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

NATHANIEL BORRELL DYER, Plaintiff, v. ATLANTA INDEPENDENT SCHOOL SYSTEM, Defendant.	Civil Action No. 1:18-CV-03284-TCB

DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The Atlanta Independent School System ("AISS") files this Memorandum of Law in Support of its Motion for Summary Judgment, showing the Court the following:

INTRODUCTION

This case concerns the extent to which a school system may restrict a person's right to speak at a board of education meeting after he used racial slurs and other offensive epithets at three separate meetings. In January 2016, October 2016, and February 2018, Nathaniel Dyer attended public meetings of the Atlanta Board of Education ("Board") and other AISS officials. At each of these meetings, he uttered racist terms like the "n-word", "coons," and "sambos." He called AISS

officials "buffoons." He even distributed a flier featuring the word "unnigged" and an altered photo of AISS Superintendent Meria Carstarphen wearing a football jersey with the word "FALCOONS" written on the front. AISS removed Dyer from each of those meetings and suspended him from attending other meetings. Dyer contends AISS's actions violated his rights under the First and Fourteenth Amendments.

AISS placed valid time, place, and manner regulations on Dyer's speech at public Board meetings, a limited public forum. These regulations were viewpoint neutral and narrowly tailored to exclude offensive speech that disrupted the orderly process of the Board's meetings. And the suspensions left Dyer with ample, alternative channels of expressing his views. The restrictions placed on Dyer's speech complied with First Amendment standards. Plaintiff, therefore, has suffered no violation of his constitutional rights.

STATEMENT OF FACTS

I. Factual background.

a. Community Board meetings and generally applicable policies regarding decorum and conduct.

The Atlanta Board of Education ("Board") holds monthly meetings, which include a work session, a community meeting, and a legislative meeting. (Jernigan

Dec. at ¶ 3.) The community meetings are open to the public and allow the Board "to receive input from community members regarding policy issues, the educational program, or any other aspect of AISS business except confidential personnel issues." (Jernigan Dec. at ¶ 6.)

The Board reserves a portion of each meeting for public comment, during which members of the public may address the Board directly. (Jernigan Dec. at ¶ 9.) If a person wishes to speak during the public-comment portion of the meeting, he or she must register to speak in person before the meeting, and the chairperson must recognize the person before he or she may speak. (Jernigan Dec. at ¶ 10.) Upon being called to the podium, the speaker must then identify himself or herself and make his or her comments "as briefly as the subject permits." (Jernigan Dec. at ¶ 11.)

The Board has promulgated policies to govern decorum at the public meetings. Members of the public who attend Board meetings are required to "faithfully and impartially conduct themselves in ways that demonstrate mutual respect, fair play, and orderly decorum," and must be respectful and courteous "even when expressing disagreement, concern, or criticism." (Jernigan Dec. at ¶ 8.) Board Policy BC-R(1) prohibits "[a]pplause, cheering, jeering, or speech that defames individuals or stymies or blocks meeting progress." (Dyer Depo. at 114:1-

25, 115:1-9, Ex. 9; Jernigan Dec. at ¶ 12.) Such conduct "will not be tolerated and may be cause for removal from the meeting or for the board to suspend or adjourn the meeting. (*Id.*) All individuals who speak at public comment must abide by those policies. (Dyer Depo. at 115:1-4; Jernigan Dec. at ¶ 5.)

Topics of discussion at the public meetings may include "controversial issues or matters of deep community concern." (Jernigan Dec. at ¶ 7.) Attendees commonly express criticism of AISS, the Board, and AISS officials during public comment. (Jernigan Dec. at ¶ 13.) AISS never stops or impedes individuals from leveling criticism during public comment. (Jernigan Dec. at ¶ 14.) In fact, Dyer has spoken at numerous community meetings, often making disparaging remarks about AISS's policy decisions and the performance of various AISS officials and Board members. (Jernigan Dec. at ¶ 15.) AISS did not stop Dyer from making those comments. (Jernigan Dec. at ¶ 16.)

Participants at public comments may not use certain types of speech. For instance, a speaker cannot not use profanity, make defamatory statements about an AISS official, or make threats. (Dyer Depo. at 115:14-20, 116:17-25, 117:1-13; XXX Dec. at ¶ 17.) AISS and the Board consider the use of racial slurs, such as the "n-word" to be inappropriate, disruptive speech and prohibits the use of racial slurs during public comment. (Jernigan Dec. at ¶ 20; Dyer Depo. at 117:14-25, 118:1-2.)

b. The January 2016 meeting.

