No "Disaggregation" of Title VI Discrimination Claims in the Southern District

Merriam Webster defines 'disaggregate' as the separation of a whole into component parts. To disaggregate instances of discrimination under Title VI, for purposes of summary judgment, is a 'no-no' in the Southern District of Ohio.

Many oppositions to summary judgment often include a "throw in the kitchen sink" type of analysis. In response, the moving party tries to over-simplify matters in a way that prevents the Plaintiff from ever seeing a jury. In Title VI cases, this is particularly apparent when numerous incidents are used to support claims of discrimination. When student-on-student discrimination is alleged, the Southern District rejected Defendants' plea to consider each incident in isolation.

The case of Brooks v. Skinner, 139 F. Supp. 3d 869 (S.D. Ohio 2015) involves three biracial students who alleged a pattern of discrimination over a five year period. For each of the incidents that were documented by the School District, there existed disciplinary reports of the offending students without further evidence of repeat behavior by the same students. At first glance, it appears that the Defendant School District satisfied their burden in addressing the racial discrimination within the school. However, rather than analyzing the School's response to the individual incidents, the Sixth Circuit considered the learning environment as a whole when partially rejecting Defendants' Motion for Summary Judgment.

Title VI claims of student-on-student harassment contain three elements:

1.) The racial harassment must be so severe, pervasive, and objectively offensive that it deprives plaintiff of access to educational opportunities or benefits,
2.) The school had actual knowledge of the harassment, and
3.) The school was deliberately indifferent.

Davis **v**. Monroe Cty. Bd. of Educ., 526 U.S. 629, 119 S. Ct. 1661, 143 L. Ed. 2d 839 (1999)

In its Motion for Summary Judgment, the Defendant School in Brooks argued that not one of the incidents, standing alone, was severe or pervasive enough to deprive the Plaintiffs of access to educational opportunities. 139 F. Supp. 3d 869, 884 (S.D. Ohio 2015). The School further argued that it was not deliberately indifferent because students were disciplined and they stopped harassing Plaintiffs. *Id*. "However, the Court finds that this framing of plaintiffs' claims is contrary to law." *Id*. Instead, the Court directs us to a prior Sixth Circuit holding where "the issue is not whether each incident of harassment standing alone is sufficient to sustain the cause of action in a hostile environment case, but whether—taken together—the reported incidents make out such a case." Williams **v**. Gen. Motors Corp., 187 F.3d 553, 562 (6th Cir. 1999) (emphasis in original) (analyzing a hostile environment claim under Title VII.) Brooks, 139 F. Supp. 3d 869, 884 (S.D. Ohio 2015).

While the Defendant School could hardly deny knowledge of its own discipline reports, some of the harassment occurred after the filing of the Plaintiffs' complaint.[1] The evidence showed that the discrimination may have stopped with the individual students but continued within the school system. Considering the totality of the circumstances, the Court quoted the Sixth Circuit decision of Patterson **v**. Hudson Area Sch., 551 F.3d 438, 448 (6th Cir. 2009), stating, "[E]ven though a school district takes some action in response to known harassment, if further harassment continues, a jury is not precluded by law from finding that the school district's response is clearly unreasonable. We cannot say that, as a matter of law, a school district is shielded from liability if that school district knows that its methods of response to harassment, though effective against an individual harasser, are ineffective against persistent harassment against a single student. Such a situation raises a genuine issue of material fact for a jury to decide." Brooks, 139 F. Supp. 3d at 884.

Under the approach argued by the Defendants, every student could discriminate against a minority student at least once, suffer some discipline, and not repeat the harassment. With approximately nine hundred students in Plaintiffs' schools, the Plaintiffs would have to endure significant harassment before the School Board would be forced to reconsider the effectiveness of their policies. Ultimately, the Brooks' Court refused to consider each incident in isolation and instead let a jury decide as to the pervasiveness of the harassment and the effectiveness of the Defendants' response. "[I]n considering whether summary judgment is appropriate, and with these principles in mind, the Court will not disaggregate the incidents of harassment plaintiffs experienced at [Defendant] schools." *Id*.

[1] "A court may consider evidence of post-complaint harassment that "arise[s] out of the scheme that was the focus of the pleadings, . . . [is] directly related to the earlier violation, and [will not result in] undue prejudice to the defendants." Brooks v. Skinner, 139 F. Supp. 3d at 884, *quoting*, Jund **v**. Town of Hempstead, 941 F.2d 1271, 1287 (2d Cir. 1991).