

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NATHANIEL BORRELL DYER,	:	
	:	
Plaintiff,	:	CIVIL ACTION FILE
	:	NO. 1:18-CV-03284-CAP
v.	:	
	:	
ATLANTA INDEPENDENT SCHOOL	:	
SYSTEM,	:	
	:	
Defendant.	:	
	:	

**DEFENDANT’S NOTICE OF OBJECTION TO PLAINTIFF’S AMENDED
RESPONSE TO DEFENDANT’S MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM**

Defendant Atlanta Independent School System files this response in opposition to Plaintiff’s Amended Response to Defendant’s Motion to Dismiss for Failure to State a Claim, (Doc. 18). For the reasons set forth below, Defendant respectfully asks this Court to disregard Plaintiff’s Amended Response.

PROCEDURAL BACKGROUND

Plaintiff filed this lawsuit on June 4, 2018, in the Superior Court of Fulton County, asserting claims for violations of the First and Fourteenth Amendments, slander, discrimination, retaliation, and harassment. (Doc. 1-1 at 9-11). AISS filed a Notice of Removal on July 9, 2018. (Doc. 1).

On July 16, 2018, AISS moved to dismiss Plaintiff's Complaint. (Doc. 2). Plaintiff belatedly responded in opposition on August 15, 2018. (Doc. 8). And on August 29, 2018, AISS filed a reply brief in support of its Motion to Dismiss to address the arguments in Plaintiff's response. (Doc. 9).

On September 17, 2018, without leave of court, Plaintiff filed his "Response to Defendant's Motion to Dismiss for Failure to State Claim." (Doc. 10). That filing, in reality, was a surreply. On September 21, 2018, AISS filed a Motion to Disregard Plaintiff's Surreply, arguing that this Court's Local Rules do not permit surreplies, and that Plaintiff neglected to ask for permission before filing his surreply. (Doc. 13). Plaintiff never directly responded to that motion. Instead, twenty-four days later, on October 15, 2018, Plaintiff filed a Motion for Leave to File Surreply. (Doc. 15). As an attachment to that motion, Plaintiff submitted a modified version of his September 17, 2018, brief, which he re-titled, "Surreply to Defendant's Motion to Dismiss for Failure to State a Claim." (Doc. 15-1). On October 15, 2018, Defendant filed a Reply to Plaintiff's Motion for Leave to File Surreply. (Doc. 16). In response, Plaintiff filed a Notice of Withdrawal of Motion for Leave to File Surreply on November 16, 2018. (Doc. 17). That same day, Plaintiff filed an Amended Response to Defendant's Motion to Dismiss. (Doc. 18). This "Amended Response" appears to be structurally and substantively identical to Plaintiff's September 17, 2018,

surreply. Defendant asks this Court to disregard Plaintiff's Amended Response with considering its Motion to Dismiss.

ARGUMENT AND CITATION TO AUTHORITY

I. NEITHER THE FEDERAL RULES NOR THE LOCAL RULES PERMITS PLAINTIFF TO FILE AN AMENDED RESPONSE TO A MOTION TO DISMISS, AND PRO SE PARTIES ARE EXPECTED TO ABIDE BY PROCEDURAL RULES.

Although courts liberally construe *pro se* pleadings, *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007), and *pro se* briefs, *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008), a *pro se* party still must “follow the rules of procedure and evidence, and the district court has no duty to act as [the *pro se* plaintiff's] lawyer.” *Tennyson v. ASCAP*, 447 F. App'x 608, 609 (11th Cir. 2012). This Court even put Plaintiff on notice that “he must comply with the Federal Rules of Civil Procedure as well as the Local Rules of Court” in the Notice to Pro Se Party that this Court issued at the beginning of this litigation. (Doc. 4). With this notice, Plaintiff still elected to proceed *pro se*. And he has repeatedly flouted basic procedure.

Despite the warning that he be familiar with Federal Rules of Civil Procedure and the Local Rules of the Court, Plaintiff filed a surreply, withdrew the surreply, and now files an Amended Response to Defendant's Motion to Dismiss. That “Amended Response” presents different arguments and citations to authority than those Plaintiff presented in his original response to Defendant's Motion to Dismiss.

Neither the Federal Rules of Civil Procedure nor the Local Rules allow for the filing of an amended response to a motion to dismiss. Worse yet, Plaintiff submitted his Amended Response, which differs substantially from his original response, four months after Defendant filed its Motion to Dismiss. As such, the Amended Response is procedurally improper and should be disregarded.

II. PLAINTIFF'S AMENDED RESPONSE IS ANOTHER IMPROPER ATTEMPT TO FILE A SURREPLY.

In amending his original response to Defendant's Motion to Dismiss, Plaintiff is actually just trying to file a surreply. Not only does the Amended Response raise arguments different from those in the original response, it is virtually *identical* to the brief that Plaintiff attached as an exhibit to his Motion for Leave to File Surreply, which he entitled "Surreply to Defendant's Motion to Dismiss for Failure to State a Claim." (Doc. 15-1). As Defendant argued in its Motion to Disregard Plaintiff's Surreply and Response to Plaintiff's Motion for Leave to File Surreply, there are no circumstances that would justify the filing of a surreply to Defendant's Motion to Dismiss. In filing his Amended Response, Plaintiff is transparently attempting to circumvent the Federal Rules and Local Rules. This Court should not allow such conduct.

For these reasons, Plaintiff respectfully requests that this Court disregard Plaintiff's Amended Response when this Court rules on Defendant's Motion to Dismiss.

Respectfully submitted, this 30th day of November, 2018.

/s/ MaryGrace K. Bell

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing was prepared using Times New Roman font, 14-point type, which is one of the font and print selections approved by the Court in L.R. 5.1(B).

This 30th day of November, 2018.

/s/ Brandon O. Moulard
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2018, I served a copy of the foregoing **DEFENDANT’S NOTICE OF OBJECTION TO PLAINTIFF’S AMENDED RESPONSE TO DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM** by filing a copy of the same via the Court’s CM/ECF electronic-filing system, which will deliver an electronic copy of this filing, and by depositing a copy of the same in the U.S. mail with adequate postage affixed thereto to ensure delivery to the following:

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