COURT REPORT

June 2026

Eleventh Circuit Court of Appeals

Title IX – Sexual Harassment

***C.W. v. Smith*, --- F.4th ----, 2026 WL 1745411 (11th Cir. June 17, 2026)**

This case involves a 15-year-old freshman football player at a high school in northeast Alabama, who was allegedly targeted by upperclassmen on the team through bullying, hitting, and threats of “keying,” a practice of using or threatening to use a car key by anal penetration of younger players. Keying was a practice the head coach/athletic director reportedly knew had occurred before among players. The freshman claimed he was subjected to repeated physical harassment consisting of chest-grabbing, butt-slapping, and verbal taunts, and four teammates cornered him and fought him after threatening him with keying. The student reported the incident to his mother, who contacted police. The coach told the student plaintiff that he was "taking it too seriously," and at a team meeting afterward, the coach supposedly commented to the team about the player being "soft" and "easily offended.” The harassment continued, discipline of the alleged harassers was minimal, and the student plaintiff eventually transferred schools. The student sued the school system under Title IX and the coach individually under the Equal Protection Clause, along with state tort claims. The trial court dismissed the student’s Title IX claim, reasoning the conduct reflected "anti-freshman bias" rather than sex discrimination, and that the coach had not been shown to know about the specific harassment. The student appealed.

On panel review, the Eleventh Circuit held that the alleged harassment can be deemed "sex-based" even when motivated by hazing/anti-freshman dynamics, if it also involves conduct that is inherently sexual or designed to enforce masculinity stereotypes. The majority held both of the student’s claims were plausibly pleaded. The Court discussed how same-sex harassment among students is actionable under Title IX, just as it is under Title VII because there is no requirement that the harasser be motivated by sexual desire. The Court further found that the harassment, as alleged, was "severe, pervasive, and objectively offensive" under the *Davis* standard, given the short timeframe, the physical nature of the incidents, and the attempted sexual assault.

Additionally, the Court also held the coach was not entitled to qualified immunity. Citing its earlier decision in *Hill v. Cundiff*, the Eleventh Circuit ruled that "doing nothing" in response to a reported sexual assault and signaling to the team that the victim was overreacting, was clearly established as unlawful deliberate indifference. Based on these findings, the case was remanded to the trial court for further proceedings.

***Warner v. School Board of Hillsborough County, Florida*, 2026 WL 1195531 (11th Cir. June 3, 2026)**

This case involves a parent who sued a school board in Florida, challenging the system's school attendance boundaries, school board election districts, and school-choice enrollment procedures. The parent alleged that attendance-zone boundaries and related housing patterns resulted in racial segregation and disproportionately affected minority families. He also claimed that the school system violated his constitutional rights when his child was unable to enroll in a preferred school through the state's school choice process.

The parent had previously settled an unrelated special-education dispute with the same school board. That settlement included (1) a release of claims specifically related to the child's education and (2) a broader agreement not to sue over any facts or events occurring before the settlement's effective date. The school board moved for summary judgment, arguing the new claims were barred by the earlier settlement. The trial court awarded summary judgment in favor of the school system and the parent appealed.

On appeal, the Eleventh Circuit held the settlement agreement was valid and enforceable. The Court rejected the parent's arguments that he was fraudulently induced to sign, that there was no consideration to support the settlement agreement, and that he did not knowingly and voluntarily sign the agreement. The Court highlighted that the agreement expressly stated the parent had an opportunity to consult counsel, had read and understood the agreement, and was not relying on representations outside the written terms. The Court held that the parent's challenge to the system's school attendance boundaries was barred by the agreement's release provision because the claim was directly tied to his child's educational assignment and involved conduct that predated the settlement. The Court also found the parent's challenges to school board election districts and his Fair Housing Act claims were barred by the broader covenant not to sue. According to the Court, those claims were connected to alleged actions and conditions that existed before the settlement's effective date.

The Court then addressed the parent's due process claim, which was based on Florida's school-choice statute. The parent argued that Florida law gave him a protected right to enroll his child in any public school that was below capacity. The Eleventh Circuit disagreed, concluding that Florida's statute establishes procedures governing school choice but does not create a constitutionally protected property interest in attending a particular school. The Court emphasized that because school boards retain discretion in determining school capacity and applying enrollment preferences established by state law, the statute did not guarantee a student's admission to a school based on the parent's preference. As a result, the Court found the parent failed to establish deprivation of a protected federal right under the Due Process Clause. For these reasons, the Eleventh Circuit affirmed the trial court's dismissal of all claims in favor of the school board.