In January 2016, Dyer attended a public Board meeting and spoke during the public-comment portion of the meeting. (Dyer Depo. at 122:9-18.) While making his comments, Dyer used the "n-word," the word "coons," and "buffoons" in reference to the Board members and Superintendent Meria Carstarphen. (Dyer Depo. at 122:19-25, 123:1-2, 137:12-25, 138:1-25, 139:1-25, 140:1-25; Jernigan Dec. at ¶ 18.) The "n-word" and "coons" are racial slurs. (Dyer Depo. at 123:3-20.) As soon as he used those racial slurs, Dyer's microphone was turned off and police officers escorted him from the meeting. (Jernigan Dec. at ¶ 19.) Dyer's speech was offensive to the Board members and other AISS staff in attendance. (Jernigan Dec. at ¶ 20.) It also violated Board policy governing decorum and appropriate conduct at community meetings. (Jernigan Dec. at ¶ 20.)

On January 15, 2016, Board Member Courtney English sent Dyer a letter that suspended him from speaking at Board meetings until July 2016. (Dyer Depo. at 121:19-25, 122:1-8, Ex. 10.) The letter notified Dyer that his use of racial slurs at the January 2016 meeting was "disrespectful" and "offensive to the board, the superintendent and the staff." (Dyer Depo. at 141:4-10, Ex. 10.) The letter warned Dyer that if he spoke at a future meeting and used similar offensive language, the Board might permanently suspend him. (Dyer Depo. at 142:2-5, Ex. 10.)

c. The meeting on October 10, 2016.

Dyer did not heed that warning. On October 10, 2016, Dyer attended and spoke at another Board meeting. (Dyer. Depo. at 143:7-24.) At this meeting, he used the word "sambo," a racially derogatory term, during the public-comment portion of the meeting. (Dyer Depo. at 143:22-24; 146:8-10.) Upon his utterance of "sambo," Mr. English directed Dyer to leave the podium. (Jernigan Dec. at ¶ 25.) Dyer refused and began to shout at the Board. (Jernigan Dec. at ¶ 25.) Police officers then escorted him from the meeting. (Jernigan Dec. at ¶ 26.) He continued to shout outside of the meeting room. (Jernigan Dec. at ¶ 26.)

On October 11, 2016, Mr. English sent Dyer another letter informing him of his suspension from attending Board meetings from October 11, 2016, through December 31, 2017. (Dyer. Depo. at 142:20-25, 143:1-15, Ex. 11.) The letter explained that AISS suspended Dyer because of his "inappropriate and disruptive behavior" at the Board meeting on October 10, 2016. (Dyer Depo. Ex. 11.) The letter specifically cited Dyer's use of the term "sambos" at the meeting as the basis for his suspension. (*Id.*)

d. The meeting on February 5, 2018.

Dyer attended a third Board meeting on February 5, 2018. (Dyer Depo. at 150:14-25, 151:1-8.) At this meeting, Dyer distributed a double-sided flyer. (Dyer

Depo. at 151:6-25, 152:1-10, Ex. 13.) The flyer depicted various images, including an image of Arthur Blank holding marionette strings attached to Dr. Carstarphen. (Dyer Depo. at 152:11-22, Ex. 13.) On one side of the flyer, the word "UNNIGGED" appeared at the bottom, right-hand corner. (*Id.*) Dyer created the word "unnigged," which, according to his deposition testimony, means "never been a nigger." (Dyer Depo. at 153:25, 154:1-15, Ex. 13.) The other side of the flyer featured a photoshopped image of Dr. Carstarphen wearing football pads and a football jersey with the word "FALCOONS" emblazoned on the front. (Dyer Depo. at 155:17-25, 156:1-5, Ex. 13.)

After distributing the flyer, Dyer began to speak at the podium during public comment. (Jernigan Dec. at ¶ 28.) Soon after he began, the Board's general counsel directed his microphone to be shut off because Dyer's flyer contained racial slurs and other offensive language. (Jernigan Dec. at ¶ 29.) Dyer was again escorted from the meeting for his offensive, disruptive behavior. (Jernigan Dec. at ¶ 30.)

