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U.S.D.C. - Atlanta

OCT 24 2019

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

By: JAMES N. HATTEN, Clerk  
Deputy Clerk



ATLANTA DIVISION

NATHANIEL BORRELL DYER, :

Plaintiff, :

: CIVIL ACTION FILE

v. : NO. 1:18-CV-03284-CAP

:

ATLANTA INDEPENDENT :

SCHOOL SYSTEM, :

Defendant. :

\_\_\_\_\_ :

**PLAINTIFF'S RESPONSE OF UNDISPUTED MATERIAL FACTS**  
**IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule 56 and Local Rules 7.1 and 56.1, Nathaniel Borrell Dyer, Plaintiff Pro Se, files this Statement of Undisputed Material Facts in Opposition of 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.)

#### UNDISPUTED

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.) meetings may concern “controversial issues or matters of deep concern.” (Jernigan Dec. at ¶ 7.)

#### DISPUTE

Board Policy precisely states:

##### A. Community Meetings

The monthly community meeting provides an opportunity for the board to receive input from community members regarding policy issues, the educational program, or any other aspect of APS business except confidential personnel issues. The community meeting or special meetings may also be used as a public forum to address controversial issues or matters of deep community concern. The chairperson may delegate the responsibility for chairing community meetings to other board members. (Exhibit 15: Board Policy at ¶ 3)

3. The public meetings may concern “controversial issues or matters of deep community concern.” (Jernigan Dec. at ¶ 7.)

UNDISPUTED

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.)

UNDISPUTED but incomplete

Board Policy also states:

Board members will also refrain from making statements in public meetings that have the direct and intended effect of impugning another person’s motives or intelligence, attacking others on a purely personal basis, or disparaging anyone’s racial, sexual, social, or religious background. (Exhibit 15: Board Policy at ¶ 9)

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.)

UNDISPUTED

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.)

UNDISPUTED

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.)

UNDISPUTED but incomplete

Board Policy also states:

but in any case, within a two-minute time period at the community meeting or a three-minute period at a specially called legislative meeting. Community members may defer their comment periods to other speakers, not to exceed a total of four minutes. (Exhibit 15: Board Policy at ¶ 9)

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; Dec. at ¶ 12, Ex. 2.)

#### DISPUTED

The Plaintiff has been faithfully participating in public comment since 2006 without incident under the Board Policy Manual which was adopted April 17, 1995 and revised on October 5, 2015. There appeared to have been two Board policies in existence. (Exhibit 17: Dyer Depo. at 110:6-25, 111:1-25, 112:1-25, 113:1-15, Exhibit 15: Board Policy Manual) One month later, the Board Policy BC-R(1) was revised on November 2, 2015 to include applause, cheering, jeering, or speech that defames individuals. (Exhibit 16: Board Policy Manual BC-R(1)) Two months after this policy was revised, Plaintiff was suspended from public comment on January 15, 2016 then consecutively on October 11, 2018 and February 8, 2018. (Exhibit 1, Exhibit 2, Exhibit 3)

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

DISPUTE

It appears the Defendant is governing under two policies at their discretion. In reference to Board Policy BC-R(1), it is vague and overbroad. (Exhibit 15: Board Policy, Exhibit 16: Board Policy BC-R(1))

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

UNDISPUTED

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

DISPUTE

AISS prevented the Plaintiff from speaking on numerous occasions. Board members will also refrain from making statements in public meetings that have the direct and intended effect of impugning another person's motives or intelligence, attacking others on a purely personal basis, or disparaging anyone's racial, sexual, social, or religious background. (Exhibit 15: Board Policy Manual at ¶ 9) (Exhibit 6, Exhibit 7)

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 If 15.) 33

UNDISPUTED

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

UNDISPUTED

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 If 17.)

DISPUTE

Plaintiff did none of those things according to the February 8, 2018 suspension letter. Yet, he was still banned from public comment for a year. (Exhibit 7)

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.)

DISPUTE

Plaintiff did none of those things according to the February 8, 2018 suspension

letter. He was still banned from public comment for a year. (Exhibit 2, Exhibit 7)

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

UNDISPUTED

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.)