Students First Act – Procedural Due Process

***Monroe County Board of Education v. Barbarietta Turner-Pugh*, --- So.3d ---, 2026 WL 1615560 (Ala. Civ. App. June 5, 2026)**

This case involves an employee who served as the school system's director of student services and was recommended for termination because of performance and insubordination issues. She requested a hearing under the Students First Act (SFA) and stated her attorneys would be in communication with the board but did not identify her counsel by name. Several days later, one of her attorneys sent formal written notice that he represented her and instructed that all correspondence be directed to him. He never withdrew as counsel. Meanwhile, a second attorney, who was representing the employee in a federal lawsuit against the same board, also became informally involved and corresponded with the board's counsel about scheduling of her hearing on the proposed termination, but the second attorney never filed a formal notice of representation in the matter.

The board initially scheduled the termination hearing for February 6, 2025. After discussions involving one of the employee's attorneys, the hearing was rescheduled for February 7, 2025. Revised notice of the new hearing date was sent to the employee's attorney of record. However, neither the employee nor any attorney appeared at the February 7 hearing. The board proceeded with the hearing, received evidence, and voted to terminate her employment.

On appeal under the SFA, the hearing officer concluded that the employee had been denied procedural due process because she and the attorney involved in federal litigation allegedly did not receive adequate notice of the rescheduled hearing date. The hearing officer found that proceeding in their absence resulted in a denial of a meaningful opportunity to be heard and reinstated the employee. The board appealed the hearing officer's decision.

On review, the Court of Civil Appeals disagreed with the hearing officer's findings. The appellate court found the school board satisfied both the procedural requirements of the SFA and constitutional due process requirements. The Court stated that notice to the attorney of record constitutes notice to the employee as a matter of Alabama law, regardless of whether the employee had a second attorney who did not agree to or was unavailable on the rescheduled date of the hearing. The Court clarified that due process requires only notice and an opportunity to respond, not guaranteed attendance or participation. The Court also noted that the board had no duty to track down the employee's attorneys or delay the hearing. Because the employee had notice through her attorney of record and the opportunity to appear, the Court reversed the hearing officer's decision to reinstate the employee on procedural grounds.

Special Primary Elections

A. G. Op. 2026-028 (June 23, 2026)

This opinion discusses whether §17-13-7.1 of the Code of Alabama, which generally limits a voter who participated in a party's regular primary to that same party's ballot in any subsequent primary runoff election, restricts voters who cast a ballot in the May 19, 2026 Primary Election to that same party's ballot in the upcoming August 11, 2026 Special Primary Election. The special primary was created after the U.S. Supreme Court vacated federal judgments requiring use of court-drawn congressional district maps, prompting the Legislature to enact Act 2026-612. Act 2026-612 authorizes special primary elections in time to allow a supplemental primary during the 2026 cycle, following issuance of any court rulings which affect congressional district boundaries. Tuesday, August 11 is the date of the special primary elections for certain congressional districts.

On the issue of whether voters in the special primary election are restricted to the same ballot cast in the primary election, the opinion concluded that §17-13-7.1 is not applicable in this situation, based on the plain and ordinary meaning of the statutory text. The opinion noted that the August 11 special primary election is not a subsequent primary runoff election tied to the May 19 primary; instead, it is a new, standalone special primary created by separate statute. The opinion points to §17-13-3.1(d), which provides that no candidate is deemed a party's nominee based solely on the May primary results once a new special primary is triggered, that any official certification from the regular primary is void for purposes of determining the nominee for the affected office, and that the nominee will instead be certified based solely on the new special primary's results. Because the two elections are distinct and separate, the Attorney General concluded that any qualified voter may choose either party's ballot in the August 11 Special Primary, regardless of which party's primary they cast in the May 19 Primary.

Student Athlete Eligibility

***Kay Ivey v. Alabama High School Athletic Association*, 03-CV-2025-000373, Circuit Court of Montgomery County, Alabama (September 4, 2025)**

Reported earlier in *Court Report*, the legal challenge involving whether the Alabama High School Athletic Association (AHSAA) could limit athletic participation of students using the CHOOSE Act ended in a settlement rather than a court ruling. The lawsuit was brought by Governor Ivey, Speaker Ledbetter, and a parent whose son was a CHOOSE Act participant. Rather than litigating the merits, the parties reached a settlement specific to the named student.

Under the settlement agreement, the AHSAA agreed that it will not limit or impede the student from participating in interscholastic athletics because of his status as a CHOOSE Act participant or because of his involvement in the lawsuit. The agreement further provides that the AHSAA will not take adverse action against the student based on court orders entered in the case and will not retaliate against him because of advocacy related to his athletic participation. The settlement expressly states, however, that all other AHSAA eligibility rules remain applicable to the student.

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