On February 6, 2018, Board Chair Jason Esteves sent Dyer a third letter, which suspended him from attending Board meetings until February 6, 2019. (Dyer Depo. at 150:5-19, Ex. 12.) The letter explained that AISS had suspended Dyer for a third time because of his "inappropriate and disruptive behavior" at the meeting on February 5, 2018. (*Id.*) The letter highlighted Dyer's distribution of the flyer,

which contained "racist and hate-filled epithets." (*Id.*) That language, the letter continued, was "offensive to the Board, our Superintendent, and our staff and community." (Dyer Depo. Ex. 12.)

II. Procedural Background.

On June 4, 2018, Dyer filed this Complaint in the Superior Court of Fulton County. [Doc 1-1.] Dyer challenged the Atlanta Board of Education's decision to suspend him from AISS meetings after he used offensive language during its public meetings. Dyer asserted a claim for a violation of his First Amendment rights, a claim for a violation of his procedural due process rights, and three claims under state law. [*Id.*] On July 9, 2018, AISS removed the case to this Court. [Doc. 1.]

AISS filed a Motion to Dismiss on July 16, 2018. [Doc. 2.] On March 14, 2019, the Court granted the motion, in part. [Doc. 22.] In its Order, this Court dismissed Dyer's state-law claims (counts 3, 4, and 5) on the grounds that they were barred by sovereign immunity. [*Id.* at 31-33.] The Court denied AISS's motion to dismiss Dyer's First Amendment claim (count 1) and procedural due process claim (count 2). [*Id.* at 24, 31.] However, the Court ruled that any claims arising from Dyer's suspensions prior to June 4, 2016, are barred by the statute of limitations, with the exception that Dyer's First Amendment claim may include a

portion of the January 2016 suspension, which did not end until after June 4, 2016. [*Id.* at 8, 10 fn. 4.] AISS now moves for summary judgment on Dyer's remaining claims.

ARGUMENT AND CITATION TO AUTHORITY

I. Summary judgment standard.

Summary judgment is proper when no genuine issues of material fact are present and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The movant carries its burden by showing there is "an absence of evidence to support the nonmoving party's case." *Celotex v. Catrett*, 477 U.S. 317, 325 (1986). Once the movant carries that burden, the nonmoving party must "demonstrate that there is indeed a material issue of fact that precludes summary judgment." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). The nonmovant present competent evidence identifying "specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S. at 324. Rule 56 mandates the entry of summary judgment against a party that fails to establish the existence of every essential element it will have to prove at trial. *Celotex*, 477 U.S. at 322.

In deciding a motion for summary judgment, the court must view all evidence and draw any factual inferences in the light most favorable to the nonmoving party to determine "whether a fair-minded jury could return a verdict

for the plaintiff on the evidence presented." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). But "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Anderson*, 477 U.S. at 247-48. To avoid summary judgment, the non-moving party must identify a "*genuine* issue of *material* fact." *Id.* at 248 (emphasis in original).

Dyer asserts claims under 42 U.S.C. § 1983, alleging that AISS violated his rights under the First and Fourteenth Amendments when it removed and suspended him from attending public Board meetings. This Court should grant summary judgment on those claims because AISS acted within the parameters of the Constitution when it regulated Dyer's speech after he repeatedly used racial slurs and other offensive language at three public meetings.

II. AISS acted lawfully when it suspended Dyer from attending Board and community meetings after he repeatedly disrupted prior meetings by using racial slurs and other derogatory language.

The First Amendment guarantees individuals the right to free speech, regardless of whether the speech is spoken, written, or made through expressive conduct. *Virginia v. Black*, 538 U.S. 343, 358 (2003). However, the freedom of expression protected by the First Amendment has limits. *Jones v. Heyman*, 888 F.2d 1328, 1331 (11th Cir. 1989). "[T]he First Amendment does not guarantee

persons the right to communicate their views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 647 (1981).

Analyzing Dyer's First Amendment claim requires answering three questions. First, was Dyer's speech protected by the First Amendment? *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985) Second, what was the nature of the forum in which Dyer spoke? *Id.* Third, did AISS satisfy the requisite constitutional standard when it excluding Dyer from speaking at public meetings. *Id.*

AISS concedes that Dyer's speech, although patently offensive, does not fall into any of the narrow categories of speech that the First Amendment does not protect. *See United States v. Stevens*, 559 U.S. 460, 468–69 (2010) (limiting categories of unprotected speech to obscenity, defamation, fraud, incitement, and speech integral to criminal conduct). This brief will instead focus on the remaining two elements: the nature of the forum in which Dyer spoke and the legality of AISS's restrictions on Dyer's speech within that forum.

a. <u>Board meetings and AISS community meetings are limited public forums.</u>

The extent to which speech may be restricted depends on the forum in which the speech occurs. *Harris v. City of Valdosta*, 616 F. Supp. 2d 1310, 1322 (M.D.

