

# COURT REPORT

Summer 2024



## Eleventh Circuit Court of Appeals

### First Amendment - Access to School Property

*Lewis v. Reyes (Fla.)*, 2024 WL 1155813 (11th Cir. Mar. 18, 2024)

This case involves an altercation between a self-proclaimed journalist, a police officer, and a Florida elementary school principal. The journalist was standing near the school's campus filming traffic. The principal approached the man and asked what he was doing. The journalist tried to request various public records but the principal told him he could only do so at central office. After the principal walked back onto the campus, the man followed him and continued to insist on receiving the public records. After being asked to leave several times, the journalist was arrested by the officer and charged with trespassing on school grounds. After pleading guilty to trespassing, the journalist sued the principal, the officer, and the school district. He claimed his efforts to seek public records were protected by the First Amendment and the principal's decision to have him arrested for trespassing violated those rights. He also claimed that the district did not properly train the principal as custodian of public records. The trial court dismissed the case for failure to state a claim and the journalist appealed to the Eleventh Circuit.

On appeal, the Court noted that Florida law gives principals the authority to call law enforcement on anyone who stays on a school campus after being asked to leave. Since there was no dispute that the journalist was asked to leave and he did not do so, the principal was within his rights to seek his arrest and the officer properly arrested him.

As to the journalist's claims related to the public records requests, state law requires only that the official acknowledge the request and respond in good faith. Here, the principal acted properly by acknowledging the request and directing him to the appropriate office. Because the journalist had no facts to show that his constitutional rights were violated, the Court upheld the dismissal in favor of the principal, the school district, and the officer.

### Title VII - Discrimination

*Jones v. Gadsden County School Board (Fla.)*, 2024 WL 446241 (11th Cir. Feb. 6, 2024)

This case involved a black male in his sixties who was employed by the board as a substitute teacher. He applied for seven full-time teaching positions but was not chosen. While most of the successful applicants were black, all were under 40 and most were women. The board explained that he was marked "ineligible" because he had a criminal history even though the State Department of Education had cleared him. Additionally, the principal believed he had poor classroom management skills based upon her observations while he was substitute teaching. The teacher filed an EEOC charge and later a lawsuit claiming he was not hired based on age and sex discrimination. Following discovery, both parties moved for summary judgment. The trial court found that the teacher failed to provide sufficient evidence of either claim, submitting only a chart identifying the sex and age of the successful candidates. This was not enough to show that the board discriminated against him. Additionally, he failed to show that the board's reasons for not selecting him—his criminal history and his issues with classroom management—were pretextual. The trial court granted summary judgment in favor of the board and the teacher appealed to the Eleventh Circuit.

On appeal, the Court noted that, in the absence of direct evidence of race or sex discrimination—which the teacher does not have here—a plaintiff could use the McDonnell Douglas burden-shifting framework to show circumstantial evidence of discrimination. To establish a prima facie case of discrimination, the plaintiff would have to show:

- That he is a member of a protected class;
- That he suffered an adverse employment action;
- That he was qualified to do the job; and
- That he was treated worse than “similarly situated” applicants who were not in his protected class.

If he can establish those elements, the burden then shifts to the employer to provide a legitimate, discriminatory reason for making the decision it made. If the employer is able to do so, the plaintiff would have to rebut each of the reasons to show that it is pretextual and that the true reason was discrimination. Here, because the teacher did not even attempt to challenge the board’s proffered reason related to poor classroom management skills, his claims fail. The Court declined to examine the other elements and reasons. Therefore, the Court upheld the trial court’s judgment in favor of the board.

## **Mediation Agreements - Withdrawal of Authority**

### ***Morris v. Bessemer City Board of Education (Ala.)*, 2024 WL 170994 (11th Cir. Jan. 16, 2024)**

This case involves a settlement agreement between an employee and the board. The trial court ordered the parties to mediation which resulted in a “Memorandum of Understanding” detailing the agreement signed by the employee and one representative of the board. The settlement was subject to approval by the board. Before the board voted to approve the agreement, the employee changed her mind. Her attorney notified the board’s attorney that she no longer wanted to settle the case. The next day, the board voted to approve the settlement and ultimately filed a motion with the trial court to enforce the settlement. The trial court held that the agreement was a valid contract subject only to the board’s approval. There was no provision that allowed the employee to withdraw from the agreement. As a result, the trial court granted the board’s motion to enforce the settlement and the employee appealed to the Eleventh Circuit.

On appeal, the employee argued that she had the right to withdraw the settlement at any point until the board voted on it since the board representative at the mediation could not bind the board. The Court noted that settlement agreements are contracts controlled by state law. Under Alabama law, contracts require an offer, an acceptance, consideration and mutual assent to the terms. Here, only the board itself had the ability to accept the offer and could not do so after the offer had already been withdrawn. Accordingly, the Court reversed the trial court and ruled in favor of the employee.

