

COURT REPORT

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Eleventh Circuit Court of Appeals

- **Due Process – Superintendent Resignation**

Edwards v. Dothan City Schools, 82 F.4th 1306 (11th Cir. Oct. 4, 2023)

This case involved a superintendent's separation from the system. After several difficulties with the board, the superintendent emailed the following message to the board members:

I intend to tender my resignation to the [board]. Please let me know who I should deal with to iron out the details.

The board interpreted her email as notice of her resignation which they accepted at the next board meeting. The superintendent claimed that the email was only notice of her **intent** to resign--not a notice of her resignation--and the board should not have acted on it. As a result, she sued the board and its members for denial of due process, conspiracy to violate her civil rights, and breach of contract. The trial court granted the defendants' motion to dismiss and the superintendent appealed to the Eleventh Circuit.

On appeal, the Court first addressed the due process claim. When a public employee can only be fired for cause, he has a constitutionally protected property interest and cannot be fired without due process--notice and an opportunity to be heard. One exception to this rule is if the employee resigns--he waives his right to due process. Another exception is if the deprivation is caused by a "random and unauthorized act" by a state actor (here, the board). The trial court found that the board's misinterpretation of her email as a resignation was a random and unauthorized act. The Court held that the trial court improperly interpreted the minutes against the superintendent rather than in her favor as required at the motion to dismiss stage. Had the trial court taken the superintendent's allegations as true, there was at least a plausible claim for relief. As a result, the Court ruled in the superintendent's favor and reversed the dismissal of the due process claim.

Next, the Court addressed the conspiracy claim. Conspiracy to interfere with civil rights happens when two or more people plot to prevent someone from performing their duties or deprive them of their rights. The plaintiff must allege that the defendants had a class-based, invidiously discriminatory motive. Under the intracorporate conspiracy doctrine, it is impossible for a corporation's employees (or a board's members) to conspire among themselves or with the corporation. Here, the superintendent claimed that the board members conspired to improperly terminate her but the Court found that she did not submit any facts supporting a conspiracy and she also failed to allege a class-based, invidiously discriminatory motive. Therefore, the Court ruled in favor of the board and upheld dismissal of the conspiracy claim.

Lastly, the Court considered the breach of contract claim against the board and board members in their official and individual capacities. In Alabama, boards of education are considered state agencies and are immune from suit, but there are several exceptions which may apply to claims against the board members. The superintendent claims two exceptions apply: actions brought to compel state officials to perform their legal duties and actions to compel state officials to perform ministerial acts. She argued that there was a legally binding contract, and the board members had a ministerial duty to perform, leaving them no discretion over whether to comply with the contract. The Court rejected her claims because the superintendent was seeking money damages rather than

prospective relief--an order to perform some act. Because of this, the superintendent's claim against the board members in their official capacities was barred. Furthermore, the Court rejected the claims against the board members in their individual capacities as well. The superintendent contracted with the board as a whole, not with the individual board members. Therefore, the Court upheld the dismissal of the breach of contract claims.

Based on this opinion, the only claim that survived was the due process claim and the matter will continue on that claim alone.

- **Title IX - Bullying**

***Adams v. Demopolis City Schools*, 80 F.4th 1259 (11th Cir. Sept. 1, 2023)**

This case (reported earlier in Court Report in [2022](#)) concerns a 9-year old black student who tragically committed suicide after being bullied at her school. Beginning in the fourth grade, the girl reported being bullied by her classmates on a daily basis. She reported sexist and racist name-calling, threats and physical attacks. After learning of the problem, the girl's grandmother reached out to her teachers with mixed success. There was some discipline of one of the accused students and a safety plan was put into place. Before the semester ended, the girl took her own life in her grandmother's home. Her family sued the board and several officials including the superintendent, principal, assistant principal, and a teacher. They claimed the defendants violated Title IX and Title VI as well as her substantive due process and equal protection rights under the Fourteenth Amendment. They also sued for wrongful death. Following discovery, the trial court granted summary judgment for the defendants. The family appealed to the Eleventh Circuit.

The Court first addressed the Title IX claims. Title IX prohibits discrimination and harassment based on gender. To succeed on that claim, a person must establish:

- that the school was "deliberately indifferent" to the harassment;
- that school officials had actual knowledge of the harassment; and
- that the harassment was so severe, pervasive and objectively offensive that the student was deprived of her right to an education.

