No. 15-10778-C

IN THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

DAVID BENOIT MECH,
d/b/a THE HAPPY/FUN MATH TUTOR,

Plaintiff/Appellant,

vs.

SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA

Defendant/Appellee.

ON APPEAL FROM THE UNITED STATED DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
DC Case Number: 13-cv-80437

ANSWER BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The Appellee certifies that the following persons have an interest in the outcome of this appeal:

1. Bernard, Shawntoyia
2. Dillard, Kalinthia R.
3. Garrison, Kris
4. Green, James K.
5. Jacque-Adams, Kathelyn
6. Latson, William
7. Littlejohn, Blair
8. Marra, Kenneth
9. Matthewman, William
10. Mech, David Benoit
11. Riopelle, Gerald
12. Rico, JulieAnn
13. The School Board of Palm Beach County, Florida
14. Slack, Peter
15. Walters, Lawrence

Respectfully submitted,

/s/ Shawntoyia N. Bernard
By: Shawntoyia N. Bernard, Esq.
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CORPORATE DISCLOSURE STATEMENT

None of the parties currently have corporate affiliates that have issued shares to the public.

STATEMENT REGARDING ORAL ARGUMENT

It is the Appellee, School Board of Palm Beach County, Florida's ("School Board"), position that oral argument is not needed as permitted in Federal Rule of Civil Procedure 34(a)(2)(C). This appeal arises out of a district court order granting School Board's Motion for Summary Judgment on the Appellant, David Benoit Mech d/b/a the Happy Fun Math Tutor's ("Mech"), federal constitution claims, denying Mech's motion for summary judgment as to liability, and dismissing his state law breach of contract claim without prejudice to file such claim in state court. School Board believes that the facts and legal arguments can be adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

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STATEMENT OF THE ISSUES

1. Whether the District Court properly granted the School Board's Motion for Summary Judgment on the basis that Mech's First Amendment claim was misplaced in that the banners were not removed because of the content of Mech's speech or in retaliation for comments of great public concern.

2. Whether the District Court committed reversible error by denying Mech's Motion for Summary Judgment based upon his assertion that School Board Policy 7.151 gave principals unbridled discretion to determine which advertisers may use School Board property to engage in commercial speech.

3. Whether the District Court committed reversible error in denying Mech's Motion to Amend Final Judgment under Federal Rule of Civil Procedure 59(e).

STATEMENT OF THE CASE

On or about February 13, 2014, Mech filed a four-count second Amended Complaint Under the Civil Rights Act, 42 U.S.C. §§ 1983, for Damages, Injunctive, and Declaratory Relief. (Doc. 36) In such complaint, Mech sought injunctive relief, declaratory judgment, and damages for Violation of his First Amendment Rights (Count I), Violation of his Fourteenth Amendment Right to Due Process (Count II), Violation of this Fourteenth Amendment Right to Equal Protection (Count III), and Breach of Contract (Count IV). (Doc. 36) Each of Mech's claims arose out of his allegation that he was a party to three separate agreements with the School Board allowing him to hang banners on the fences at Omni Middle School, Boca Raton Middle School, and Spanish River High School, and that those banners were eventually removed without his consent in violation of his constitutional and contractual rights. (Doc. 36)

Specifically, Mech alleges a) that the School Board's custom, policy, or practice prohibits him and "other disfavored advertisers from advertising on the premises of public schools"; b) that he "was a party to multiple advertising agreements with the District, including separate agreements with Omni Middle School, Boca Raton Community Middle School, and Spanish River Community High School"; c) that once the School Board created a limited public forum for advertising, it had a legal obligation to administer the advertising scheme and

forum constitutionally; and d) that after accepting and displaying his advertisements, the principals "at the aforementioned schools breeched those advertising contracts by removing" his banners from school fences. (Doc. 36, ¶¶ 1, 23, 27, and 28) In addition to pointing to three alleged advertising agreements, Mech noted that the School Board's banner fence screen program was controlled by Policy 7.151. Policy 7.151 provides in pertinent part:

> "1. Purpose- The District recognizes that athletic sponsors and other business partners provide a vital role in sponsorship of key programs within our schools. As such, schools have increased needs to visibly recognize these partners in the community…By permitting recognition of business partners on school campuses, it is not the intent of the School Board to create or open any Palm Beach County School District school…as a public forum for expressive activity, nor is it the intent of the School Board to create a venue or forum for the expression of political, religious, or controversial subjects which are inconsistent with the educational mission of the School Board or which could be perceived as bearing the imprimatur or endorsement of the School Board.
>
> …..
>
> 2. Policy Statement.
>
> a. A Business Partnership Agreement (PBSD 1570) must be used to document all partnerships as well as any screens posted to recognize sponsor donation revenue. A copy of this form is incorporated herein by reference as part of this policy and can be located on the District's forms web page.
>
> b. Because the screens are not considered advertising, the business partner must be informed and fully understand and agree that any funds provided to the school are considered donations.
>
> …..

h. In keeping with the express purpose of this Policy not to create or open schools as a public forum for expressive activity, Principals shall use their discretion in selecting and approving business partners that are consistent with the educational mission of the School Board, District and community values, and appropriateness to the age group represented at the school. Examples of inappropriate business partners include but are not limited to: businesses that sell goods or services which are illegal if possessed by or sold to a minor, adult entertainment establishments, businesses whose primary source of revenue is generated from the sale or distribution of alcohol or tobacco products, tattoo parlors, pain clinics and businesses soliciting addicts.

(emphasis added)

The policy upon which Mech relies for his claims clearly states on its face that the purpose of the banner program was to recognize donation revenue-- not to serve as an advertising program. (Doc. 36, Exhibit C) Mech asked the district court to disregard the policy's plain language that the School Board does not permit advertising, and rule that district personnel "illegally applied School Board Policy 7.151(1) and 7.151(2)(h) beyond what is set out in the clear language of the Rules to an advertiser's other lawful, independent businesses." (Doc. 36, ¶38) According to Mech, the removal of his banners constitutes discrimination "against disfavored advertisers on the basis of **content of the speech of their completely separate businesses**." (Doc. 36, ¶44)

The School Board offered two grounds for summary judgment (Doc. 54, Doc. 66). First, the School Board argued that Mech did not have valid and enforceable contracts with the School Board on the date the banners were

removed; thus, the Mech had no legal right to have his banners hang on the school fences on the date of the removal. (Doc. 54) Thus, his constitutional rights could not have been abridged when the banners were removed. The School Board did not assert-- nor does it take the position now-- that First Amendment rights arise out of contract. Instead, the School Board asserted that, in this case, Mech, himself, framed his claim around his assertion that he had a right to engage in commercial advertisement on the school fences because he entered into advertising contracts with the three schools. Indeed, he does not assert that any and everyone has an inherent, constitutional right to hang banners on the school fences. Instead, he argued in his second Amended Complaint that his banners should have remained on the fences because he entered into contracts permitting him to hang his banners. He responded to the School Board's Motion for Summary Judgment by arguing that he did not need to have a contract (or apply for a permit) to assert that Policy 7.151 gives principals unbridled discretion to remove his banner.

Second, the School Board asserted that Mech's First Amendment rights were not violated because the banners were not removed because of the content of his speech or in retaliation for comments of great public concern. (Doc. 66, page 3) Mech moved for summary judgment on the basis that the "schools' principals exercised standardless, post hoc discretion to selectively ban" Mech's banners for

reasons other than precise and objective criteria; thereby violating his First Amendment rights. (Doc. 48)

On October 17, 2014, the Honorable Kenneth Marra dismissed Mech's claim for declaratory relief. (Doc. 76) On October 24, 2014, the Court entered an Order Granting Defendant's Motion for Summary Judgment on Plaintiff's Federal Constitutional Claims and Denying Plaintiff's Motion for Summary Judgment. (Doc. 80) The Judgment was entered on October 27, 2014. (Doc. 81)

On November 24, 2014, Mech filed a Motion to Amend Judgment Under Rule 59(e), and argued "the Court appears to have assumed erroneously that, so long as the motive for removal of the banner was not the content of the banner, unbridled discretion to remove it did not render its removal unconstitutional." (Doc. 82) The Court denied his request the amend judgment on the grounds that Mech failed "to articulate how [School Board's] decision to remove his banners constituted "censorship" of the views he expressed at the manager of an adult media company." (Doc. 84)

This appeal ensues.

