

COURT REPORT

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Eleventh Circuit Court of Appeals

First Amendment – Public Comments

Moms for Liberty – Brevard County, FL v. Brevard Public Schools, 118 F.4th 1324 (11th Cir. Oct. 8, 2024)

This case (reported earlier in Court Report in [2022](#)) involves the public comments policy for board meetings. The policy stated that speakers were not allowed to make abusive or obscene statements, and they could not address or question board members individually. The board chair appeared to enforce the policy inconsistently rather than in a logical or uniform manner, which caused some parents to either self-censor their comments or not speak at all. A local parents rights group filed a lawsuit against the board, claiming the policy was vague and violated their First Amendment rights. The trial court granted summary judgment in favor of the board, ruling that the group lacked standing and the policy did not chill the public's right to free speech. The group appealed to the Eleventh Circuit.

The Court first considered the issue of standing. The board argued that the group did not have standing to sue because there was no threat of an actual or imminent injury to their right to free speech. The board claimed that any threats of interruption or removal from meetings were not enough to have a true chilling effect on protected speech. The group claimed its members had to self-censor their speech because of how the board enforced the policy, and this enforcement violated their constitutional rights. The Court agreed and found that the group had standing.

Next, the Court analyzed the policy's restrictions on abusive, personally directed, and obscene speech. School board meetings are considered limited public forums. As such, any regulation on speech must be viewpoint neutral and reasonable.

Regarding the board's restriction on abusive speech, the Court held that it was unconstitutional on its face. The board's definition of "abusive" allowed the board chair to silence speakers who she thought were expressing an offensive message. A review of the chair's enforcement demonstrated the point:

At one meeting, for example, she interrupted a speaker who criticized the Board's COVID-19 masking policy... [The board chair] quickly stopped the speaker, who had not yelled, screamed, or otherwise caused a disruption. In her affidavit, [the board chair] explained that she interrupted him because his "characterization of people as 'evil' was abusive." [The board chair] interrupted another speaker who was criticizing the Board's policies on gender in school bathrooms and school-sponsored sports. According to [the board chair], the speaker had engaged in abusive "name-calling"... Yet another speaker was interrupted for repeating insults leveled at her by protestors outside the Board meeting. In stopping her, [the board chair] contended that the speaker had improperly repeated words that were abusive to the speaker herself.

Id. at 1334.

The Court explained that even offensive statements are constitutionally protected and may not be blocked just because it would upset listeners. The Court noted that a more narrowly defined policy on abusive language may be constitutional, but this language was too broad.

Regarding personally directed speech, the Court held that it was vague and unconstitutional as well. Without addressing the underlying constitutionality of such a policy, the Court held it was unconstitutional on the grounds that the chair inconsistently enforced the rule. When rules are applied in response to one speaker but not another, the Court held they are unconstitutionally applied by definition. The Court next addressed the rule prohibiting speakers from personally directing remarks to anyone not on the board. The board argued that this policy was designed to prevent disruptions and avoid inciting audience members. The Court was not persuaded. It believed hearing concerns about individuals within the school system is at the heart of the board's business, and placing a limitation on that right is unconstitutional on its face.

Lastly, the Court addressed the board's prohibition on "obscene" speech, ruling that it was unconstitutional as well. While there are proper limits that can be placed on obscene speech, enforcement here was left to the discretion of the chair. Again, the broad and vague definition of "obscene" renders the policy unconstitutional.

Government restrictions on speech in limited public forums must be viewpoint neutral, reasonable, and clearly specify what speech is permitted and not permitted. The board's policies here did not do such. The Court reversed and remanded this case back to the trial court for further proceedings.

ADA Discrimination and Retaliation

***McNeal v. Macon County Board of Education*, 2024 WL 4040838 (11th Cir. Sept. 4, 2024)**

This case involves an employee who suffered from a spinal injury. During her interview for a special education teacher position, she informed the principal that her spinal injury prevented her from performing certain physical tasks in the classroom. She could still, however, perform adequate classroom instruction and paperwork. Shortly after beginning her teaching position, she asked for additional paraprofessional assistance in the classroom. This request was denied by the administration. Later on, the teacher was injured on the job after an incident with a student. She had pain in her head, arm, and upper body and took sick leave. The teacher and her medical provider gave an indefinite time frame for her recovery, and so she was placed on administrative leave and ultimately terminated from her employment. The teacher sued the board for disability discrimination and retaliation under the American with Disabilities Act. The board argued that the teacher was not a qualified individual and did not request reasonable accommodations. The trial court granted summary judgment in favor of the board and the teacher appealed.