The Court focused on the first element of deliberate indifference which means a school official knew of and disregarded an excessive risk to the victim's health or safety. Here, the family argued that the school was deliberately indifferent because it ignored the bullying incidents and failed to adopt anti-bullying policies required by state law. The Court noted that ineffective efforts are not the same as deliberately indifferent. To be deliberately indifferent, a decisionmaker has to actually **decide** to ignore the harassment. In this case, after the teacher heard a boy call the girl the "n word", she wrote him up and sent him to the office. After another incident, the boy was placed in in-school suspension. Each response was consistent with the code of conduct and shows that the teacher did not ignore the bullying. The assistant principal also initiated a safety plan for the girl in response to the bullying. Whether or not the safety plan was effective, it was a reasonable attempt to address the bullying and did not amount to deliberate indifference.

The Court then addressed the board's failure to adopt the anti-bullying plan required by the Jamari Terrell Williams Act. The Act became effective the summer before the girl started fourth grade and the State Department disseminated a model plan to local school systems a few months later--the same month the girl took her own life. The board adopted the plan two months later. The Court found that even before the board adopted the new plan, it already had an anti-bullying policy and training in place to address bullying and suicide prevention. Also, it was normal practice for the board to adopt model plans provided by the State Department. With its own anti-bullying policy already in place, the board's decision to wait to adopt the model plan was not deliberately indifferent. Because the family failed to establish the required element of deliberate indifference, the Court declined to address the other elements and upheld judgment in favor of the defendants on the Title IX claims.

Next, the Court addressed the Title VI and equal protection claims which protect students from intentional race discrimination. Again, to succeed on either claim, the family must show that the defendants were deliberately indifferent to the harassment. In addition to the school officials' actions discussed above, there was no evidence that bullying or harassment was a widespread problem in the system or at the student's school. Nor was there evidence of a "pervasive practice or custom" of ignoring bullying directed at the girl. Based on this, the Court found no intent to discriminate by any action or inaction of the board defendants.

Next, the Court addressed the substantive due process claims. While procedural due process relates to the procedures used in an action, substantive due process protects citizens even if the procedures are properly followed. In schools, conduct may violate substantive due process if it is arbitrary or shocking to the conscience. Such conduct must have intended to injure in a way that cannot be justified by any government interest. The plaintiff must show more than mere deliberate indifference. Here, the family argues that the defendants' failure to timely adopt the bullying policy was arbitrary but the Court disagreed. The Court already decided that the defendants' actions were not deliberately indifferent and a short delay in adopting a policy was not arbitrary or conscience-shocking.

Finally, the Court considered the state wrongful death claims, arguing that the defendants' failure to adopt the anti-bullying policy effectively led to the girl's death. A state agent is immune from liability when formulating plans and policies and exercising judgment in educating students. Here, the family argued that the defendants were not immune because the Williams Act required boards to adopt the bullying policy--they had no discretion. The Court disagreed. While acknowledging the tragedy, the Court upheld the trial court's decision in favor of the board defendants.

Alabama Supreme Court

- Immunity - School Violence

Ex parte Herring, --So.3d--, 2023 WL 7096598 (Ala. Oct. 27, 2023)

This case involves the senseless death of a student who was shot and killed on school grounds. On the day of the shooting, a male student left the campus and returned with a loaded 9-millimeter handgun hidden in his clothes. The side school door was locked but another student opened the door so the boy could enter. Later that day, the boy pulled the gun out to show it to the girl. The gun fired and accidentally struck the girl killing her. The girl's mother sued the superintendent and principal for wrongful death. Both moved for summary judgment arguing that they had state-agent immunity for claims related to the supervision of students. The mother argued that they were not immune because they acted beyond their authority by failing to enforce various safety policies--an exception to immunity. The trial court denied the motion and the superintendent and principal filed a mandamus petition to the Alabama Supreme Court.

A denial of immunity at the summary judgment stage is immediately reviewable. To claim immunity, a state agent must first show that he was performing a function that would entitle him to immunity. Here, the defendants argued that claims related to their formulation of safety plans, the administration of a school, and the exercise of judgment in educating and supervising students--all acts that are protected by immunity. The mother argued that the defendants acted beyond their authority by failing to comply with state law, the board's policy manual, the job description and the code of conduct.

Regarding the policy manual, the mother pointed to a section that required each school to develop and implement evidence-based practices to prevent violence. The Court rejected the claim noting that the policy did not impose a duty on any individual employee, including school principals. Even if it had, the policy did not address how, when, and under what circumstances the duty should be carried out. Therefore, the policy was not detailed enough to avoid immunity.

Next, the Court reviewed the principal's job description which included the goal of providing leadership, supervision, and organization for students. The Court found that those statements did not require specific duties but were merely aspirational in nature. As a result, they could not be used to invoke the "acted beyond authority" exception to immunity.

