

**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.

**DEFENDANT’S STATEMENT OF UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule 56 and Local Rules 7.1 and 56.1, the Atlanta Independent School System (“AISS”) files this Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment, showing the Court the following:

1. The Board holds monthly meetings, which include a work session, a community meeting, and a legislative meeting. (Exhibit 1: Declaration of David Jernigan (“Jernigan Dec.”) at ¶ 3.)
2. 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.)

3. The public meetings may concern “controversial issues or matters of deep community concern.” (Jernigan Dec. at ¶ 7.)
4. 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.)
5. 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.)
6. 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 the chairperson must recognize the speaker before he or she can speak. (Jernigan Dec. at ¶ 10.)
7. Upon being called to the podium, the speaker must then identify himself/herself and make his or her comments “as briefly as the subject permits” (Jernigan Dec. at ¶ 11.)

8. Board Policy BC-R(1), which governs participation at public comment at community meetings, provides,

Persons are expected to honor meeting decorum. Applause, cheering, jeering, or speech that defames individuals or stymies or blocks meeting progress will not be tolerated and may be cause for removal from the meeting or for the board to suspend or adjourn the meeting. Those wishing to display place cards, signs and/or banners must remain behind the seating area, or on the side of the seating area, and may not block any attendee's view of the proceedings. Place cards, signs and banners may not have wooden or metal sticks or poles attached to them.

(Exhibit 2: Deposition of Nathaniel Dyer (“Dyer Depo.”) at 114:1-25, 115:1-9, Ex. 9; Jernigan Dec. at ¶ 12, Ex. 2.)

9. All individuals who speak at public comment must abide by this policy. (Dyer Depo. at 115:1-4; Jernigan Dec. at ¶ 5.)

10. Attendees commonly express criticism of AISS, the Board, and AISS officials during public comment. (Jernigan Dec. at ¶ 13.)

11. AISS never stops or impedes individuals from leveling criticism during public comment. (Jernigan Dec. at ¶ 14.)

12. In fact, Nathaniel 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.)

13. AISS did not stop Dyer from making those comments. (Jernigan Dec. at ¶ 16.)

14. However, under Policy BC-R(1), participants at public comments may not use certain types of speech. For instance, a speaker could 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; Jernigan Dec. at ¶ 17.)

15. 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.)

16. Dyer is a self-employed graphic designer based in Atlanta, Georgia. (Dyer Depo. at 36:5-15, 37:11-17.)

17. Prior to the events giving rise to this lawsuit, Dyer has disseminated flyers equating the former AISS superintendent, Errol Davis, to a member of the Ku Klux Klan. (Dyer Depo. at 68:1-18, Ex. 4.)

18. Another flyer he created portrayed Board members and Mr. Davis as “clowns.” (Dyer Depo. at 85:4-15, 86:14-19, Ex. 6.)

19. Dyer has referred to the Board as “inept,” “inequitable,” and “buffoons,” and likened them to “flying monkeys.” (Dyer Depo. at 92:15-20, 96:1-6, Exs. 7 and 8.)
20. He has also ridiculed Board members, calling them “unintelligent.” (Dyer Depo. at 105:10-13.)
21. 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; Jernigan Dec. at ¶ 18.)
22. While making his comments, Dyer used the “n-word,” the word “coons,” and “buffoons” in reference to the Board members and Superintendent 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.)
23. The “n-word” and “coons” are racial slurs. (Dyer Depo. at 123:3-20.)
24. As soon as he used those racial slurs, Dyer’s microphone was turned off and police officers escorted Dyer from the meeting. (JERNIGAN Dec. at ¶ 19.)
25. Dyer’s speech was offensive to the Board members and other AISS staff in attendance. It also violated Board policy governing decorum and appropriate conduct at community meetings. (Jernigan Dec. at ¶ 20.)