STATEMENT OF THE FACTS

Mech is an individual who offers tutoring services to middle and high school students. (Doc. 36, ¶13-15) The School Board is the corporate body politic governing the public schools within the School District of Palm Beach County. (Doc. 36, ¶6) Pursuant to its authority designated in section 1001.41, Florida Statutes, the School Board adopted School Board Policy 7.151 Business Partnership Recognition – Fence Screens on January 12, 2011 (Doc. 48, App. 4-Deposition of Kristin Garrison, Page 24, Line 15 and Page 48, Lines 20-22). School Board Policy 7.151 provides that school principals have been delegated the authority to select and approve business partners (Doc. 36, Exhibit C).

It is undisputed that a banner with the name, phone number, and website address for the Happy/Fun Math Tutor was placed on the fences at Omni Community Middle School, Spanish River Community High School, and Boca Raton Community Middle School. In February 2013, the principals of Omni Middle School and Spanish River High School advised Mech in writing that the banners were being removed because Mech's "position with Dave Pounder Productions, together with the fact that Dave Pounder Productions utilizes the same principal place of business and mailing address as The Happy/Fun Math Tutor creates a situation that is inconsistent with the educational mission of the Palm Beach County School Board and the community values." (Doc. 36, Exhibits

E and F) In a subsequent letter, the School Board's then-General Counsel, Sheryl Wood, advised Mech, "[g]iven that parents within the community have already made the connection between your tutoring business and your adult entertainment business, the principals had no choice but to remove your banners." (Doc. 36, Exhibit H)

The letters did not provide that the banners were being removed because of the language on Happy Fun/Math Tutor's banner or due to any *views, positions, statements, or thoughts* he may have expressed in his position with the Happy Fun/Math Tutor or his position with Dave Pounder Productions. (Doc. 36, Exhibits E, F, and H) At no time did the School Board or its employees take issue with the language on the banners or advise Mr. Mech that it disagreed with or sought to censor the content or viewpoint of his speech. (Doc. 36, Exhibits E, F, and H)

The School Board and Mech agree that Mech's banners did not contain any misleading or unlawful information. They also agreed that the banners were removed because of Mech's relationship with Dave Pounder Productions.

ARGUMENT

The Court reviews a district court's grant of summary judgment *de novo,* viewing all evidence and drawing all reasonable inferences in favor of the non-

moving party. *Rine v. Imagitas, Inc.*, 590 F.3d 1215, 1222 (11th Cir. 2009). Summary judgment is proper "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Further, if reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir.1997).

"The moving party bears the initial burden of showing the court ... that there are no genuine issues of material fact that should be decided at trial." *Allen v. Board of Public Educ. for Bibb Cnty.*, 495 F.3d 1306, 1313 (11th Cir. 2007). In opposing a motion for summary judgment, the non-moving party may not rely solely on the pleadings, but must show by depositions, documents, affidavits, interrogatory answers, or other materials that specific facts exist demonstrating a genuine issue for trial. *Celotex Corporation v. Catrett*, 477 U.S. 317, 324 (1986).

The District Court properly granted the School Board's Motion for Summary Judgment on the basis that Mech's First Amendment claim was misplaced in that the banners were not removed because of the content of Mech's speech or in retaliation for comments of great public concern.

The School Board asserts that the Court properly granted summary judgment on its behalf. As Mech states in his Brief, the School Board believes Mech did not have valid and enforceable contracts at the time that the banners were removed; thus, he had no right to have the banners on the fences. More importantly, the School Board strongly asserts that the Policy upon which Mech relies states on its face that the School Board did not intend to establish an advertising program.

Nevertheless, even if the fence screens are advertisements, summary judgment was proper because the fence screens were not removed due to the message, ideas, content or viewpoint of Mech's speech on the banners. All of the banners on the fence were to have the same content: the name of Business Partner, a phone number, a web address, and the phrase "Partner in Excellence." The record shows that the School Board expressed no objection to the language on Mech's banners.

