

**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 BRIEF IN OPPOSITION TO PLAINTIFF’S CROSS-  
MOTION FOR SUMMARY JUDGMENT**

The Atlanta Independent School System (“AISS”) files this Brief in Opposition to Plaintiff’s Cross-Motion for Summary Judgment, showing the Court the following:

**PROCEDURAL HISTORY**

Plaintiff filed his Complaint on June 4, 2018, in Fulton County Superior Court. [Doc. 1-1]. AISS filed a Notice of Removal on July 9, 2018, [Doc. 1] and a Motion to Dismiss and Brief in Support on July 16, 2019. [Doc. 2]. On March 14, 2019, the Court granted the motion, in part. [Doc. 22.]

AISS filed an Answer to Plaintiff’s Complaint on April 4, 2019, [Doc. 25] and discovery began thirty days later on May 4, 2019. L.R. 26.1A. The parties agreed

this case was subject to a four-month discovery track. [Doc. 26]. As such, discovery ended on September 3, 2019.

AISS filed a Motion for Summary Judgment [Doc. 34], Memorandum of Law in Support of Motion for Summary Judgment [Doc. 34-1], and Statement of Undisputed Material Facts [Doc. 34-2] on October 3, 2019. On October 24, 2019, Plaintiff filed the following documents: (1) Opposition of Motion for Summary Judgment [Doc. 35]; (2) Memorandum of Law in Opposition of Motion for Summary Judgment [Doc. 35-1]; (3) Response of Undisputed Material Facts in Opposition of Motion for Summary Judgment [Doc. 36]; and (4) Statement of Undisputed Material Facts in Support of Motion for Summary Judgment [Doc. 37].

When Plaintiff filed the Statement of Undisputed Material Facts in Support of Motion for Summary Judgment in the court's electronic filing system, Plaintiff labeled the document as a "Cross-Motion for Summary Judgment." [Doc. 37]. Although Plaintiff filed Document 37 as a "Cross-motion for Summary Judgment," within the actual document, Plaintiff entitled the document, "Plaintiff's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment" both at the beginning of the pleading and in the certificate of service. [Doc. 37].

AISS filed a Reply Brief in support of its Motion for Summary Judgment [Doc. 39] and a Response to Plaintiff's Statement of Material Facts [Doc. 40] on

November 11, 2019.

**ARGUMENT AND CITATION TO AUTHORITY**

Plaintiff's Cross-motion for Summary Judgment must be dismissed because (1) it does not meet the requirements of a motion or a motion for summary judgment under the Federal Rules of Civil Procedures or this Court's Local Rules, and (2) Plaintiff filed it twenty-one days after the filing deadline.

**I. Plaintiff's "Cross-motion for Summary Judgment" Does Not Meet the General Criteria for a Motion or the Specific Criteria for a Motion for Summary Judgment.**

Labeling a document as a motion does not make it a motion. Rather, to constitute a motion, a filing must comply with the Federal Rules of Civil Procedure and all relevant Local Rules. Plaintiff's "Cross-motion for Summary Judgment" must be denied because it meets neither the general requirements of a motion nor the specific requirements of a motion for summary judgment.

Federal Rule 7(b)(1) outlines the general requirements of a motion and provides that a motion must: "(A) be in writing unless made during a hearing or trial; (B) state with particularity the grounds for seeking the order; and (C) state the relief sought." Local Rule 7.1(A)(1) further provides, "Every motion presented to the clerk for filing must be accompanied by a memorandum of law which cites supporting authority."

If a party fails to file an appropriate motion, the court may dismiss the motion. L.R. 7.1(F)(stating this Court has the discretion to “decline to consider any motion or brief that fails to conform to the requirements” of the Local Rules). In *Disc Disease Solutions, Inc. v. Vgh Solutions, Inc.*, the court held that a plaintiff’s motion to amend was legally insufficient where the plaintiff’s “request” consisted of the following language in the footnote of its response to the defendant’s motion to dismiss: “In the event that the Court finds that additional allegations are required related to any aspect of Plaintiff’s claims . . . Plaintiff respectfully requests leave of Court to amend its complaint.” 2016 WL 9240616 \*2 (M.D. Ga. 2016). Specifically, the court denied the plaintiff’s request because it was not made by motion and did not include specific argument to support why the motion to amend should be granted. *Id.*

Like the motion in *Disc Disease Solutions*, Plaintiff’s “cross-motion” should be denied because it does not meet the requirements of a motion. Specifically, the “cross-motion” does not “state with particularity the grounds for seeking the order,” does not “state the relief sought,” and is not accompanied by a memorandum of law citing supporting authority.