On appeal, the Court first addressed the discrimination claim, holding that the teacher was not a qualified individual under the ADA because she could not perform the essential functions of her job. Moderate to intense physical engagement with students was an essential function of a special education teacher, as outlined in the job description. Additionally, special education teachers needed to be able to exert certain pounds of force. Neither of these essential functions could be performed by the teacher due to her spinal injury. Since she could not carry out the essential functions of her job, she was not a qualified individual. Furthermore, her request for accommodations which included indefinite leave and additional personnel were unreasonable and would cause an undue burden on the board.

As for the retaliation claim, the Court found that her not being able to fulfill the essential functions of her job was a legitimate reason for the board to terminate the teacher. Therefore, the Court upheld the trial court's ruling and affirmed the judgment in favor of the school board.

Student Abuse – Damages

A.W. by and through J.W. v. Coweta County School District, 110 F.4th 1309 (11th Cir. Aug. 7, 2024)

This case involves a teacher who abused special education students in elementary school. The students, aged 7 to 12, had disabilities that affected their communication skills. Parents noticed sudden behavioral changes and signs of distress in their children. The students would come home in soiled clothing with bodily marks and tell their parents of the abuse they endured with their teacher throughout the school day. The teacher subjected the students to various forms of abuse, including confining them to small spaces and locking them in the bathroom for time outs. She struck one student in the face with a shoe and pinched another's forearm. On two other occasions, she slapped a student and aggressively shook their head by holding them at neck point. Additionally, she called the students "disgusting animals" and threatened to punch them. A paraprofessional witnessed the incidents of name-calling and rough physical contact by the teacher to the students. She reported the teacher's abuse to the principal on various occasions, but the principal did not inform law enforcement authorities until much later, in violation of the state's mandatory reporting laws. The principal was later disciplined for failure to report. The students ultimately filed a lawsuit against the district and principal. They alleged violations of their due process rights under §1983 and sought damages under Title II of the American with Disabilities Act. The trial court dismissed the case, holding that damages for emotional distress were unrecoverable under Title II of the ADA, and the students failed to state a constitutional claim for a due process violation. The principal was granted qualified immunity, so the trial court dismissed the claims against her and the district. The students appealed.

The Court first addressed the types of relief the students might be entitled to, despite not being able to recover damages for emotional distress. The Court held that the trial court erred when it failed to consider the students' request for other relief. The students should have been allowed to seek other forms of relief such as damages for physical harm, compensation for lost educational benefits, remediation, and nominal damages. The Court disagreed with the trial court's refusal to consider the availability of alternative relief.

The Court then addressed the §1983 claims. To state a proper §1983 claim, the students must allege that "a person acting under the color of state law, deprived them of a right...secured by the Constitution or a federal statute." Here, the students claimed the principal deprived them of their right to substantive due process guaranteed to them by the Fourteenth Amendment. To constitute a violation of substantive due process, governmental conduct had to have been "conscience-shocking." Here, the students alleged that the principal's failure to address the teacher's abusive behavior was conscience-shocking, but the Court disagreed in light of relevant case law of past abuse cases. Only the most egregious official conduct meets this standard. The Court expressed that the teacher's conduct here was troubling but not conscience-shocking so the principal's failure to report it could not meet the standard. Therefore, the Court upheld the dismissal of the due process claims, but reversed the dismissal of the Title II claims, and sent the case back to the trial court for consideration of other types of damages.

Section 1981 - Race Discrimination & Retaliation

Jackson-Crawford v. School Board of Seminole County, FL, 2024 WL 3371413 (11th Cir. July 11, 2024)

This case involved a black woman who worked as a support facilitator for exceptional students at a high school. When a new principal was hired at the school, tension began to brew with the employee. She requested changes to her class schedule, but the principal could not accommodate her personal preferences. More problems began to develop between the employee and the assistant principal, who served as her immediate supervisor. She did not like the way the assistant principal conducted her classroom observations. She also felt the assistant principal criticized her unfairly for being tardy despite the fact that she believed she had an understanding with the principal about her schedule. The employee filed a complaint with human resources. Following an investigation, the district concluded that the assistant principal's behavior did not amount to harassment or discrimination. The employee filed an EEOC charge alleging race discrimination.

Four months later, at the end of the school year, the employee was nonrenewed which she claimed was in retaliation for her earlier EEOC charge. The principal denied this and claimed that he recommended her nonrenewal because of her persistent tardiness, work attitude, and interest in finding a better candidate. The trial court granted summary judgment in favor of the board, and the employee appealed.

On appeal, the employee claimed that the trial court should have found the short timeframe between her EEOC charge and the conversations about her nonrenewal persuasive --- regardless of when she was actually nonrenewed. While there was a four-month gap between the EEOC charge and the nonrenewal decision, there was a two-to-three-month gap between the EEOC charge and the discussions ahead of the nonrenewal. Still, the Court found this timeline unpersuasive. The board provided legitimate non-discriminatory reasons for non-renewing the employee's contract and she did not provide any evidence showing that those reasons were false. Since the employee could not show the reasons were a pretext, the Court upheld summary judgment in favor of the board.

