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## Federal court rejects Sun Prairie families' claims over Patrick Marsh slavery assignment

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Patrick Marsh Middle School is located at 1351 Columbus St. on Sun Prairie's east side.

File/

The United States District Court for the Western District of Wisconsin rejected Sun Prairie families' claims against the Sun Prairie Area School District on July 1 for the controversial slavery assignment that was given to sixth grade students at Patrick Marsh Middle School on Feb. 1, 2022.

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Chief U.S. District Judge James D. Peterson signed off on the decision after summary judgment took place last week. The school district moved for summary judgment for the court to make a decision without having to go to trial. The court opinion stated, “the quiz was offensive and insensitive, but it did not violate the Fourteenth Amendment, the Establishment Clause of the First Amendment, or federal anti-discrimination law. There is no basis to hold the school district liable under federal law for its handling of the incident.”

Three Patrick Marsh social studies teachers assigned electronic learning materials on ancient Mesopotamia and Hammurabi's Code on Feb. 1. That day marked the first day of Black History Month, and the slides assigned featured prominent black leaders like Rosa Parks and Martin Luther King Jr. in addition to ancient Mesopotamia material. One particular question asked students to apply Hammurabi's Code, a Mesopotamian King's laws, to three scenarios. One of those scenarios stated: “A slave stands before you. This slave has disrespected his master by telling him ‘You are not my master!’ How will you punish this slave?”

The correct answer was “put to death.”

Sixth-grader Zavion Ervins was upset and emailed his teacher about it and brought it to the attention of his mother, Dazarrea, who eventually filed a lawsuit against the school district along with Priscilla Jones, mother of student George Brockman.

The school district said that the assignment was not a part of the district's curriculum and the three teachers had adopted them to their Mesopotamia curriculum and had been used the prior two years. The court noted that it is unclear from the record who actually created the Mesopotamia materials. All three teachers were placed on administrative leave and eventually resigned.

In response to the situation, the school district held mandatory training on harmful curriculum content, reviewed various curricula, partnered with an organization to hold healing sessions and collaborated with the African American Parent Network on a district-wide equity assessment.

Ervins and Jones claimed that the Mesopotamia materials and the district's handling of the situation violated state and federal laws. They also contended that Brockman, who was not in the class that received the assignment, was harassed for his race and disability by students and staff at schools over the course of his education.

However, the court added that Brockman's claims failed. The court noted that Brockman suffered years of verbal abuse from a few students that teachers couldn't stop, but there is no evidence he was harassed based on his disability.

"There is no genuine dispute that he was cruelly bullied based on his race," the court stated. "But George's claim is based on the denial of educational opportunity, and plaintiffs adduce no admissible evidence that his education suffered, which is a necessary element of that claim."

The court noted problems with the plaintiffs' summary judgment evidence. The plaintiffs' responses to the defendant violated the court's summary judgment procedures and they failed to raise factual disputes. Consequently, the court ignored the argumentative responses and deemed the corresponding facts to be undisputed.

The school district also moved to strike the declarations of plaintiffs' expert, Bruce I. Levenberg, arguing that his supplemental report was untimely and his original report did not provide a clear description of the bases of his opinions. The supplemental report came after his deposition, which didn't allow the defendants to properly prepare for the deposition. Plaintiffs countered that the delay in disclosing the supplemental report was harmless, but the court stated "in any case, a supplemental report would be due no later than five days before the expert's deposition."

Also, the court found many issues with Levenberg's declarations. According to the court, Levenberg claimed to have conducted a "forensic case study analysis" of the school district's role, but that form of case study is not a "systematic analytical methodology and his report is highly conclusory."

The court pointed out that Levenberg failed to cite evidence that anyone harassed students in assuming the role of "slave master" and he doesn't explain the anyone in the school district violated any established professional standards. In addition, his opinions about Zavion and Brockman's long-term health are hypothetical. The court concluded by granting the school district's motion to exclude Levenberg's evidence under Federal Rule of Evidence 702 due to it being unreliable and unhelpful to resolving issues in the case.

