

**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.

**ATLANTA INDEPENDENT SCHOOL SYSTEM'S RESPONSE TO
PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 56.1(B)(3), and this Court's Instructions to Per Se Parties and Counsel (Doc. 5), Defendant Atlanta Independent School System ("AISS") submits this response to Plaintiff's Statement of Undisputed Material Facts (Doc. 37), showing this Court the following:

Statement No. 1

AISS claims that Dyer's claims are barred by a two-year statute of limitations. (Court Order at 8)

Response:

AISS objects to this statement on the grounds that it is immaterial. A fact is

“material” if it might affect the outcome of the case under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Whether AISS included a particular argument in a pleading or whether this Court referenced a particular argument in an order has no bearing on whether AISS violated Mr. Dyer’s rights under the First or Fourteenth Amendments. AISS further objects to this statement as it is a legal issue before this Court. L.R. 56.1(B)(1)(c). L.R. 56.1(B)(1)(c) provides that the Court “will not consider any fact: (c) stated as an issue or legal conclusion.” Whether Mr. Dyer’s claims are barred by the statute of limitations is a legal issue for this Court to decide. Without waiving any objection, AISS admits that it argued in its Motion to Dismiss that Mr. Dyer’s claims were barred by the statute of limitations. (Doc. 2). This Court ruled that any claims arising from Mr. Dyer’s suspensions prior to June 4, 2016 are barred by the statute of limitations, with the exception that Mr. Dyer’s First Amendment claims may include a portion of the January 2016 suspension, which did not end until after June 4, 2016. (Doc. 22 at 8, 10 fn. 4).

Statement No. 2

AISS Board Policy 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)

Response:

AISS objects to this statement on the grounds that it is immaterial. The Board of Education's policies governing conduct by Board members at public meetings has no bearing on whether AISS violated Mr. Dyer's rights under the First or Fourteenth Amendments.

Statement No. 3

Former Board Chair Courtney English and Board Chair Jason Esteves interrupted Mr. Dyer as he was making public comments. (Exhibit 6, Exhibit 7)

Response:

AISS admits that in Exhibit 6, Former Board Chair Courtney English interrupted Mr. Dyer after he spoke the word "sambos" during a Board meeting. AISS further admits that in Exhibit 7, Board Chair Jason Esteves addressed Mr. Dyer as he spoke during public comment. AISS objects to the assertion that Mr. Esteves interrupted Mr. Dyer as he spoke during the public comment session because Exhibit 7 does not support this assertion. L.R. 56.1(B)(2)(a)(2).

Statement No. 4

Former Board Chair Courtney English and Board Chair Jason Esteves made

statements addressing Mr. Dyer's comments. (Exhibit 6, Exhibit 7)

Response:

AISS admits that in Exhibit 6, Former Board Chair Courtney English addressed Mr. Dyer's use of the word "sambos" to Mr. Dyer and the audience during the Board meeting. AISS further admits that in Exhibit 7, Board Chair Jason Esteves addressed Mr. Dyer's use of racially-charged language in a brochure that Mr. Dyer created.

Statement No. 5

Former Board Chair Courtney English and Board Chair Jason Esteves violated Board Policy by making statements in a public meeting directed at Mr. Dyer. (Exhibit 15: Board Policy Manual at ¶ 9)

Response:

AISS objects to the assertions in Statement No. 5 because they are a legal issue before this Court. L.R. 56.1(B)(1)(c). L.R. 56.1(B)(1)(c) provides that the Court "will not consider any fact: (c) stated as an issue or legal conclusion." Also, the evidence Mr. Dyer cites does not support his assertion that Mr. English and Mr. Esteves violated Board policy.

Statement No. 6

Former Board Chair Courtney English and Superintendent Meria Carstarphen addressed Mr. Dyer's comments. (Exhibit 11)

Response:

Admitted.

Statement No. 7

Former Board Chair Courtney English and Superintendent Meria Carstarphen violated Board policy by making statements in a public meeting directed at Mr. Dyer.