UNDISPUTED but incomplete

Plaintiff engages satire. Satire is the use of humor, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues.

18. Another flyer he created portrayed Board members and Mr. Davis as "clowns." (Dyer Depo. at 85:4-15, 86:14-19, Ex. 6.) 44

UNDISPUTED but incomplete

Plaintiff engages satire. Satire is the use of humor, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues.



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.)

UNDISPUTED but incomplete

Plaintiff engages satire. Satire is the use of humor, irony, exaggeration, or ridicule to expose and criticize people’s stupidity or vices, particularly in the context of contemporary politics and other topical issues.

20. He has also ridiculed Board members, calling them “unintelligent.” 105:10-13.)

UNDISPUTED

Plaintiff made it abundantly clear that it was based on their decisions based on their political positions and not as a personal attack. Plaintiff repeatedly states “In the position they represent.” (Dyer Depo. at 105:5-13)

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 If 18.)

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff’s claims are governed by a two-year statute of limitations (Court Order at 8)

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, Jernigan Dec. at ¶ 18.)

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff’s claims are governed by a two-year statute of limitations (Court Order at 8)

23. The “n-word” and “coons” are racial slurs. (Dyer Depo. at 123:3-20.)

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff’s claims are governed by a two-year statute of limitations (Court Order at 8)

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.)

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff’s claims are governed by a two-year statute of limitations (Court Order at 8)

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.) 55

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff's claims are governed by a two-year statute of limitations (Court Order at 8)

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).

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff's claims are governed by a two-year statute of limitations (Court Order at 8)

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.)

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff's claims are governed by a two-year statute of limitations (Court Order at 8)

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.)

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff's claims are governed by a two-year statute of limitations (Court Order at 8)

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.)

OBJECTION TO ADMISSIBILITY

Defendant contends that Plaintiff's claims are governed by a two-year statute of limitations (Court Order at 8)

30. Dyer attended and spoke at a Board meeting on October 10, 2016. (Dyer. Depo. at 143:7-24.)

UNDISPUTED

31. At that meeting, he used the word "sambo" during the public comment portion of the meeting. (Dyer Depo. at 143:22-24.)

DISPUTE

Plaintiff used the word "samboed." (Exhibit 6)

32. The word “sambo” is a racially derogatory term. (Dyer Depo. at 146:8-10; Jernigan Dec. at 24.)

UNDISPUTED

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.)

OBJECTION

Defendant is using innuendo to make the incident appear more severe than what actually occurred. Plaintiff did not use the word “sambo” but “samboed.” Plaintiff shouted to the Board, “You will not violate my rights!” (Exhibit 6)

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

UNDISPUTED but incomplete

Plaintiff was seeking clarification as to why AISS officers were once again harassing and escorting him from the meeting for something he did not say in reference to APS children. The Defendant’s original contention and viewpoint was that the Plaintiff referred to APS children as “sambos”. (Exhibit 6)

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.)

UNDISPUTED but incomplete

The letter further stated:

Nevertheless, on October 10, 2016, you brazenly ignored our previous warnings and again, you used a racial slur when you referred to APS students as “sambos” during the public comment portion of the ABOE meeting. You also referenced on the official sign-in sheet to speak at the ABOE meeting having previously spoken to “[a]ll of these fools.” Your insulting comments, particularly your reference to APS students as “sambos,” are completely outside the bounds of civility and, as before, were offensive to the Board, our Superintendent, and our staff and community. Your comments failed to advance any meaningful discourse upon which the Board or Superintendent could possibly act.

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.)

UNDISPUTED but incomplete

The letter also stated:

Your insulting comments, particularly your reference to APS students as “sambos,” are completely outside the bounds of civility and, as before, were offensive to the Board, our Superintendent, and our staff and community. (Exhibit 2)

37. The letter specifically cited Dyer's use of the term "sambos" at the meeting as the basis for his suspension. (Id.)

DISPUTE

The letter specifically cited Dyer's reference to APS students as "sambos" during the public comment portion of the meeting which he did not do. The Plaintiff did not refer to APS students as "sambos" as he was interrupted by Courtney English. (Exhibit 2, Exhibit 6)

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

UNDISPUTED

39. At this meeting, Dyer distributed a double-sided flyer. (Dyer Depo. at 151:6- 25, 152:1-10, Ex. 13.) 77

UNDISPUTED but incomplete

Plaintiff engages satire. Satire is the use of humor, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues.

