

COURT REPORT

September 2026



Eleventh Circuit Court of Appeals

Title VII – Sex & Race Discrimination

***Fennel v. Elmore County Board of Education*, 2026 WL 2664351 (11th Cir. September 10, 2026)**

This case involves a white female probationary assistant principal at a high school in central Alabama who was terminated along with a black male assistant principal for engaging in intimate, inappropriate behavior on school grounds during school hours. Early in the school year, a teacher walked into the teachers' lounge and saw the two administrators alone together in what she described as an unprofessional situation. After the principal learned of the lounge incident, he met with each administrator separately, sharing that other teachers had commented that the two assistant principals spent long periods together behind closed doors and the principal instructed them to limit their interactions to those instances necessary for their job responsibilities.

Several months later, another teacher responding to a student fight and seeking administrative assistance entered the male administrator's office and saw the two employees in close physical contact. The male administrator yelled an expletive, ran out to help the teacher while zipping his pants, and the employee plaintiff remained in the office for over a minute before responding to the fight. The two were later placed on administrative leave pending an investigation by the human resources director. The director reviewed surveillance footage confirming the incident and showing that the two frequently spent extended periods together in their respective offices. Based on that investigation, the superintendent recommended termination of both employees, and the school board approved the terminations. The employee sued under Title VII, alleging sex discrimination and associational race discrimination under a "mixed-motive" theory. The trial court granted summary judgment for the board, and the employee appealed.

On appeal, the Eleventh Circuit affirmed the trial court's ruling. Under a mixed-motive theory, an employee can succeed on a Title VII claim if she shows that illegal bias was a motivating factor for an adverse employment action even though other factors also motivated the action. Addressing the sex discrimination claim first, the Court rejected the employee's argument of gender bias, specifically that she was fired simply for being a woman alone in an office with a man. The Court found that the evidence showed she was terminated because of two witnessed incidents and extensive closed-door encounters with her male colleague which were captured on video. The Court held that male school district employees who received prior sexual harassment complaints were not valid comparators, because their conduct was not the same basic conduct as the employee plaintiff's conduct giving rise to her termination. The Court noted that the male tenured administrator involved in the same incident as the plaintiff received the same punishment. The Court also found no evidence that the board knew of or tolerated prior harassment complaints against the male administrator, since the principal had not reported any prior complaints involving the male administrator to the Central Office. The Court rejected the employee's "cat's paw" theory, raised for the first time on appeal, because the principal did not recommend her termination. Instead, the board acted on the superintendent's recommendation following an independent investigation by the human resources director. Lastly, the Court held that the principal's allegedly backdated memorandum documenting the employee's lounge incident could not establish pretext, because the board's decision to approve her termination did not rely on the principal's memorandum.

The Court also rejected the employee's associational race discrimination claim. Although Title VII protects an employee from discrimination because of an interracial association, the Court found the employee failed to produce any evidence showing that her association with the black, male assistant principal motivated the board's decision to terminate her. The Court was unconvinced by the employee's attempt to compare herself to a black female assistant principal who was not terminated, but who allegedly rubbed the male administrator's back and held his hand in public because the board was unaware of the alleged conduct involving that employee. In any event, the Court noted the black female administrator's conduct was not sufficiently similar to the plaintiff's conduct. The Court likewise characterized as speculation the plaintiff's theory that the principal desired that a white employee be terminated alongside the black male assistant principal to avoid allegations of race discrimination. Because the employee failed to present evidence from which a reasonable jury could find that her sex or interracial association was a motivating factor in her termination, the Eleventh Circuit affirmed summary judgment for the school board.

ADA – Discrimination & Retaliation

***Agrait v. Hillsborough County Public Schools*, 2026 WL 2606830 (11th Cir. September 3, 2026)**

This case involves a speech-language pathologist diagnosed with multiple sclerosis and employed with a school system in Florida. During the COVID-19 pandemic, the employee provided services to students virtually while the school system operated online. After schools returned to full-time in-person instruction, the employee was assigned to work at a middle school and high school as the sole speech-language pathologist on site. The employee requested multiple times to continue working remotely as an accommodation, but her requests were denied by the school system, concluding that physical presence was an essential function of her job position. Despite the denials of her requests, the employee continued to insist on remote work and arranged virtual sessions with her students through personnel who were unaware of her unauthorized requests. After declining alternatives offered by the school system including returning in-person, taking leave, retiring or resigning, the employee was terminated. She sued the school system under the Americans with Disabilities Act (ADA), alleging claims of disability discrimination and retaliation. The trial court granted summary judgment for the school system, and the employee appealed.

