

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

NATHANIEL BORRELL DYER,

Plaintiff,

v.

Civil Action No. 1:18-CV-03284-TCB

ATLANTA INDEPENDENT SCHOOL  
SYSTEM,

Defendant.

**Joint Preliminary Report and Discovery Plan**

Pursuant to LR 16.2, NDGa, Plaintiff Nathaniel Dyer (“Dyer”) and Defendant Atlanta Independent School System (“AISS”) submit their Joint Preliminary Report and Discovery Plan, and show the Court as follows:

**1. Description of Case:**

**(a) Describe briefly the nature of this action.**

Plaintiff filed his complaint under 42 U.S.C. § 1983 against AISS for violations of his right to free speech under the First Amendment and right to due process under the Fourteenth Amendment.

**(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.**

Nathaniel Borrell Dyer (Plaintiff) is a graphic designer by trade but spends much of his time as a community advocate for issues related to children and education in the Atlanta area. The Atlanta Board of Education (“Board”) holds monthly community meetings, which allow community members to provide their input on a variety of topics. Plaintiff would often deliver his criticisms during public comment sessions at APS school board meetings. Since January 2016, Plaintiff registered to speak during public comment sessions at least four times, but was prohibited from finishing his comments because of what the Board viewed as inappropriate comments that violated the rules of decorum for the meetings. Following the meetings, the Board suspended Plaintiff’s right to speak at future meetings for a specified time period.

On January 15, 2016, the Board issued a suspension letter to Plaintiff alleging that he used racial slurs and derogatory terms. The suspension lasted until July 2016.

The Board suspended Plaintiff again on October 11, 2016, in part based on his use of the word “Sambos” during public comment session. The suspension lasted until December 31, 2017.

The Board suspended Plaintiff for a third time on February 8, 2018, after he distributed fliers during the February 5, 2018, community meeting. These fliers,

which Plaintiff created, depicted a photoshopped image of AISS Superintendent Dr. Meria J. Carstarphen wearing a football jersey with the word “FALCOONS” emblazoned on the front. Plaintiff’s flyers also accused Dr. Carstarphen of “destroy[ing] BLACK children and their communities.” This suspension prohibited Plaintiff from entering AISS property or speaking to AISS employees for one year. It further instructed Plaintiff not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of that period. That prohibition on communication included, but was not limited to, verbal, written, electronic, or in-person communication.

**(c) The legal issues to be tried are as follows:**

- Whether AISS violated Plaintiff’s rights under the First Amendment when it prohibited him from speaking at Board meetings.
- Whether AISS violated Plaintiff’s right to procedural due process under the Fourteenth Amendment when it prohibited him from speaking at Board meetings and from entering AISS property without providing him a pre-deprivation hearing.

**(d) The cases listed below (include both style and action number) are:**

*Pending Related Cases: None*

*Previously Adjudicated Related Cases: None*

**2. This case is complex because it possesses one (1) or more of the features listed below (please check):**

	(1)	Unusually large number of parties.
	(2)	Unusually large number of claims or defenses.
	(3)	Factual issues are exceptionally complex.
	(4)	Greater than normal volume of evidence.
	(5)	Extended discovery period is needed
	(6)	Problems locating or preserving evidence.
	(7)	Pending parallel investigations or action by government.
	(8)	Multiple use of experts.
	(9)	Need for discovery outside United States boundaries.
	(10)	Existence of highly technical issues and proof.
	(11)	Unusually complex discovery of electronically stored information.

The parties do not contend that this case is complex.

**3. Counsel:**

The following individually named attorneys are hereby designated as lead counsel for the parties:

**Plaintiff Pro Se:**

Nathaniel Borrell Dyer  
202 Joseph E. Lowery Blvd., NW

Atlanta, GA 30314  
(404) 964-6427  
[nate@natbotheedge.com](mailto:nate@natbotheedge.com)

**Defendant Atlanta Independent School System:**

Brandon O. Moulard  
Nelson Mullins Riley & Scarborough, LLP  
Atlantic Station  
201 17<sup>th</sup> Street, NW, Suite 1700  
Atlanta, Georgia 30363  
(404) 322-6000 Telephone  
(404) 322-6050 Facsimile  
[brandon.moulard@nelsonmullins.com](mailto:brandon.moulard@nelsonmullins.com)

**4. Jurisdiction:**

Is there any question regarding this court's jurisdiction?

Yes  No

If "yes" please attach a statement, not to exceed one (1) page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

**5. Parties to This Action:**

(a) The following persons are necessary parties who have not been joined:

None known.

(b) The following persons are improperly joined as parties:

None.

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

None.

(d) The parties shall have a continuing duty to inform the court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

#### **6. Amendments to the Pleadings:**

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed.R.Civ.P.15. Further instructions regarding amendments are contained in LR 15.

- List separately any amendments to the pleadings which the parties anticipate will be necessary:

None.

(b) Amendments to the pleadings submitted LATER THAN THIRTY (30) DAYS after the preliminary planning report is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

#### **7. Filing Times for Motions:**

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN THIRTY (30) DAYS after the preliminary planning report is filed or should have been filed, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A (2).

(a) Motions to Compel: before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

(b) Summary Judgment Motions: within thirty (30) days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

(c) Other Limited Motions: Refer to Local Rules 7.2; 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) Motions Objecting to Expert Testimony: *Daubert* motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

## **8. Initial Disclosures**

The parties are required to serve initial disclosures in accordance with Fed. R. Civ. P. 26. If any party objects that initial disclosures are not appropriate, state the party and the basis for the party's objection. NOTE: Your initial disclosures should include electronically stored information. Refer to Fed. R. Civ. P. 26(a)(1)(B).

The parties do not object to serving initial disclosures.