The Courts will protect First Amendment freedoms; however, the First Amendment does not create property rights, and does not guarantee absolute freedom of speech. *See Board of Cnty. Comm'rs, Wabaunsee Cnty., Kan. v. Umbehr*, 518 U.S. 668 (1996). The First Amendment's guarantee of freedom of speech protects individuals from government action ***because*** *of* their speech. *See id*. The First Amendment means "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of*

City of Chicago v. Mosley, 408 U.S. 92, 95 (1972). Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wise-open.' *See id.* at 96.

Because it is undisputed that the School Board took absolutely no action against Mech based upon either the message, ideas, subject matter, content, or viewpoint of the speech written on the banner, the First Amendment is not implicated in this case. The Court's order granting the School Board's Motion for Summary Judgment was proper.

The District Court did not commit reversible error by denying Mech's Motion for Summary Judgment based upon his assertion that School Board Policy 7.151 gave principals unbridled discretion to determine which advertisers may use School Board property to engage in commercial speech.

Mech asserts that Policy 7.151 violates his First Amendment rights and the rights of other disfavored advertisers because school principals have "unbridled discretion" to remove banners. Specially, he alleges that the School Board "has improperly afforded itself unlimited discretion, has applied vague standards, and has acted arbitrarily and in a content biased manner in deciding which advertisers will be allowed to use the limited public forum." (Doc. 36, ¶46) Although he alleges a pattern and practice as it relates to disfavored advertises, he cites no

examples of other "disfavored advertisers" whose banners were removed or denied.

Mech relies on several licensing and permitting cases and a funding case to support his position. These cases stand for the proposition that, "courts have long held that when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, one who is subject to the law may challenge it facially without the necessity of first applying for and being denied a license." See *Southworth v. Bd. of Regents of Univ. of Wis. Sys*, 307 F.3d 566, 576 (7th Cir. 2002); *see also Atlanta Journal and Constitution v. City of Atlanta Department of Aviation*, 322 F.3d 1298 (11th Cir. 2003)(en banc).

In *Southworth v. Bd. Of Regents of Univ. Wis. Sys*., 307 F.3d 566 (7th Cir. 2002), the court held that the unbridled discretion standard applies not only to permitting and licensing cases, but also to the University's mandatory student activity fee system that students claimed forced them to fund other students' political and ideological speech in violation of their First Amendment rights. In that case, the Court ultimately agreed with the University and concluded that the numerous and specific funding standards detailed in the University's Policies, Bylaws, and Finance Committee Rules of Procedure limited the discretion of the student government with respect to funding student organizations. *See id*.

In *Atlanta Journal*, the City of Atlanta proposed to provide City-owned newsracks which would be leased to various newspapers. *See Atlanta Journal and Constitution v. City of Atlanta Department of Aviation*, 322 F.3d at 1304. The newsracks were outfitted with Coca-Cola advertising, and the newspapers were informed that any other advertising displays on the newsracks by the newspaper publishers were not permitted, other than a single content-identifying strip, subject to approval by the City of Atlanta Department of Aviation. The lower court found that the Coca-Cola advertising portion of the plan was unconstitutional because it contained an unreasonable distinction based upon speaker identity and that the Department's unrestrained discretion in deciding which publications were given permits for newsracks was unconstitutional. *See id*. at 1305. The Department appealed to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit stated,

> "[I]f the property is a public forum or a designated public forum, then any content-based restrictions on speech within that forum are highly scrutinized: the restrictions must be narrowly drawn to serve a compelling state interest…..When the City seeks to regulate speech on government-owned property which is not a public forum or a designated public forum, the standard is modified, becoming more deferential to regulation. If the property is a nonpublic forum, then the City "ha[s] 'no constitutional obligation per se to let any organization use the [forum]…. Therefore, in a nonpublic forum, the City may properly restrict exercise of expression that is inconsistent with the intended use or function of that property through reasonable, viewpoint-neutral regulations.*"*(citations omitted) *Id*. at 1306-07.