(Exhibit 15: Board Policy Manual at ¶ 9)

Response:

AISS objects to the assertions in Statement No. 7 as they constitute Mr. Dyer's legal argument and are not factual assertions supported by admissible evidence. L.R. 56.1B(3)(c). The citations submitted by Mr. Dyer do not provide the requisite factual basis to support Mr. Dyer's conclusory statements, and this Court cannot consider any statements that are merely legal conclusions. *Id.*

Statement No. 8

At a Carver High School community meeting, Mr. Dyer raised his hand and said, "I have a question." (Exhibit 9, Exhibit 10)

Response:

AISS admits that in Exhibit 10, Mr. Dyer exclaimed that he had a question during a meeting. AISS objects to the assertions that the meeting took place at Carver High School, that it was a community meeting, or that Mr. Dyer raised his hand, as

Exhibits 9 and 10 does not support these assertions. L.R. 56.1(B)(2)(a)(2).

Statement No. 9

Mr. Dyer was questioned inside the meeting by Chief Sands-Hall for 10 minutes or more in a packed house of audience. (Exhibit 10)

Response:

AISS objects to the assertions within Statement No. 9 because Exhibit 10 does not support them. L.R. 56.1(B)(2)(a)(2). AISS further objects to the assertions in Statement No. 9 on the grounds that they are immaterial. L.R. 56.1B(3)(c). Even if Exhibit 10 established that Chief Sands-Hall spoke to Mr. Dyer for ten minutes inside a community meeting, that fact has no bearing on whether AISS violated Mr. Dyer's rights under the First or Fourteenth Amendments.

Statement No. 10

Mr. Dyer and his former Boyscout walked into a community meeting held at Grove Park Elementary. As he took a seat, he was immediately surrounded by three AISS resource officers. He was forcefully removed from his seat and escorted out of the meeting in front of parents and children in attendance. (Exhibit 9)

Response:

AISS objects to the assertions within Statement No. 10 because Exhibit 9 does not support them. L.R. 56.1(B)(2)(a)(2). When Exhibit 9 begins, Mr. Dyer is being

escorted out of a meeting. Exhibit 9 does not support the assertions that Mr. Dyer attended the meeting with a former Boy Scout, that the meeting was a community meeting, that the meeting took place at Grove Park Elementary School, that Mr. Dyer was immediately surrounded by three AISS resource officers, or that he was forcefully removed from his seat and escorted out of the meeting in front of parents and children in attendance.

Statement No. 11

In the parking lot of Grove Park Elementary, former Chief Hall-Sands accused Mr. Dyer of being disruptive at the town hall meeting led by Dr. Carstarphen's senior staff. (Exhibit 9).

Response:

AISS admits that Chief Sands-Hall spoke with Mr. Dyer in a parking lot in Exhibit 9. AISS further admits that she notified Mr. Dyer that he disrupted a meeting. AISS objects to the assertions that their conversation took place in the parking lot of Grove Park Elementary School or that the meeting that she references was a town hall meeting led by Dr. Carstarphen's senior staff because Exhibit 9 does not support these assertions. L.R. 56.1(B)(2)(a)(2).

Statement No. 12

Former Chief Hall-Sands revisited the conversation about Mr. Dyer raising his hand

to ask a question at Carver High School. She told Mr. Dyer “You could raise your hand all day long. I’m not gonna put you out. You can’t speak out. You kept your hand up and they ignored you and you had a problem with that.” (Exhibit 9)

Response:

AISS admits that Chief Sands-Hall made the statement asserted in Statement No. 12 in Exhibit 9. AISS objects to the assertion that the incident occurred at Carver High School because Exhibit 9 does not support this assertion. L.R. 56.1(B)(2)(a)(2).

Statement No. 13

Former Chief Sands-Hall told Mr. Dyer that on top of not being allowed to speak at meetings for six months that she was added [sic] a criminal trespass warning in conjunction. (Exhibit 4, Exhibit 5, Exhibit 9)

Response:

Admitted.

Statement No. 14

On October 11, 2016, AISS issued a second “Suspension from Public Comment at Atlanta Board of Education Meetings” letter. This suspension was from October 10, 2016 until December 31, 2017. (Exhibit 2)

Response:

Admitted.