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.)

UNDISPUTED but incomplete

Plaintiff engages satire. Satire is the use of humor, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues.

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.)

UNDISPUTED but incomplete

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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,

UNDISPUTED but incomplete

Plaintiff engages satire. Satire is the use of humor, irony, exaggeration, or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics and other topical issues.



43. After distributing the flyer, Dyer began to speak at the podium during public comment. (Jernigan Dec. at ¶ 28.)

UNDISPUTED

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.)

UNDISPUTED but incomplete

General Counsel D. Glen Brock, Partner of Nelson-Mullins Riley & Scarborough, ordered Board Chair Esteves to shut the mic off. Board members will also refrain from making statements in public meetings that have the direct and intended effect of impugning another person's motives or intelligence, attacking others on a purely personal basis, or disparaging anyone's racial, sexual, social, or religious background. (Exhibit 15: Board Policy at ¶ 9)(Exhibit 7)

45. Dyer was again escorted from the meeting for his offensive, disruptive behavior. (Jernigan Dec. at ¶ 30.) 88

DISPUTED

Plaintiff did not engage in what could have been perceived as offensive or disruptive behavior. It was the viewpoint of General Counsel D. Glen Brock who thought the flyer of satire was inappropriate for the setting. (Exhibit 7)

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. Depo. at letter explained that AISS had suspended Dyer for a 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.)

#### OBJECTION TO ADMISSIBILITY

The evidence, Exhibit 12, submitted by the Defendant has been tampered with which constitutes a case of perjury. The date and language on Defendant’s February 6, 2018 letter is significantly different from the February 8, 2018 letter submitted in the Plaintiff’s complaint. The Defendant’s exhibit omits the following language:

You are instructed not to set foot on Atlanta Public Schools (“APS”) property during this one year suspension. If you do, you will be arrested for trespassing. You are further instructed not to have any communication whatsoever with any employee or representative of the ABOE or AISS for the duration of this suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication. (Exhibit 3, Exhibit 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.)

#### OBJECTION TO ADMISSIBILITY

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

#### UNDISPUTED

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

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

UNDISPUTED but incomplete

AISS began to leave Dyer alone after he filed the lawsuit. Former AISS Chief Marquenta Sands-Hall instructed Plaintiff to fight it outside of APS as she issued Plaintiff a trespass warning a Grove Park Elementary School. AISS Chief Applin also made reference to court. (Exhibit 6, Exhibit 9)

Respectfully submitted this 23rd day of October, 2019.

Nathaniel Borrell Dyer

*Plaintiff Pro Se*

**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 23rd day of October, 2019.

Nathaniel Borrell Dyer

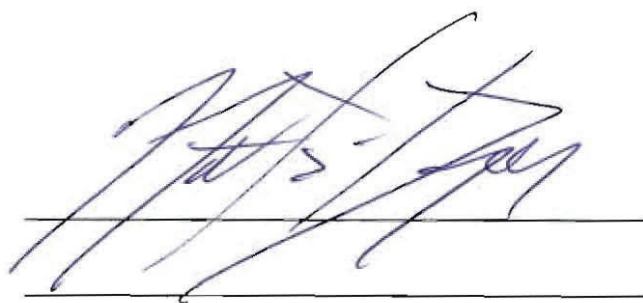
*Plaintiff Pro Se*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of October, 2019, a copy of the document entitled **PLAINTIFF'S RESPONSE OF UNDISPUTED MATERIAL FACTS IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT** was delivered by first class mail to:

Nelson Mullins Riley & Scarborough LLP  
Atlantic Station / 201 17th Street, NW / Suite 1700  
Atlanta, GA 30363

Nathaniel Borrell Dyer  
*Plaintiff Pro Se*



A handwritten signature in blue ink, appearing to read 'Nathaniel Borrell Dyer', is written over two horizontal lines.