26. 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).
27. 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.)
28. 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.)
29. AISS removed Dyer from the meeting not because of the content of his speech, but because his use of racial slurs disrupted the meeting and offended the Board, staff, and audience members. (Jernigan Dec. at ¶ 22.)
30. Dyer attended and spoke at a Board meeting on October 10, 2016. (Dyer Depo. at 143:7-24.)
31. At that meeting, he used the word “sambo” during the public comment portion of the meeting. (Dyer Depo. at 143:22-24.)
32. The word “sambo” is a racially derogatory term. (Dyer Depo. at 146:8-10; Jernigan Dec. at ¶ 24.)

33. Upon his utterance of “sambo,” Mr. English directed Dyer to leave the podium. Dyer refused and began to shout at the Board. (Jernigan Dec. at ¶ 25.)

34. Police officers then escorted Dyer from the meeting. He continued to shout outside of the meeting room. (Jernigan Dec. at ¶ 26.)

35. On October 11, 2016, Courtney English sent Dyer another letter informing him that he was suspended from attending Board meetings from October 11, 2016, through December 31, 2017. (Dyer Depo. at 142:20-25, 143:1-15, Ex. 11.)

36. 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.)

37. The letter specifically cited Dyer’s use of the term “sambos” at the meeting as the basis for his suspension. (*Id.*)

38. Dyer attended another Board meeting on February 5, 2018. (Dyer Depo. at 150:14-25, 151:1-8.)

39. At this meeting, Dyer distributed a double-sided flyer. (Dyer Depo. at 151:6-25, 152:1-10, Ex. 13.)

40. The flyer depicted various images, including an image of Arthur Blank holding marionette strings attached to Meria Carstarphen. (Dyer Depo. at 152:11-22, Ex. 13.)
41. On one side of the flyer, the word “UNNIGGED” appeared at the bottom, right-hand corner. 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.)
42. The other side of the flyer featured a photoshopped image of Dr. Carstarphen wearing football pads and football jersey. The word “FALCOONS” was emblazoned on the front of her jersey. (Dyer Depo. at 155:17-25, 156:1-5, Ex. 13.)
43. After distributing the flyer, Dyer began to speak at the podium during public comment. (Jernigan Dec. at ¶ 28.)
44. 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.)
45. Dyer was again escorted from the meeting for his offensive, disruptive behavior. (Jernigan Dec. at ¶ 30.)



46. 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.)

47. 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. The letter highlighted Dyer’s distribution of the flyer, which contained “racist and hate-filled epithets.” That language, the letter continued, was “offensive to the Board, our Superintendent, and our staff and community.” (Dyer Depo. Ex. 12.)

48. Since his most recent suspension ended, Dyer has attended and spoken at community meetings. His comments during those meetings included critical remarks about AISS and the Board. (Jernigan Dec. at ¶ 32.)

49. AISS did not stop or impede Dyer from making those comments. (Jernigan Dec. at ¶ 32.)

Respectfully submitted this 3<sup>rd</sup> day of October, 2019.

/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

*Counsel for Defendant Atlanta Independent  
School System*

**NELSON MULLINS RILEY & SCARBOROUGH LLP**

201 17th Street NW, Suite 1700

Atlanta, GA 30363

Tel: 404.322.6000

Fax: 404.322.6050

[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)

**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 3<sup>rd</sup> day of October, 2019.

/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

*Counsel for Defendant Atlanta Independent  
School System*

**NELSON MULLINS RILEY & SCARBOROUGH LLP**

201 17th Street NW, Suite 1700

Atlanta, GA 30363

Tel: 404.322.6000

Fax: 404.322.6050

[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)

**CERTIFICATE OF SERVICE**

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

Nathaniel Borrell Dyer  
202 Joseph E. Lowery Blvd., NW  
Atlanta, GA 30314  
[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  
*Counsel for Defendant Atlanta Independent  
School System*

**NELSON MULLINS RILEY & SCARBOROUGH LLP**

201 17th Street NW, Suite 1700

Atlanta, GA 30363

Tel: 404.322.6000

Fax: 404.322.6050

[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)