Title VII - Religious Accommodations

Staple v. School Board of Broward County, FL, 2024 WL 3263357 (11th Cir. July 2, 2024)

This case involves a transportation employee who requested a modified work schedule that would permit him to observe his Sabbath from sundown Friday to sundown Saturday. In years past and in various positions, the board accommodated his requests, including adjusting his work hours and having other employees fill in for him up until his retirement. He was eventually rehired by the board as a transportation supervisor, and he made the same request for modified work hours. This time, however, the board denied his request and informed the employee that he had to use his paid leave to observe his Sabbath because the accommodations would burden other employees. After filing an EEOC charge, the employee sued the board for religious discrimination under Title VII. The trial court dismissed the employee's claims, and he appealed.

The Court began its analysis by reversing the trial court's dismissal of the employee's religious accommodation claims under Title VII. Employers have duties imposed under Title VII including the duty not to discriminate against an individual because of his religion and the duty to accommodate an individual's religious practices. The employee alleged the board did not accommodate his practice to observe his Sabbath. The trial court erroneously ruled that the employee had to also allege he was discharged or disciplined for his religious accommodation claims to survive. This was not the case. Under Title VII's disparate treatment provision, the employee is only required to show only some harm regarding a term or condition of his employment. Discharge or discipline, as the trial court thought, is not required. The man sufficiently alleged some harm to an identifiable term or condition of his employment when he claimed that the board denied accommodating his Sabbath hours and required him to use his paid leave as an alternative. The board countered this and provided two reasons why the claims should still be dismissed. First, it claimed the employee did not properly allege a prima facie case. And secondly, although it was not the employee's desired accommodation, the board nonetheless accommodated the employee's religious practice by allowing him to use both his paid and unpaid leave to observe his Sabbath. These reasons were unconvincing to the Court, which ultimately reversed the trial court decision and ruled in favor of the employee.

Attorney General's Opinions

Elections – Substitution of Candidates

A.G. Op. 2024-035 (June 11, 2024)

This opinion addressed whether a political party can submit a name for the general election ballot for county superintendent, if the party did not certify a candidate for the position in the primary election.

Here, a probate office received a declaration of candidacy for a person to be included on the primary election ballot for county superintendent. However, the State Superintendent's certification letter for the person was sent in after the deadline and prevented the person from participating in the primary. Later the political party filed a certification of candidates to be included on the general election ballot and it once again submitted the same person's name. This is not permitted. A political party cannot place a candidate on the general election ballot for county superintendent, if the person was not on the primary election ballot.

Charter Schools - Donations

[A.G. Op. 2024-033 \(May 2, 2024\)](#)

This opinion addressed whether a two-year college may donate surplus personal property to a start-up public charter school under Ala. Code § 16-1-34.

Here, a local community college discussed donating surplus personal property to a charter school. During their discussions, the parties realized there could be some legal issues with transferring property from a state institution to a charter school. Ala. Code § 16-1-34 allows a two-year college president to donate surplus personal property to a local city or county board of education. A charter school is defined as a public school governed by an independent governing board that is a 501(c)(3) tax exempt organization. Therefore, a charter school is neither a local board of education nor part of one. As such, it may not receive donations of personal property from community colleges.

Matter of Interest

Title IX Final Rule Vacatur

[Tennessee v. Cardona, --- F.Supp.3d ---, 2025 WL 63795, \(E.D. Ky. Jan. 9, 2025\)](#)

In April 2024, the United States Department of Education released its final Title IX rule, which included sex-based discrimination on the basis of gender identity and sexual orientation. However, on January 9, 2025, the U.S. District Court for the Eastern District of Kentucky struck down the 2024 Title IX final rule and vacated it nationwide. In its opinion, the court noted several reasons for doing so.

First, the court held that the Department of Education had surpassed its statutory authority, finding its reliance on *Bostock v. Clayton County* unconvincing. Second, the final rule violated the First Amendment because it compelled speech by requiring the use of names and pronouns associated with a student's gender identity. Additionally, the court addressed the final rule's vague and overbroad nature, stating that it provided no clear guidance as to what conduct violated the law. The final rule also ran afoul of the Spending Clause by failing to impose unambiguous conditions on federal funds. And lastly, the court found that the final rule was arbitrary and capricious.

Given these reasons, the court concluded that a vacatur was the most appropriate remedy. Under this vacatur order, the entirety of the 2024 Title IX final rule was determined to be invalid and prevents its application across the nation. Previously, a lawsuit was filed by state officials in Alabama, reaching the Eleventh Circuit. On appeal, the Eleventh Circuit ruled in their favor and granted the state officials' request for an injunction.

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