The plaintiffs abandoned some of their original claims at summary judgment, leaving two groups of claims – those dealing with the Mesopotamia assignment and those dealing with Brockman's mistreatment by students and staff. The Mesopotamia claims were under Title VI of the Civil Rights Act, the Fourteenth Amendment, the Establishment Clause of the First Amendment ar

state-law tort of intentional infliction of emotional distress. Brockman's claims were under Title VI, the Americans with Disabilities Act (ADA) and the Rehabilitation Act and the state-law tort of intentional infliction of emotional distress.

Dazarrea and Jones stated that they "experienced their own individualized injuries separate and apart from their children." They filed an establishment clause claim, adding that the district interfered with their parent-child relationships and to direct the religious training of their children. The First Amendment Establishment Clause states that Congress shall "make no law respecting an establishment of religion." Dazarrea stated in her declaration that "Hammurabi's Code was against her morals and undermined the religious principles and guidance she taught Zavion," the court said.

However, they could not cite sufficient evidence to support their alleged injuries. The court recognized that: ". . . a plaintiff must articulate 'specific facts' about the harms they personally and directly suffered, including what happened and when," (Lujan, 504 U.S. at 562-64.)

The court added that the plaintiffs' statements contained no reasonable explanations about how their relationships with their children were harmed, nor were there any facts showing religious interference. The court said their Establishment Clause claims fail for the common-sense reason that teaching Hammurabi's Code was a history lesson, not religious education. Neither the school district nor any of the educators promoted Hammurabi's Code as a viable moral code or way of life.

The plaintiffs' Title VI claims were dismissed as they lacked standing because neither plaintiff attends public schools. It is established by the court that a Title-VI plaintiff must be a participant or beneficiary of the program at issue. To go along with the decision, the court said the assignment was understandably upsetting, but frustration and disagreement does not constitute an injury for the purposes of standing.

Plaintiffs also brought forth a hostile environment claim under the Title VI, which protects against intentional discrimination based on race in programs that receive federal assistance. In order to establish a hostile environment claim, a plaintiff must prove that the student participated in a federally funded program, the alleged hostile environment was so severe and offensive that it deprived the student access to educational benefits, and the school district had actual knowledge of and was indifferent toward the conduct in question. The district's legal counsel contended that plaintiffs couldn't prove this because the assignment didn't create severe hostility and the district's response was appropriate.

For the plaintiffs' due process claims, they used the state-created danger doctrine, which applies when the state puts an individual in a dangerous situation and fails to protect them. To hold the district liable for the violation, plaintiffs must show a violation of their rights because of a widespread policy. The plaintiffs' stated that the district's failure to oversee teachers and curriculum exposed their children to dangers posed by the assignment. However, the court stated that the facts of this case don't fit within the state-created danger doctrine, which usually involves individuals in danger of serious bodily harm.

Brockman's claims under Title II of the ADA and 504 of the Rehabilitation Act were based on the school district violating the ADA and Rehabilitation Act in two ways: peer-to-peer disability harassment and isolation from the classroom.

Brockman said that the school district allowed his peers to harass him for his learning disability. The plaintiff must show that the harassment was based on a disability to violate the ADA and Rehabilitation Act. While he provided evidence of racial harassment, there was no proof in the evidence that he was bullied based on his disability and the court granted summary judgment to the district.

For the isolation from the classroom claim, the district put together several pages of arguments and the plaintiffs didn't respond to any of them, ultimately forfeiting this claim.

Additionally, plaintiffs brought intentional infliction of emotional distress claims under the state law. The court declined to exercise supplemental jurisdiction over the state law claims on the basis that plaintiffs didn't raise any unusual circumstances for the federal court to take this issue. The federal court remanded this claim back to the state court.

*To read the court's full opinion, visit*

<https://storage.courtlistener.com/recap/gov.uscourts.wiwd.47748/gov.uscourts.wiwd.47748.54.0.pdf>

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