Ga. 2009). Four types of government forums exist: (1) the traditional public forum; (2) the designated public forum; (3) the limited public forum; and (4) the nonpublic forum. *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1225 (11th Cir. 2017). Before determining the extent to which the state may restrict speech, courts must conduct a "forum analysis" to "identify the type of government forum involved and then apply the test specific to that type of forum in evaluating whether a restriction violates the First Amendment." *Id.* at 1223-24.

A traditional public forum is government property, like streets and parks, which have historically been held for public use for purposes of assembly, thought exchange, and discussion. *Id.* A designated public forum is "government property that has not traditionally been regarded as a public forum but is intentionally opened for that purpose." *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239, 2250 (2015). A limited public forum "exists where a government has reserved a forum for certain groups or for the discussion of certain topics." *Barrett*, 872 F.3d at 1224. To speak at a limited public forum, "each individual member must obtain permission from the governmental proprietor of the forum, who in turn has discretion to grant or deny permission." *Id.* at 1225.

The speech at issue occurred in a limited public forum. Plaintiff's claim concern AISS's responses to comments he made at the public-comment portion of

public meetings conducted by the Atlanta Board of Education ("Board"). If a person wishes to address the Board during the public comment portion of the meeting, he or she must register to speak in person before the start of the meeting and be recognized by the chairperson before speaking. Once at the podium, the speaker must make his or her comments "as briefly as the subject permits." (Jernigan Dec. at ¶ 11.) Board Policy BC restricts the topics upon which speakers may speak to matters of public policy, educational programs, or other aspects of AISS business. (Jernigan Dec. at ¶ 6, Ex. 1.) Policy BC also prohibits community members from speaking about confidential personnel issues and issues that have no connection to AISS. (*Id.*)

Meetings of this kind are considered limited public forums. AISS and the Board limit discussion at the public meetings to specific categories of topics, namely, school district policy, educational programming, and other aspects of AISS's business and operations. To speak at a public meeting, an attendee must first register. And only those individuals recognized by the Board chairperson may speak. The Eleventh Circuit has consistently deemed similar school board meetings to be limited public forums. *See Jackson v. McCurry*, 762 F. App'x 919, 930 (11th Cir. 2019) ("a meeting of the school board qualifies as a limited public forum, at least insofar as each meeting includes a period for public comment in which the

board may entertain citizen complaints if it chooses to do so"); *Barrett*, 872 F.3d at 1225 ("the public-comment portions of the Board meetings and planning sessions fall into the category of limited public fora because the Board limits discussion to certain topics and employs a system of selective access").

The question then becomes: were the restrictions that AISS placed on Dyer's offensive rhetoric appropriate for a limited public forum?

b. <u>The regulation of Plaintiff's offensive speech was content-neutral and narrowly tailored to prevent Plaintiff from causing further disruption to community meetings.</u>

When the government creates a public forum, it does not need to permit every type of speech. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106 (2001). The Constitution permits public entities to impose reasonable time, place, and manner regulations on speech in limited public forums. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Such restrictions must be content-neutral and narrowly tailored to achieve a significant government interest. *Id.* The restrictions must also leave open alternative channels of communication. *Id.* The restrictions placed on Dyer's speech satisfy those criteria.

i. <u>AISS restricted Dyer's speech because it was disruptive and offensive, not because of disagreement with Dyer's message.</u>

The most important consideration when determining content-neutrality is the whether the government limited a person's speech because of disagreement with

the message it conveys. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). A content-neutral restriction is one that does not restrict "either a particular viewpoint or any subject matter that may be discussed." *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1259 (11th Cir. 2005). Even if a regulation incidentally affects some speakers or messages but not others, it is considered neutral if it serves a litigate government purpose. *Heyman*, 888 F.2d at 1332. The government has a legitimate interest in curtailing speech that disrupts or impedes the orderly, efficient meeting of public bodies. *Id.* at 1332-33.