On appeal, the Eleventh Circuit affirmed the trial court's ruling. The Court held that physical presence was an essential function of the employee's position as a speech-language pathologist. In reaching its decision, the Court considered the school system's written job description and attendance policies, which required regular and predictable attendance and identified physical presence at the school sites as part of that requirement. The Court also considered the employee's actual job duties, including her responsibility for supervising and protecting students during therapy sessions. Although the employee successfully provided services remotely during the pandemic, the Court distinguished that period because both students and staff were participating virtually at that time. Once students returned in-person to school, allowing the employee to work remotely would have required another school employee to escort students to the computer lab, supervise them during virtual therapy sessions, and respond to any behavioral issues or emergencies during those sessions. The Court highlighted that the ADA does not require an employer to eliminate an essential job function or to transfer an essential job function to another employee as an accommodation. Accordingly, the Court held that indefinite remote work was not a reasonable accommodation and that the employee was not a "qualified individual" under the ADA because she could not perform all essential functions of the position with or without a reasonable accommodation.

The Court also rejected the employee's retaliation claim. Although requesting reasonable accommodation is a protected activity under the ADA, the school system demonstrated legitimate, nonretaliatory reasons for its actions. The school system withheld certain pay from the employee for days when she neither reported to work in-person nor took approved leave but later compensated her for workdays when it verified that she had performed work. Further, the school system repeatedly warned the employee that remote work was not authorized and offered her other alternatives before ultimately terminating her employment. Because the employee continued to insist on indefinite remote work and did not identify evidence showing that the school system's stated reasons were pretextual, the Court concluded that no reasonable jury could find that her accommodation requests were the but-for cause of the adverse employment action. Finding no evidentiary support for pretext or retaliatory intent, the Eleventh Circuit affirmed summary judgment on all claims for the school system.

Title IX – Removal of 2024 Regulations

On September 28, 2026, the U.S. Department of Education announced a **final rule** formally removing the vacated 2024 Title IX regulations from the Code of Federal Regulations. The rule restores the regulatory text as it existed the day before the 2024 regulations took effect. The 2024 regulations had expanded the definition of “sex discrimination” to include discrimination based on sexual orientation and gender identity. A federal district court vacated the 2024 regulations nationwide in January 2025, after which the Department returned to enforcing the 2020 Title IX regulations. Litigation concerning the 2024 regulations continued until August 2026, preventing the Department from formally removing the vacated provisions from the Code.

According to the Department, the final rule does not reflect any new policy decisions and does not change current practice for students, parents, or school personnel. Rather, it updates the Code of Federal Regulations to reflect the regulations the Department has enforced since January 2025. The restored regulations include the 2020 Title IX rule, including its procedural and due-process requirements, as well as earlier regulatory provisions. The Department states that the correction will take effect upon publication of the final rule. AASB encourages school boards to consult with their local counsel and confirm that their Title IX policies, procedures, and training materials are aligned with the 2020 regulations.

Swatting Threats

On September 25, 2026, the U.S. Departments of Education and Justice issued joint guidance through a **Dear Colleague letter** to educational institutions, including state and local education agencies, regarding the growing number of “swatting” incidents targeting schools. Swatting involves deliberately making a false report of a serious emergency, such as an active shooter, bomb threat, or hostage situation, to provoke a law enforcement response. The guidance notes that perpetrators commonly use technology to conceal their identities and emphasizes that swatting may violate federal and state criminal laws.

The Departments encourage school systems to prepare for these incidents by coordinating with local law enforcement, establishing procedures for assessing anonymous threats, considering multidisciplinary threat-assessment teams, conducting tabletop exercises, and maintaining clear emergency communication protocols. Schools should also designate officials responsible for coordinating the response and train staff members who may receive threatening communications. Importantly, the guidance notes that all threats should initially be treated as credible. Schools should first take appropriate steps to protect students and staff and notify law enforcement while continuing to determine whether the threat is genuine or a hoax. The guidance also recommends a “Report, Don’t Repost” approach when threats circulate through social media. The letter identifies several federal resources, including training offered by the FBI, DOJ, and the Department of Homeland Security. The letter also notes that the guidance is not legally binding and is intended to give educational institutions flexibility to tailor their responses to local needs.

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