Statement No. 15

Courtney English, former AISS Board Chairman, claimed that Mr. Dyer referred to APS children as “sambos” during the public comment portion of the meeting. Mr. Dyer was asked to leave the podium. (Exhibit 6)

Response:

Admitted.

Statement No. 16

In the Defendant’s Motion for Summary Judgment, there is no accusation of Mr. Dyer referring to APS children as “sambos.” (Def. MSJ Mem of Law at 6)

Response:

AISS objects to this statement on the grounds that it is immaterial. Whether AISS included a particular argument in its Memorandum of Law in Support of Motion for Summary Judgment has no bearing on whether AISS violated Mr. Dyer’s rights under the First or Fourteenth Amendments. AISS further objects to the assertions within Statement No. 16 on the grounds that they relate to legal arguments raised in a pleading rather than to evidence before this Court. L.R. 56.1(B)(1)(b).

Statement No. 17

The Defendant’s Motion for Summary Judgement states that he used the word “sambo.” (Def. MSJ Mem of Law at 6)

Response:

AISS objects to this statement on the grounds that it is immaterial. Whether AISS included a particular argument in its Memorandum of Law in Support of Motion for Summary Judgment has no bearing on whether AISS violated Mr. Dyer's rights under the First or Fourteenth Amendments. AISS further objects to the assertions within Statement No. 17 on the grounds that they relate to legal arguments raised in a pleading rather than to evidence before this Court. L.R. 56.1(B)(1).

Statement No. 18

Mr. Dyer was escorted once again to the hall by three AISS resource officers accompanied by Chief Ronald Applin. (Exhibit 6)

Response:

AISS admits that after Mr. Dyer used the word "sambos" and refused to stop speaking during the Board meeting, three law enforcement officers escorted Mr. Dyer to the hallway outside of the Board meeting. AISS further admits that Chief Ronald Applin spoke with Mr. Dyer in the hallway.

Statement No. 19

As Mr. Dyer was being led out of the meeting, Mr. English stated that no one will refer to children as "sambos" under his watch. (Exhibit 6)

Response:

AISS admits that after Mr. Dyer's departure from the meeting, Mr. English notified the audience that the word "sambos" cannot be used to reference AISS students.

Statement No. 20

Mr. Dyer asked Chief Ronald Applin which law was broken for him to be removed.

(Exhibit 6)

Response:

AISS admits that after law enforcement officers escorted Mr. Dyer from the room, he asked Chief Ronald Applin for the legal basis for his removal from the meeting.

Statement No. 21

Several witnesses in attendance explained to the Chief that they did not hear Mr. Dyer refer to the children as "sambos." (Exhibit 6)

Response:

AISS objects to the assertions within Statement No. 21 because Exhibit 6 does not support them. L.R. 56.1(B)(2)(a)(2).

Statement No. 22

Mr. Dyer pointed out that he was continuously being targeted for harassment when he exercises his First Amendment Rights to Free Speech. (Exhibit 6)

Response:

AISS objects to this statement on the grounds that it is immaterial. Mr. Dyer's personal belief as to whether he was being harassed has no bearing on whether AISS violated his rights under the First or Fourteenth Amendments.

Statement No. 23

On February 8, 2018, AISS issued a third "Suspension from Public Comment at Atlanta Board of Education Meetings" letter. (Exhibit 3)

Response:

Admitted.

Statement No. 24

AISS referenced Mr. Dyer's comments "were offensive to the Board." (Exhibit 3)

Response:

Admitted.

Statement No. 25

The On [sic] February 8, 2018 letter accused Mr. Dyer of introducing racist and hate-filled epithets at an ABOE meeting. They refer to a flier that was passed out to audience members with the phrase "unnigged coming soon" and that contained a picture of Superintendent Carstarphen wearing a photoshopped football jersey with the name "FALCOONS" on it. (Exhibit 3, Exhibit 13, Exhibit 14)

Response:

Admitted.