Board Policy BC requires speakers at public meetings to conduct themselves in ways that demonstrate mutual respect, fair play, and orderly decorum," and to demonstrate respect and courtesy "even when expressing disagreement, concern, or criticism." (Jernigan Dec. at ¶ 8, Ex. 1.) Under Policy BC-R(1), the Board will not tolerate "[a]pplause, cheering, jeering, or speech that defames individuals or stymies or blocks meeting progress." (Dyer Depo at 114:1-25, 115:1-9, Ex. 9; Jernigan Dec. at ¶ 12.) Those policies apply to all individuals who speak at community meetings. (Jernigan Dec. at ¶ 5.)

Dyer repeatedly violated those policies by using racial slurs and epithets at public meetings on January 15, 2016; October 11, 2016; and February 6, 2018. At the meeting in October 2016, when told to leave the podium, Dyer refused and

began shouting at the Board. (Jernigan Dec. at ¶ 25.) AISS removed Dyer from each of those meetings and suspended him from speaking at future meetings. AISS did so not because it disagreed with Dyer's message, but because it regarded his use of racially-insensitive language to be highly offensive and disruptive to the meeting. Before and after the three meetings in question, AISS permitted Dyer to speak critically of AISS without restriction. (Jernigan Dec. at ¶¶ 12, 13, 48, 49.) And other attendees routinely express criticism of AISS and Board without incident. (Jernigan Dec. at ¶¶ 10, 11.) AISS does not favor one viewpoint over another; but it does insist that participants at public comment refrain from using degrading racial slurs.

The court in *Kirkland v. Luken*, 536 F. Supp. 2d 857 (S.D. Ohio 2008), concluded that the First Amendment permitted a city council to restrict racially-charged comments like Dyer's. There, while speaking during the public-comment portion of a public council meeting, the plaintiff used the term "Nigganati," which the plaintiff later described as "part of a political 'training' exercise." *Id.* at 862, 676. After the mayor ruled the plaintiff out of order and ordered his microphone shut off, the plaintiff stepped toward the mayor while shouting. *Id.* at 862. After the plaintiff refused to leave, he was arrested, charged with criminal trespass, tried, and convicted. *Id.* The court held that the mayor's decision to stop the plaintiff's

comments and remove him from the meeting for using a "high offensive and degrading racial slur" was "objectively reasonable and proper." *Id.* at 876.

Little distinction can be drawn between the plaintiff's speech in *Kirkland* and Dyer's comments. Dyer's use of the "n-word," "coons," "unnigged," and "falcoons" are comparable—if not worse—than the *Kirkland* plaintiff's use "Nigganati." Like the mayor's reaction in *Kirkland*, AISS and the Board deemed Dyer's language to be highly offensive and disruptive. And as was the case in *Kirkland*, the offensiveness and disruptiveness of Dyer's comments, not the obscure content of his message, prompted AISS's decisions to remove Dyer from the meetings. Those decisions served a legitimate government interest—maintaining order and preserving meeting decorum—and did not violate Dyer's constitutional rights.

ii. Removing Dyer from meetings and suspending him were narrowly tailored restrictions on his speech.

The restrictions that AISS placed on Dyer's speech were also narrowly tailored. A restriction on speech is narrowly tailored "so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward*, 491 U.S. at 799. A restriction need not be the least intrusive means of furthering a governmental interest, "since a less-restrictive-alternative analysis has never been…a part of the inquiry into the validity of a

time, place, or manner regulation." *Id.* at 782-83. Instead, the government may burden as much speech as necessary to serve its legitimate interests. *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). Court courts to defer to a government's reasonable determination if it has met that standard. *Ward*, 491 U.S. at 782-83.

Removing Dyer from the meetings on January 15, 2016; October 11, 2016; and February 6, 2018, was narrowly tailored to achieve AISS's legitimate interest of maintaining decorum and preventing Dyer from continuing to disrupt the meetings by using racial slurs and other offensive language. *See Kirkland,* 536 F. Supp. 2d at 876 (cutting the mic and removing the plaintiff from the meeting "was narrowly tailored…to prevent the meeting from becoming disorderly as a result of plaintiff's use of a racial slur."). Merely asking Dyer not to use racial epithets would not have sufficed, as demonstrated by Dyer's repeated disregard for the three letters AISS sent, which instructed him to refrain from using offensive, racially-tinged language. At the meeting on October 10, 2016, after uttering the epithet "sambos," Dyer ignored the Board chairs directive to leave the podium. Only by physically removing him from the meeting could AISS ensure he would stop causing a disruption.