**Editor’s Note: The matter went to trial three months after this decision and the jury found in favor of the board. The employee has appealed the verdict to the Eleventh Circuit.**

## **Section 1981 - Race Discrimination**

### ***Mizzell-Bullock v. Seminole County Public Schools (Fla.)*, 2024 WL 65199 (11th Cir. Jan. 5, 2024)**

This case involved an African-American woman who was employed as a high school assistant principal. During her employment, there were multiple issues. At some point, the woman asked a district administrator for permission to co-teach a dual enrollment course at the local college but her request was denied because she did not have the credentials. Nevertheless, the woman ultimately co-taught the course at the college even though the district denied her request. Months later, she requested a meeting with her supervisors about her relationships with other staffers and a position she had not been selected for. While the woman claimed that voices were raised during the meeting, race was never mentioned. The following year, the woman applied for a principalship at a predominantly White school in the district. During the interview, she claims she was asked how she would feel about being the “face” of the school. She felt the question was discriminatory since the school had never had a Black principal but she did not raise any such concerns after she was not selected.

Weeks later, she was placed on administrative leave for possible misallocation of funds after the co-teaching payments were discovered. An investigation found that she had misrepresented her involvement with the course and her actions violated the policy. After being told she would be recommended for termination, she decided to resign.

She eventually sued the district for race discrimination and retaliation pursuant to Section 1981, specifically claiming that she was treated differently in the investigation because she had previously complained about race discrimination. The district argued that by choosing to resign, she failed to exhaust her administrative remedies before filing a lawsuit. It also argued that her retaliation claim failed because her prior complaints did not mention race discrimination and happened over a year before the investigation which led to her resignation. Following discovery, the trial court entered judgment in favor of the school district. The assistant principal appealed to the Eleventh Circuit.

Section 1981 prohibits race discrimination and retaliation in employment contracts but the board cannot be held liable based on the actions of its employees. Rather, it can only be held liable based on some official board policy or custom or the action of one with final policymaking authority. Here, none of the administrators, including the superintendent, had final policymaking authority over employment decisions. Florida law (as in Alabama) provides that the final authority rested with the board. Moreover, there was no policy or custom of race discrimination. She also failed to establish a link between her earlier complaints and her subsequent termination/resignation. There was no evidence that the administrators involved in her issues the year before had anything to do with the investigation which ultimately led to her resignation. Therefore, there was no causal link between any possible protected activity and potential retaliation. For these reasons, the Court upheld the trial court's decision in favor of the board.

### **Americans with Disabilities Act – Accommodations**

#### ***Gordon v. Bibb County School District (Ga.)*, 2023 WL 8253881 (11th Cir. Nov. 29, 2023)**

This case involved an IT employee who requested accommodations following an injury. She asked for a standing desk, that she be allowed to wear a knee brace, and that she not be required to climb ladders or lift heavy objects. The district denied her request for a standing desk because IT employees did not generally work at desks since they traveled between schools and were rarely stationed at a single location or desk. The district granted the other requests and also allowed her hourly breaks anytime she had to stand for long periods of time. Ultimately, the employee was demoted to a lower paying position. The district claims that demotion was due to performance issues which had been raised long before her disability concerns were raised. The employee sued the board for disability discrimination and retaliation under the Americans with Disabilities Act. Following discovery, the trial court granted summary judgment in favor of the board and the employee appealed to the Eleventh Circuit.

To establish a discrimination claim, an employee must show:

- That she is disabled;
- That she is qualified for the position; and
- That she was discriminated against because of her disability.

The employee must also show:

- That the employer knew of the employee's physical or mental limitations;
- That the employee made a specific request for a reasonable accommodation that would have allowed her to perform the essential functions of her job;
- That reasonable accommodations would not have imposed an undue hardship on the employer's business; and
- That the employer did not provide reasonable accommodations.

On appeal, the Court noted that the district granted all of the employee's requests except for the standing desk since the employee would rarely work at a desk space. An employer is only required to provide an accommodation that is reasonable. Given the nature of this employee's work, the standing desk was not a reasonable accommodation and the employer properly refused it.

The Court also analyzed the employee's retaliation claim. To establish retaliation, the employee must show:

- That she engaged in a statutorily protected expression;
- That she suffered an adverse employment action; and
- That there was a causal link between the two.

The Court here found that the employee satisfied the first element when she complained about her supervisors and filed an EEOC claim, both of which were protected activities. The second element was also shown when she had been demoted to a lower paying position. The employee, however, did not show a causal link between her protected conduct and demotion. The employee's lack of technical skills to perform her job was the district's main concern and the employee failed to show that the reason was a pretext. As a result, the employee's retaliation claim failed and the Court upheld the judgment in favor of the board.