### **9. Request for Scheduling Conference**

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

The parties do not request a scheduling conference at this time.

### **10. Discovery Period**

The discovery period commences thirty (30) days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.1A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this court are assigned to one of the following three (3) discovery tracks: (a) zero (0)-months discovery period, (b) four (4)-months discovery period, and (c) eight (8)-months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

- AISS's policies and procedures for allowing community members to



• speak during public comment session;

- The verbal and written statements Plaintiff made during the public comment sessions that led the Board to issue suspensions;
- AISS's response to the verbal and written statements Plaintiff made during the public comment sessions.
- Plaintiff's videos of public comments from the board meetings that led to his suspensions.
- Plaintiff's suspension letters and trespass warnings.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery or that discovery should be conducted in phases or be limited to or focused upon particular issues, please state those reasons in detail below:

This case is subject to a four-month discovery track.

**11. Discovery Limitations:**

(a) What changes should be made in the limitations on discovery under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed?

None.

(b) Is any party seeking discovery of electronically stored information?

\_\_\_\_\_ Yes      X   No

If “yes,”

(1) The parties have discussed the sources and scope of the production of electronically stored information and have agreed to limit the scope of production (e.g., accessibility, search terms, date limitations, or key witnesses) as follows:

N/A

(2) The parties have discussed the format for the production of electronically stored information (e.g., Tagged Image File Format (TIFF or .TIF files), Portable Document Format (PDF), or native), method of production (e.g., paper or disk), and the inclusion or exclusion and use of metadata, and have agreed as follows:

N/A

In the absence of agreement on issues regarding discovery of electronically stored information, the parties shall request a scheduling conference in paragraph 9 hereof.

**12. Other Orders:**

What other orders do the parties think that the Court should enter under Rule 26(e) or under Rule 16(b) or (c)?

None.

**13. Settlement Potential:**

(a) Lead counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference on April 22, 2019 and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For Plaintiff (Pro Se): /s/ Nathaniel Dyer

Other participants: /s/ \_\_\_\_\_

For Defendant: /s/Brandon Moulard

Other participants: /s/ \_\_\_\_\_

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

A possibility of settlement before discovery.

A possibility of settlement after discovery.

A possibility of settlement, but a conference with the judge is needed.

No possibility of settlement.

(c) Counsel () do or () do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is not yet scheduled.

(d) The following specific problems have created a hindrance to settlement of this case:

**None.**

**14. Trial by Magistrate Judge:**

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties () do consent to having this case tried before a magistrate judge of this court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of this court this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

(b) The parties () do not consent to having this case tried before a magistrate judge of this court.

Respectfully submitted,

Nelson Mullins Riley & Scarborough,  
LLP

s/ Nathaniel Borrell Dyer  
Nathaniel Borrell Dyer,  
202 Joseph E. Lowery Blvd., NW  
Atlanta, GA 30314  
(404) 964-6427  
nate@natbotheedge.com  
*Plaintiff Pro Se*  
(Signed by Brandon O. Moulard with  
express permission of Mr. Dyer)

s/ Brandon O. Moulard  
Laurance J. Warco  
Georgia Bar No. 736652  
Brandon O. Moulard  
Georgia Bar No. 940450  
MaryGrace K. Bell  
Georgia Bar No. 330653  
Atlantic Station  
201 17<sup>th</sup> Street, NW, Suite 1700  
Atlanta, Georgia 30363  
(404) 322-6000 Telephone

(404) 322-6050 Facsimile

[laurance.warco@nelsonmullins.com](mailto:laurance.warco@nelsonmullins.com)

[brandon.moulard@nelsonmullins.com](mailto:brandon.moulard@nelsonmullins.com)

[marygrace.bell@nelsonmullins.com](mailto:marygrace.bell@nelsonmullins.com)

*Counsel for Defendant Atlanta  
Independent School System*

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

NATHANIEL BORRELL DYER,

Plaintiff,

v.

Civil Action No. 1:18-CV-03284-TCB

ATLANTA INDEPENDENT SCHOOL  
SYSTEM,

Defendant.

**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that on the date stamped above, he filed the within and foregoing Joint Preliminary Report And Discovery Plan with the Clerk through the CM/ECF system which will automatically effect service or process on all counsel of record.

Nathaniel Borrell Dyer  
202 Joseph E. Lowery Blvd., NW  
Atlanta, GA 30314  
(404) 964-6427  
[nate@natbotheedge.com](mailto:nate@natbotheedge.com)

*s/ Brandon O. Moulard*  
Laurance J. Warco  
Georgia Bar No. 736652  
Brandon O. Moulard  
Georgia Bar No. 940450

MaryGrace K. Bell  
Georgia Bar No. 330653  
*Attorneys for Atlanta  
Independent School System*

**Nelson Mullins Riley & Scarborough, LLP**

Atlantic Station  
201 17<sup>th</sup> Street, NW, Suite 1700  
Atlanta, Georgia 30363  
(404) 322-6000 Telephone  
(404) 322-6050 Facsimile  
[laurance.warco@nelsonmullins.com](mailto:laurance.warco@nelsonmullins.com)  
[brandon.moulard@nelsonmullins.com](mailto:brandon.moulard@nelsonmullins.com)  
[marygrace.bell@nelsonmullins.com](mailto:marygrace.bell@nelsonmullins.com)

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

NATHANIEL BORRELL DYER,

Plaintiff,

v.

Civil Action No. 1:18-CV-03284-TCB

ATLANTA INDEPENDENT SCHOOL  
SYSTEM,

Defendant.

**Scheduling Order**

Upon review of the parties' Joint Preliminary Report and Discovery Plan, it is hereby ORDERED that the discovery plan contained therein is approved and adopted and it is FURTHER ORDERED that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Timothy C. Batten, Sr.  
Judge, United States District Court