Statement No. 26

AISS General Counsel D. Glenn Brock, Partner of Nelson-Mullins Riley & Scarborough, advised Board Chairman Jason Esteves to shut Mr. Dyer's mic off during his public comment. (Exhibit 7)

Response:

AISS admits that in Exhibit 7, Glenn Brock, who was General Counsel for AISS and is an attorney with Nelson Mullins Riley & Scarborough, advised Board Chairman Jason Esteves that Mr. Dyer not be allowed to continue speaking during public comment because of a brochure he held containing racially-charged information. AISS objects to the remaining assertions within Statement No. 26 because Exhibit 7 does not support them. L.R. 56.1(B)(2)(a)(2).

Statement No. 27

Mr. Dyer did not use any language that could be considered a racial epithet during his public comment. (Exhibit 7)

Response:

AISS objects to the assertions in Statement No. 27 as Exhibit 7 does not support them. However, even if Mr. Dyer did not utter any racial epithets while speaking

during the public comment session, the brochure that he distributed during the Board meeting contained multiple racial slurs.

Statement No. 28

AISS General Counsel D. Glenn Brock stated, “The brochure that he is holding is inappropriate for this setting and it contains racially charged information.” He recommended that Mr. Dyer not be allowed to continue because he had been warned of this before. (Exhibit 7)

Response:

Admitted.

Statement No. 29

Mr. Dyer explained to Board Chair Esteves that the flyer was satire. (Exhibit 7)

Response:

AISS objects to this statement on the grounds that it is immaterial. Mr. Dyer’s belief as to whether his flyer was satire has no bearing on whether AISS violated his rights under the First or Fourteenth Amendments.

Statement No. 30

Board Chairman Jason Esteves told Mr. Dyer that it was not satire. (Exhibit 7)

Response:

Admitted.

Statement No. 31

The Defendant circled the words “FALCOONS” and “unnigged” located on the back of the flyer. (Exhibit 13)

Response:

AISS objects to the assertions in Statement No. 31 on the grounds that they are immaterial. L.R. 56.1B(3)(c). Even if Mr. Dyer could establish that an AISS employee circled words on Exhibit 13, the fact that an AISS employee circled the words or that they are circled at all has no bearing on whether AISS violated Mr. Dyer’s rights under the First or Fourteenth Amendments.

Statement No. 32

The February 8, 2018 suspension letter instructs Mr. Dyer not to set foot on Atlanta Public Schools property for one year. It states that Mr. Dyer is not to have any communication whatsoever with any employee or representative of the ABOE or AISS for the duration of the suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication. (Exhibit 3)

Response:

Admitted.

Statement No. 33

Exhibit 12 submitted by AISS was dated February 6, 2018. (Exhibit 12)

Response:

AISS objects to this statement on the grounds that it is immaterial. The date listed at the top of the suspension letter does not affect whether AISS violated Mr. Dyer's rights under the First or Fourteenth Amendments.

Statement No. 34

The February 6, 2018 letter was documented as being sent Via Personal Delivery.

Response:

Admitted.

Statement No. 35

The February 6, 2018 suspension letter omits the following language:

It states that Mr. Dyer is not to have any communication whatsoever with any employee or representative of the ABOE or AISS for the duration of the suspension.

This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication. (Exhibit 12)

Response:

AISS admits that Exhibit 12 does not include any language prohibiting Mr. Dyer from communicating with an employee or representative of the ABOE or AISS for

the duration of the suspension.

Statement No. 36

Mr. Dyer submitted the February 8, 2018 suspension letter which states in part:

It states that Mr. Dyer is not to have any communication whatsoever with any employee or representative of the ABOE or AISS for the duration of the suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication. (Exhibit 3)

Response:

AISS admits that Exhibit 3 states that Mr. Dyer is not to have any communication whatsoever with any employee or representative of the ABOE or AISS for the duration of the suspension. AISS further admits that the prohibition on communication within Exhibit 3 includes, but is not limited to, verbal, written, electronic, or in-person communication.

Respectfully submitted this 11th day of November, 2019.

/s/ Brandon O. Moulard

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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 11th day of November, 2019.

/s/ Brandon O. Moulard

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of November, 2019, I served a copy of **ATLANTA INDEPENDENT SCHOOL SYSTEM'S RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS** via first-class mail and CM/ECF notification to the following:

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/s/ Brandon O. Moulard

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