A cursory review of Document 37 indicates that even though Plaintiff labeled the document as a “cross-motion for summary judgment” when he filed it

electronically, it is not a motion for summary judgment. The title and form of the document make plain that Document 37 is a statement of material facts. The title of the document is “Plaintiff’s Statement of Undisputed Material Facts in Support of Motion for Summary Judgment,” and the first sentence of the document states that Plaintiff files it “*in support* of its opposition and cross-motion for summary judgment.” [Doc. 37] (emphasis added). The substance of the document is thirty-six numbered paragraphs in the style of a statement of material facts.

Nothing within Document 37 resembles a motion. The “cross-motion” presents no language moving this Court to enter summary judgment on Plaintiff’s behalf. Plaintiff’s filing presents no legal argument or citation to authority as to why this Court should grant summary judgment. Although Plaintiff states that the filing is “in support” of a “cross-motion for summary judgment,” Plaintiff has not filed any document that meets the requirements of either a cross-motion or a memorandum in support of a cross-motion.

In addition to not meeting the general requirements of a motion, Document 37 does not meet the specific requirements of a motion for summary judgment under Federal Rule 56 and Local Rule 56.1. These rules require a party to include the following in a motion for summary judgment: (1) a motion; (2) a brief; and (3) a statement of material facts supported by citation to the evidence. Fed.R.Civ.P. 56;

L.R. 56.1. The party must “identify[] each claim or defense – or the part of each claim or defense – on which summary judgment is sought.” Fed.R.Civ.P. 56(a). Plaintiff filed a statement of material facts in support of his motion for summary judgment but has failed to meet any of the other requirements of a motion for summary judgment. As argued above, Plaintiff has not filed either a motion or a brief in support of a motion.

This Court should deny Document 37 because it does not comply with Federal Rules 7(b)(1) or 56, or Local Rules 7.1 or 56.1.

**II. Plaintiff’s Cross-motion for Summary Judgment Should be Denied Because Plaintiff Filed It Three Weeks After the Filing Deadline.**

If this Court finds that Plaintiff filed a proper Cross-motion for Summary Judgment, this Court should still deny the cross-motion because it is untimely. Under Federal Rule 56(b) and Local Rule 56(D), the deadline to file a motion for summary judgment is thirty days after the close of discovery. The parties also affirmed that any motions for summary judgment were due “within thirty (30) days after the close of discovery, unless otherwise permitted by court order” in their Joint Preliminary Report and Discovery Plan. [Doc. 26]. Plaintiff disregarded both the rules and the Joint Preliminary Report and Discovery Plan.

Motions for summary judgment were due October 3, 2019—thirty days after discovery ended on September 3, 2019. [Doc. 25, 26, 34]. AISS filed its Motion for

Summary Judgment and Memorandum in Support on October 3, 2019, but Plaintiff did not file his “Cross-motion for Summary Judgment” until October 24, 2019, twenty-one days after the deadline. [Doc. 37].

Plaintiff cannot get away with filing his motion for summary judgment late by labeling it as a “cross-motion.” Nothing in the Federal Rules of Civil Procedure or this Court’s Local Rules creates a separate deadline for cross-motions. Rather, all motions must be filed by their applicable deadlines, and, according to the Joint Preliminary Report and Discovery Plan adopted by this Court, the only way an extension may be granted is by order of the Court, which Plaintiff did not seek. [Doc. 26, 27].

If Plaintiff wished to file a motion for summary judgment, he needed to file it by October 3, 2019. He cannot wait until AISS filed its Motion for Summary Judgment before deciding whether to file his own. Because Plaintiff did not file a motion for summary judgment until twenty-one days after the deadline, this Court should deny his untimely “cross-motion.”

### **CONCLUSION**

AISS understands that Plaintiff is a *pro se* party. However, *pro se* parties are not excused from compliance with the Federal Rules of Civil Procedures or the Local Rules of this Court. *Smith v. Specialized Loan Servicing, LLC*, 2017 WL 8218979

\*3 (N.D. Ga. 2017). Judge Batten instructed Plaintiff that he must familiarize himself and comply with the Federal Rules of Civil Procedure and the Local Rules of this Court. [Doc. 4]. But Plaintiff continues to violate these rules. [Doc. 6, 14, 15, 17, 18]. AISS asks this Court to deny Plaintiff's Cross-motion for Summary Judgment because it does not meet the general requirements for a motion or the specific requirements for a motion for summary judgment and Plaintiff filed it well after the deadline.

Respectfully submitted this 18th day of November, 2019.

*/s/MaryGrace K. Bell* \_\_\_\_\_

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 18th day of November, 2019.

/s/MaryGrace K. Bell

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 18th day of November, 2019, I served a copy of **DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S CROSS-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/MaryGrace K. Bell  
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)