## Alabama Supreme Court

### Immunity – Student Punishment

*Ex parte Louie*, -- So.3d --, 2024 WL 203209 (Ala. Jan. 19, 2024)

This case involves a substitute teacher who was assigned to supervise the alternative program students at the high school. Typically, there were school resource officers assigned to the classroom since those students were there for disciplinary issues but one officer was at a conference and the other officer was needed elsewhere in the school that day leaving the substitute alone. The officer and an administrator did periodically check in on the classroom that day, but at some point, several students physically attacked the teacher. She filed suit against the superintendent, principal, and vice principal for various negligence claims and loss of consortium. Following discovery, the defendants filed a motion for summary judgment, asserting state agent immunity. The trial court granted the motion as to the negligent and wanton hiring, supervision, and training claim, but it denied the motion as to negligence and loss of consortium. The defendants appealed to the Alabama Supreme Court.

State agent immunity is available when a person's conduct involves exercising judgment in the discharge of duties imposed by statute, rule, or regulation. It can also be granted when a person is supervising or educating students during all aspects of the educational process unless he acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority.

Here, the teacher argued that the school officials exceeded their authority by failing to follow the faculty handbook and information guide. Specifically, the alternative program was to be held away from the high school campus, it was to be staffed by certified personnel, and they wrongfully assigned certain students to the program. The Court disagreed and found that the handbook and guide were not mandatory rules. Rather the school officials had the discretion to make the decisions they did. As a result, the Court ruled the school officials' actions were shielded by immunity and granted the mandamus petition. The case was remanded back to the trial court with an order to enter judgment in favor of the school officials.

## Immunity - Corporal Punishment

*Ex parte Smith*, -- So.3d --, 2023 WL 8290957 (Ala. Dec. 1, 2023)

This case involved an incident related to an elementary age boy who had apparently experienced a number of behavioral issues. One day, the boy got into an altercation with another student in class. His teacher was accused of holding the boy's arms behind his back and directing the other student to hit the boy back. The teacher denied this incident occurred. The boy's mother sued the board and the teacher in her individual capacity for assault, battery, outrage, and other state law claims. The trial court dismissed the claims against the board based on absolute immunity leaving only the claims against the teacher.

Following discovery, the teacher filed a motion for summary judgment arguing that she was entitled to various immunities and defenses. The trial court denied the bulk of her motion and the teacher sought review with the Alabama Supreme Court.

On review, the teacher argues that she is entitled to state agent immunity since she was engaged in the supervision of students at the time of the incident, but the mother argues that she exceeded her authority by violating the board's corporal punishment policy. The teacher claims that, even considering the facts in a light most favorable to the plaintiff, she did not administer corporal punishment but the Court disagreed. The teacher also argued that corporal punishment was defined as striking a student with a paddle which there was no evidence that she did. Again, the Court disagreed finding that corporal punishment was not limited to that strict definition.

The teacher also claimed that she was entitled to schoolmaster's immunity. A schoolmaster can stand in loco parentis (in the place of the parent) and is allowed to apply moderate correction to students under her care. However, there is no immunity when the teacher maliciously inflicts permanent injury or excessive punishment on the student. Here, there was evidence that the teacher may have acted with malice. Based on the evidence presented, the teacher acted beyond her authority by violating the corporal punishment policy. Therefore, she was not entitled to state agent immunity or schoolmaster's immunity. The Court denied her mandamus petition and returned the case to the trial court for further proceedings.

## Matter of Interest

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CASE

### Property Valuations

*Morgan County Bd. of Equal. v. Indorama Ventures*, -- So.3d --, 2024 WL 1223802 (Ala. Mar. 22, 2024)

**Editor's Note: This case did not directly involve a local board of education as a party but it did have a direct impact on local boards of education in Morgan County and potentially statewide. For that reason, AASB's Legal Assistance Fund joined this appeal as amicus curiae ("a friend of the court") to represent the interests of local school boards.**

This case involved a chemical company and its attempts to reduce its property taxes. Rather than using the valuation calculated by the Alabama Department of Revenue manual, the company hired outside experts to assess the property. When the local revenue commissioner rejected the company's valuation, it filed an appeal with the county's board of equalization. Following extensive litigation, the trial court ruled in favor of the company, resulting in the trial court ordering several public entities, including the county's local boards of education, to refund hundreds of thousands of dollars to the company in property tax overpayments. The board of equalization appealed to the Alabama Supreme Court. AASB argued on behalf of the impacted school boards and boards statewide that failure to follow standard valuation techniques could be catastrophic making it virtually impossible for school systems to budget from one year to the next and would create inequities in valuations by allowing certain private entities favorable calculations. Unfortunately, the Supreme Court ultimately sided with the company and upheld its valuation.

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