglas A. Bahr
Solicitor General
State Bar ID No. 04940
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Email dbahr@nd.gov

Attorneys for the State Board of Public Education of the State of North Dakota.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

New Public School District #8,	)	
	)	
Appellant,	)	**Supreme Court No. 20160209**
	)	
v.	)	**District Ct. No. 53-2015-CV-01100**
	)	
State Board of Public School Education, Hope Nauman and Jason Nauman,	)	
	)	
Appellees.	)	

CONSOLIDATED WITH

New Public School District #8,	)	
	)	
Appellant,	)	**Supreme Court No. 20160210**
	)	
v.	)	**District Ct. No. 53-2015-CV-01103**
	)	
State Board of Public School Education, Mary Black, Marsha Hughes, Tanna Martinez, Nathan Black, and Richard Martinez,	)	
	)	
Appellees.	)	

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

[¶1] Lisa A. Johnson states under oath as follows:

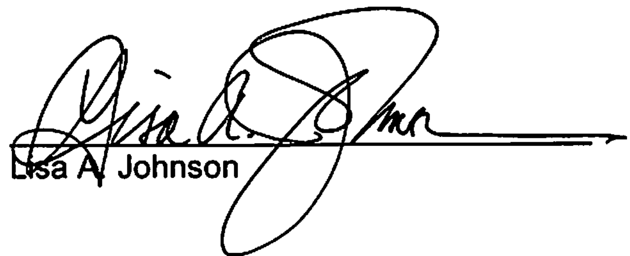
[¶2] I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

[¶3] I am of legal age and on the 10th day of August, 2016, I served the attached **BRIEF OF APPELLEE** upon New Public School District #8, by and through their

attorneys, Amy Lynn De Kok and David Ray Phillips, by placing a true and correct copy thereof in an envelope addressed as follows:

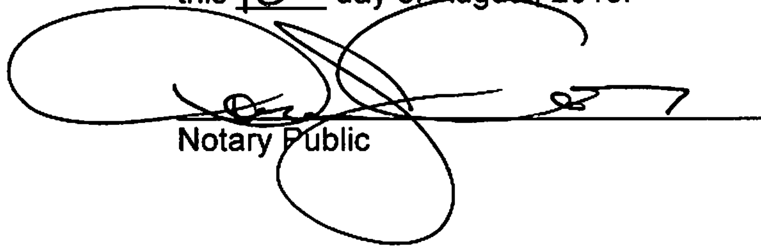
Amy De Kok
David Phillips
Fredrikson & Byron
1133 College Drive Ste 1000
Bismarck, ND 58501

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.



Lisa A. Johnson

Subscribed and sworn to before me
this 10th day of August, 2016.



Notary Public

DONNA J CONNOR
Notary Public
State of North Dakota
My Commission Expires Aug. 6, 2021