The Court then addressed the Code of Student Conduct which prohibited students from leaving campus without permission, using a cell phone during school hours, and having a firearm on school property. The mother claimed the principal acted beyond his authority by failing to enforce these rules but the Court disagreed. In a past case which involved a student violating school rules, the Court held that a teacher acted beyond his authority because the teacher was complicit in the rules violation. See *Ex parte Yancey*, 8 So.3d 299 (Ala. 2008). This was not the case here. The mother then argued that the principal was responsible for failing to discipline the student for past violations but the Court noted that mere failure to prevent misconduct is not enough to establish complicity.

Finally, the mother argued that the superintendent acted beyond her authority by violating Ala. Code §16-12-3, which requires city superintendents to enforce laws and regulations. Again, the Court rejected the mother's claim that the mere failure to prevent violations was equivalent to complicity. Ultimately, having found that the defendants were entitled to immunity, the Court granted the petition and directed the trial court to enter summary judgment in favor of the superintendent and principal.

- **Immunity - Compensation**

***Ex Parte Morgan*, --So.3d--, 2023 WL 6527769 (Ala. Oct. 6, 2023)**

This case involved a longtime employee of the school system who sued the board members in their official and individual capacities for various claims related to her pay. The defendants moved to dismiss the suit on the grounds that they were entitled to immunity but the trial court denied the motion. Following discovery, the defendants moved for summary judgment on the grounds of immunity. The trial court granted the motion as to the official capacity claims but denied it as to the individual capacity claims. The defendants filed a petition for review in the Alabama Supreme Court.

The Court first noted that the defendants' arguments for immunity before the trial court were different than the arguments before the appellate court. The defendants initially argued that they were entitled to immunity in their individual capacities because the employee's claims were effectively a claim against the state since any duty they breached was in their capacity as board members and therefore barred under state immunity. Before the appellate court, the defendants argued that the claims did not fall into one of the exceptions to state-agent immunity. The Court noted that a recent decision--issued between the time arguments were made at the trial court and the Supreme Court--overruled a case that defendants had previously relied upon at the trial court. While the Court understood why the defense argument changed, it would not consider the argument since it was not made at the trial court level.

Despite this, the Court ruled in favor of the board defendants because the employee ultimately conceded that the board members were entitled to summary judgment in their individual capacities. The Court granted the petition and ordered the trial court to enter judgment in favor of the board members.

Alabama Court of Civil Appeals

- **Contract Principals - Evaluations**

Ex parte Whitlow, --So.3d--, 2023 WL 6527527 (Ala.Civ.App. Oct. 6, 2023)

This case involves a contract principal who was nonrenewed at the end of his three-year contract. The principal challenged the nonrenewal in the trial court alleging that he was entitled to an extension of his contract because the superintendent had not evaluated him as required. He sued the board as well as the superintendent and board members in their official capacities. According to the Teacher Accountability Act, the trial court must hold an expedited hearing within 45 days but the hearing was not held due to a mistake by the court clerk. When the 45 days expired, the defendants moved to dismiss the suit arguing that the board was immune and the trial court had lost jurisdiction over the case since the time expired. The trial court dismissed the case and the principal appealed.

On review, the Court first held that as an agency of the state, the board was entitled to state immunity so the trial court correctly dismissed the board. The Court next considered the claims against the superintendent and board members in their official capacities. While such claims are generally treated as claims against the board itself, there is an exception when an action is brought to compel officials to perform their legal duties. Here, if the trial court had found the board improperly nonrenewed the principal for personal or political reasons, the board would have a legal duty to reinstate him. Accordingly, the claims against the board members were not barred by immunity and should not have been dismissed.

Conversely, because the superintendent's authority is limited to making recommendations, he had no legal duty to take any action to reinstate the principal. Therefore, the "legal duties" exception to immunity did not apply and he was properly dismissed by the trial court.

Finally, the principal argued that the expiration of the 45-day period did not strip the trial court of jurisdiction. The Court refused to consider this argument since the principal did not present it to the trial court first. Ultimately, the Court upheld the dismissal of claims against the board and superintendent but directed the claims against the board members be revived so that the trial court could rule on the merits.

Attorney General's Opinions

- **Dual Offices of Profit**

A.G. Op. 2024-002 (Oct. 4, 2023)

This opinion addressed whether a person can serve on the county water board and the county school board at the same time. No person can hold two offices of profit simultaneously. Ala. Const. art. XVII, §280; Ala. Code §36-2-1. A person holds an office of profit if:

- 1) He is elected or appointed;
- 2) He receives a fixed compensation; and
- 3) He exercises sovereign power of the state.

County school board members hold an office of profit but water board members do not because they do not exercise a state power. Therefore, the appointment would not violate the prohibition against serving in dual offices of profit, but another law may impact this question. The law controlling water boards states that directors cannot hold state, county or municipal office simultaneously. Ala. Code §11-88-6(c). For this reason, a person cannot simultaneously serve on the school board and the water board.

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