The suspensions imposed on Dyer were also narrowly tailored. On three occasions, Dyer ignored AISS's repeated requests to refrain from using racial slurs.

Those requests did not prevent Dyer from returning to public meetings with equally, if not more offensive, language. And simply prohibiting Dyer from speaking at public comment would not have sufficed to stop him from disrupting the meetings with offensive, racially-charged comments. At the February 2018 meeting, Dyer distributed flyers that contained racial slurs. To prevent Dyer from disrupting other meetings, AISS needed to stop him from even entering the room in which these meetings occurred because Dyer was equally disruptive at the podium as he was when sitting in the audience. The least restrictive means of curtailing Dyer's offensive, disruptive behavior was to suspend him from meetings.

iii. Dyer had alternative channels of communication.

A lawful restraint on speech must leave open adequate alternative channels of communication through which individuals can convey their message or participate in their chosen activity. *City of Ladue v. Galileo*, 512 U.S. 43, 56-58 (1994). The Supreme Court has found that no First Amendment violation occurs when the government bars citizens from exchanging views in formal settings when opportunities for informal communication also exist. *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 285 n.4 (1984).

None of the suspensions imposed on Dyer prevented him from contacting

Board members and AISS directly, whether by telephone, email, or other written correspondence, to express his views. While suspended from Board meetings, Dyer could have distributed flyers in the area immediately surrounding AISS property, in the community, or in local publications. He could have attended meetings of local organizations and neighborhood associations to share his concerns regarding AISS. The various social media websites, including YouTube, Facebook, and Instagram, provided him with a multitude of platforms to express his views. Dyer even had his own public-access television show. (Dyer Depo. at 188:21-25, 189:1-19.) He testified that speaking on the same issues he had hoped to raise during the Board meetings comprised he "main brunt" of his show. (Dyer Depo. at 189:24-25, 190:1-13). Those alternative channels provide Dyer with ample means of communicating his message during his temporary suspension from attending Board meetings.

III. Because AISS did not violate Dyer's First Amendment rights, Dyer also did not suffer a deprivation of his due process rights.

Dyer also asserts a claim under the Fourteenth Amendment, alleging that AISS denied him procedural due process before suspending him under threat of being charged with criminal trespass. To prevail on a procedural due process claim, a plaintiff must establish: (1) that he or she possessed a protected liberty or property interest; (2) governmental deprivation of said interest; and (3) denial of

adequate procedural protections. *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006).

Dyer does not assert that AISS denied him a protected property interest. Instead, he claims that he had a liberty interest in attending and speaking at public Board meetings. In that sense, Dyer's due process claim is redundant with his First Amendment claim.

The district court in *Ritchie v. Coldwater Cmty. Sch.*, No. 1:11-CV-530, 2012 WL 2862037 (W.D. Mich. July 11, 2012), dealt with a similar situation. There, the plaintiff asserted that a school district violated his due process rights by ordering him not to attend board of education meetings and removing him from two such meetings. *Id.* at *17 The plaintiff also asserted a claim for violation of his First Amendment rights based on the same incidents. *Id.* at *14. The court noted that the First Amendment provided "the explicit textual source" for the plaintiff's due process claim. *Id.* at *17. Thus, the plaintiff First Amendment and due process claims were "redundant." *Id.* The court dismissed the due process claim based on that redundancy. *Id.*

Here, Dyer's due process claim is indistinguishable from his First Amendment claim. Both claims rests on Dyer's accusation that AISS wrongfully excluded him from Board meetings. Because the restrictions AISS placed on

Dyer's disruptive speech do not offend the First Amendment, they likewise do not contravene Dyer's liberty interest in expressing his views at Board meetings.

CONCLUSION

AISS's primary endeavor is to educate and serve the students of Atlanta, Georgia. Teaching children how to engage civically in appropriate, respectful ways and fostering a diverse, inclusive learning environment are core components of AISS's mission. Students frequently attend public Board meetings, and some were likely in attendance at the meetings in January 2016, October 2016, and February 2018 where Dyer made his offensive comments. Dyer's use of racial slurs and epithets is anathema to AISS's educational mission and violates basic meeting decorum. The First Amendment does not obligate AISS to tolerate such conduct.

Respectfully submitted this 3rd day of October, 2019.

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CERTIFICATE OF COMPLIANCE

I hereby 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 3rd day of October, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2019, I served a copy of **DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** via first-class mail and CM/ECF notification to the following:

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