

May 2017- April 2018 Court Decisions Impacting School Districts

Mississippi Council of School Attorneys May 8, 2018

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United States Supreme Court Cases of Note:

- ❖ *Endrew F., et al v. Douglas County School District*, ___ U.S. ___, 137 S.Ct. 988, 197 L.Ed.2d 335, 85 U.S.L.W. 4129 Mar. 22, 2017)
 - IDEA and FAPE
 - An autistic child attended school through the 4th grade with basically the same IEP that was minimally modified each year. His parents complained that the school was not doing enough to meet his needs and eventually moved him to a private school when his 5th grade IEP was basically the same as his 4th grade IEP. The child made marked improvements at the private school. The parents sued for reimbursement of the private school tuition.
 - The IEP for a SPED child who is fully integrated in the regular classroom should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.
 - HOLDING – IDEA requires that a SPED child not fully integrated in the regular classroom must receive an educational program reasonably calculated to enable a child to make progress appropriate *in light of the child's circumstances* and this is more of a requirement than the “merely more than *de minimis*” test.

Mississippi District Court Cases of Note

- ❖ *Rhodes, et al v. Lamar County School District, et al*, No. 2:16-CV-195-KS-MTP (S.D. Miss. Mar. 28, 2018)
 - § 1983 for false imprisonment, unreasonable seizure, excessive force, Due Process and failure to train or supervise; ADA; Rehabilitation Act; and various state law claims
 - C. R. was an autistic student in Craft’s classroom. During a “meltdown”, Craft had C.R. enter the “Chill Zone”, which is a 4’x4’ enclosure. Rhodes, C.R.’s mother, just happened to be on campus that day and when she went to his classroom, she heard C.R. screaming “let me out” and witnessed Craft holding the door shut with her foot.
 - The statute of limitations has expired as to Rhodes’ individual claims, but it has not as to the minor child.
 - HOLDING – Summary Judgment in favor of the District on the false imprisonment claim is granted because C.R. was neither arrested nor imprisoned.

- HOLDING – Summary Judgment on the unreasonable seizure claim fails because there is a genuine dispute as to fact over whether Craft intended to restrain C.R.’s liberty which amounts to a seizure under the 14th Amendment.
 - HOLDING – The excessive force and Due Process claims were conceded by the Plaintiff and therefore dismissed.
 - As to the failure to train or supervise claim against the District, Plaintiff must show that (1) the District’s training policy procedures were inadequate, (2) the District was deliberately indifferent in adopting its training policy; and (3) the inadequate training policy directly caused the deprivation of C.R.’s rights.
 - HOLDING – Because there was no pattern of unreasonable seizure violations (deliberately indifferent prong) and because there is no evidence that the lack of more training would obviously end in the deprivation of C.R.’s rights, Summary Judgment in favor of the District was granted on the failure to train or supervise claim.
 - Defendants argue that the ADA and Rehabilitation claims should be dismissed because Plaintiffs failed to exhaust their administrative remedies pursuant to IDEA.
 - HOLDING - Since the ADA and Rehabilitation Act claims here overlap with IDEA claims, administrative remedies should have been exhausted.
 - Plaintiffs contend they are seeking monetary damages only and therefore exhaustion of administrative remedies would be futile.
 - HOLDING – the District Court refuses to hold that administrative remedies need not be exhausted when the Plaintiff is only seeking monetary damages. Therefore, Summary Judgment was granted in favor of the District on the ADA and Rehabilitation claims.
 - HOLDING - As to state law claims, Craft had qualified immunity under the MTCA since there was no evidence that she was acting outside the scope of her employment, and she is entitled to Summary Judgment as to the state law claims. However, the District is subject to the existing state law claims, and Summary Judgment is denied as to the District on the state law claims.
 - HOLDING –Regarding punitive damages, the District has absolute immunity from punitive damages brought under § 1983, but Craft does not in her individual capacity under § 1983. The District does not have immunity for punitive damages on the state law claims.
- ❖ *Wallace v. Desoto County School District, et al*, No. 3:16-CV-287-M-P (N.D. Miss. Mar. 21, 2018)
- Wrongful termination; Due Process; Title VII Sex Discrimination; Title VII Retaliation
 - In August 2016, a picture depicting Plaintiff Wallace, who was the head football coach, athletic director and teacher at Desoto Central High School (DCHS), in a state of full frontal nudity appeared on his Ashley Madison account. He contends the picture was placed on the account by his then ex-wife Keck and her boyfriend, Turnage, who were also DCSD employees. The picture had been taken by Keck when they were married.
 - Around the same time, a partially nude photograph of Rivera, a female DCSD employee, was emailed to co-workers by Turnage. Rivera was Wallace’s girlfriend, with whom he had an affair while married to Keck.
 - Both Wallace and Keck made complaints of sexual harassment to the District.
 - The District investigated the Rivera incident and ordered Turnage to stay away from her.