The Court noted that the parties agreed that the airport was not public, thus, the Court employed the more deferential standard appropriate for regulation of nonpublic forum expressive activity, and concluded that the regulations were viewpoint neutral. *See id*. at 1307. Thus, the court focused its discussion on whether the restrictions were reasonable, and determined that in a nonpublic forum, the City may properly restrict exercise of expression that is inconsistent with the intended use or function of that property through reasonable, viewpoint-neutral regulations. *See id*. The official charged with administering the Plan should have clear standards by which to accept or reject a publisher's request to use the newsracks at the Airport. The Court was amenable to a first-come, first-served system; a lottery system; or a system in which each publisher is limited to a percentage of available newsracks would be appropriate vehicles for limiting the official's discretion.

The holding in *Atlanta Journal & Constitutional* does not assist Mech in this case. In each of the cases Mech cites that discuss the unbridled discretion standard, the courts expressed concern that unbridled discretion would give government officials the ability to decide who may speak and who may not speak based upon the **viewpoint** of the speaker. *See id*. at 579. Moreover, it is undisputed that the School Board has not restricted speech by Mech on behalf of

Dave Pounder or a message expressed by Mech on behalf of Dave Pounder Productions.

The School Board has never raised any objection to the content or viewpoint of the commercial speech on the banner or to any other speech or views expressed by Mech. The School Board did not find either the content or viewpoint expressed on such banner objectionable.

The record does not support Mech's position that the principals had "unbridled discretion" that could result in **viewpoint** discrimination. Much like an airport, a school is not public. Thus, the School Board's action need only be reasonable. Principals are given the right to use their discretion in selecting and approving business partners that are consistent with the educational mission of the School Board, the appropriateness to the age group represented at the school, and whether it is consistent with the intent of the program.

Mech was advised in the letter from Sheryl Wood, "[g]iven that parents within the community have already made the connection between your tutoring business and your adult entertainment business, the principals had no choice but to remove your banners." The complaints from parents of small school children provided a reasonable basis for removing the banners.

In *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958 (9th Cir. 1999), a would-be advertiser sued the superintendent of school district based

on the district's refusal to post a paid advertisement containing the text of the Ten Commandments on high school's baseball field fence, alleging violation of his right to free speech. The United States District Court granted the district's motion for summary judgment, and plaintiff appealed. The Court of Appeals held that: (1) the fence was a "nonpublic forum" open for a limited purpose, and the district could exclude subjects from posting thereon that would be disruptive to the educational purpose of the school; (2) district's concerns regarding disruption and potential controversy were legitimate reasons for restricting the content of the advertisements on the fence by excluding ads on certain subjects; (3) precluding plaintiff's sign was pursuant to a permissible, content-based limitation on the forum, and not viewpoint discrimination; and (4) fact that district chose to close the forum rather than post plaintiff's advertisement and risk further disruption or litigation did not constitute viewpoint discrimination. *See id*.; *see also Perry Education Association v. Perry Local Educators' Association,* 460 U.S. 37, 49 (2001)("Implicit in the concept of the nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identity. These distinctions may be impermissible in a public forum but are inherent and inescapable in the process of limiting a nonpublic forum to activities compatible with the intended purpose of the property. The touchstone for evaluating these

distinctions is whether they are reasonable in light of the purpose which the forum at issue serves").

In *DiLoreto*, the Court stated that a school could exclude subjects from paid advertisements and could impose content-based limitations. In this case, there is no allegation that the schools imposed content-based or excluded certain topics, subjects, or expressions from the fence. Indeed, the banners were not removed based upon the content of the banners.

Although Mech argues that the principals have unbridled discretion that could lead to viewpoint discrimination, none of the banners on the schools fences set forth any viewpoint. They simply list a name, address, and web address. There is no evidence that the School Board has ever removed a banner due to the name, address, or web address appearing on it.

The District Court did not commit reversible error in denying Mech's Motion to Amend Final Judgment under Federal Rule of Civil Procedure 59(e).

Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly in the interests of finality and conservation of scarce judicial resources. *See* 8 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2810.1 (2d ed.1995); 12 James Wm. Moore et al., Moore's Federal Practice § 59.30[4] (Matthew Bender 3d ed.); *Wendy's Int'l v. Nu–Cape Construction,* 169 F.R.D. 680, 684–85 (M.D.Fla.1996).

There are four basic grounds upon which a Rule 59(e) motion may be granted: 1) to correct manifest errors of law or fact upon which the judgment is based; 2) newly discovered or previously unavailable evidence; 3) to prevent manifest injustice; and 4) an intervening change in controlling law. 8 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2810.1 (2d ed.1995).

When a party is considering filing a Rule 59(e) motion, it should keep in mind that such motions are very burdensome to the courts. *See XL Ins. Am., Inc. v. Ortiz*, No. 0920630-CV-HUCK, 2010 WL 963146, at *1 (S.D. Fla. Mar. 15, 2010). The presumption should be in favor of seeking review of the district court's order in the appellate courts, particularly when the district court has clearly given thorough consideration to the underlying ruling (as evidenced, for example, by the issuance of a reasoned opinion). *See Id*.

A motion pursuant to Rule 59(e) must demonstrate why the Court should reconsider its prior decision and "set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *PaineWebber Income Properties Three Ltd. Partnership v. Mobil Oil Corp.*, 902 F.Supp. 1514, 1521 (M.D.Fla.1995). In other words, reconsideration should be granted only where the movant has pointed to factual or legal matters "that might reasonably be expected to alter the conclusion reached by the court;" it should not be granted where the

moving party seeks solely to relitigate an issue already decided. *See Michael Linet, Inc. v. Village of Wellington, Florida*, 408 F.3d 757, 763 (11th Cir.2005) (explaining that Rule 59(e) cannot be used to "relitigate old matters, raise argument or present evidence that could have been raised prior to entry of the judgment."). Rule 59(e) it is not a vehicle for rehashing arguments already rejected by the court or for refuting the court's prior decision. *See Wendy's Int'l, Inc. v. Nu-Cape Const., Inc.*, 169 F.R.D. at 686. Because the Court carefully considered Mech's arguments and determined that his first amendment rights were not violated, the Court did not err in denying his Motion to amend the judgment. Moreover, the School Board argued in its Reply that Mech's First Amendment rights were not violated because the banners were not removed because of the content of his speech or in retaliation for comments of great public concern. (Doc. 66, page 3) Additionally, School Board has argued throughout this proceeding that the removal was not based upon the content of the banner, but instead it was based upon Mech's "position with Dave Pounder Productions, together with the fact that Dave Pounder Productions utilizes the same principal place of business and mailing address as The Happy/Fun Math Tutor." (Doc. 36, Exhibits E and F). Because the school fences are not public forums, the School Board has a right to determine what type of access is appropriate based upon the intended purpose of the property. *See Perry Educ. Association v. Perry Local Educator's Association*, 460 U.S. at 49.

Moreover, even if the District Court did err, such error was not reversible error. The presumption should be in favor of seeking review of the district court's order in the appellate courts, particularly when the district court has clearly given thorough consideration to the underlying ruling. Mech has filed an appeal and the Eleventh Circuit will address the issues raised therein. Accordingly, this Court should not reverse the District Court's denial of Mech's Motion to Amend the Judgment.

CONCLUSION

The district court did not commit reversible error in granting the School Board's Motion for Summary Judgment, denying Mech's Motion for Summary Judgment, or denying Mech's Motion to Amend Judgment.

CERTIFICATION OF COMPLIANCE

This Brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 5361 words, excluding the parts of the Brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

Additionally, this Brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word version 2013 in 14-point New Times Roman font.

/s/

By: Shawntoyia N. Bernard, Esq.
Florida Bar No.: 0651664

CERTIFICATE OF SERVICE

I, Shawntoyia N. Bernard, hereby certify that on June 4, 2015, a copy of Appellee's Answer to Appellant's Initial Brief was electronically filed with the Court using CM/ECF. I further certify that on June 4, 2015, copies of this Brief was sent via Federal Express for the overnight delivery to the Clerk of Court, and to the following counsels:

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