- The District fired Wallace for immoral conduct and gave him a letter indicating his right to a hearing which he later requested. However, the District later refused to give Wallace a hearing because at the time of his firing, his teaching license had lapsed.
 - Plaintiff claims he was deprived of property and liberty interests when he was denied a public hearing.
 - HOLDING – Since the Plaintiff was not a licensed employee at the time of his firing, he did not have a 14th Amendment property interest in his job. Furthermore, his state law claim fails for the same reason. Therefore, the District’s MSJ is granted as to these matters.
 - HOLDING – However, there is a possibility that Plaintiff did have a liberty interest in clearing his name that was not allowed to him when the District refused to give him a hearing; so, MSJ was denied on the liberty interest claim.
 - HOLDING - Defendant’s MSJ on the Title VII Sex Discrimination claim is denied because there is a genuine issue of fact as to whether the Plaintiff’s sex was a motivating factor in his termination since Rivera was not terminated and was in fact treated very differently although their circumstances were very similar.
 - HOLDING - Defendant’s MSJ on the Title VII Retaliation claim is denied because there is a genuine issue of fact as to whether the Plaintiff’s complaining of Keck’s sexual harassment was the “but for” cause of his termination, although the Court strongly suggested that a jury would most likely not come to this conclusion.
- ❖ *Coleman v. City of Hattiesburg*, No. 2:16-CV-135-KS-MTP (S.D. Miss. Feb. 13, 2018)
- Title VII hostile work environment due to racial harassment - Motion to Reconsider filed by City
 - Summary Judgment in favor of the City denied at *Coleman v. City of Hattiesburg*, No. 2:16-CV-135-KS-MTP (S.D. Miss. Jan. 24, 2018)
 - City argues that this is a case of reverse discrimination since the Plaintiff is white and as such argues that the burden for the Plaintiff is heavier than Title VII cases where the Plaintiff is a minority.
 - HOLDING - The fact that a Plaintiff is not a racial minority does not change the analysis for discrimination under Title VII; therefore, Plaintiff, who is Caucasian, had no higher burden of proof in showing a hostile work environment.
- ❖ *Stuckey v. Clarksdale Municipal School District*, No. 4:16-CV-186-DMB-JMV (N.D. Miss. Nov. 1, 2017)
- First Amendment retaliation claim under § 1983
 - Plaintiff believed for months that her Principal was collecting donated sick days for her. She was not working because her son had been shot, and she was taking care of him. When Plaintiff ran out of her actual accumulated sick leave, she learned that the Principal had in fact not been collecting days for her and had violated District practice by not notifying other schools in the District that she was requesting donated leave. Plaintiff sued alleging that this was retaliation against her because she believed that the Principal and Superintendent believed that she reported cheating on state tests to *The Clarion Ledger* two years earlier. In fact, she did not speak to the paper.
 - “To establish a § 1983 claim for employment retaliation related to speech, a plaintiff-employee must show: (1) he suffered an adverse employment action; (2) he spoke as a

citizen on a matter of public concern; (3) his interest in the speech outweighs the government's interest in the efficient provision of public services; and (4) the speech precipitated the adverse employment action.”

- Plaintiff does not have to show that she actually engaged in the speech but only that the Defendants thought she engaged in the speech.
- HOLDING – Summary Judgment granted because there was no evidence that the Principal or Superintendent believed that the Plaintiff spoke to the paper about the cheating scandal.

❖ *Brookins v. Lawrence County School District, et al*, No. 2:17-CV-60-KS-MTP (S.D. Miss. Oct. 19, 2017)

- Title VII; racial discrimination claim under §§ 1981 and 1983; and First Amendment retaliation claim under § 1983
- Plaintiff, a former teacher of LCSD, sued the District, Superintendent and Principal alleging that they engaged in various discriminatory and retaliatory actions against him because he complained about discrimination against African-American students and teachers. The Plaintiff resigned alleging constructive discharge due to the Defendants' actions.
- The Principal and Superintendent filed a Motion for Judgment on the Pleadings (MJP) under Rule 12(c)
- HOLDING – The Title VII discrimination and retaliation claims against the Superintendent and Principal in their individual capacities were dismissed because Title VII claims must be against employers or supervisors acting in their official capacity if the alleged wrongful acts were performed by the supervisor in his official capacity.
- Regarding the § 1981 discrimination claim, the Principal and Superintendent alleged that they were entitled to qualified immunity in their MJP.
- When qualified immunity is raised at the pleading stage “heightened pleading” is required of the Plaintiff. A Plaintiff's case must be plead in the complaint with factual specificity and precision.
- HOLDING - Defendant Principal and Superintendent's MJP in regard to the § 1981 claim is dismissed because the Plaintiff alleged specific events and discriminatory conduct as to each Defendant with enough specificity to give them notice of the nature of the claims against them, and as alleged, the facts state a claim of racial discrimination under § 1981.
- Regarding the § 1983 racial discrimination claim, the Principal and Superintendent alleged in their MJP that the Complaint should be dismissed because they were entitled to qualified immunity and because the Plaintiff alleged no “direct evidence” of discriminatory intent by either of them.
- HOLDING – The Court again found that the pleadings met the “heightened pleading” requirement for a qualified immunity claim at the pleading stage.
- HOLDING - Furthermore, the Court held that the Plaintiff did not have to allege “direct evidence” of discriminatory intent in a § 1983 racial discrimination claim but could plead facts from which one could reasonably infer discriminatory intent.
- Regarding the § 1983 First Amendment claim, the Principal and Superintendent alleged in their MJP that the Plaintiff did not plead facts demonstrating that he spoke as a private citizen on a matter of public concern.

- HOLDING – Speech made pursuant to a public employee’s official duties is not protected by the First Amendment. However, just because an employee speaks while at work or about work does not automatically mean that the speech is pursuant to the employee’s official duties. If a public employee’s speech is analogous to that of a private citizen’s speech, he is not speaking pursuant to his official duties.

- ❖ *S. O. v. Hinds County School District*, No. 3:17-CV-383-DPJ-KFB (S.D. Miss. Oct. 18, 2017)
 - § 1983 and various state law claims
 - Student was searched after being accused of stealing. The student sued the District and various school and law enforcement personnel in their official and individual capacities but failed to meet the notice requirements mandated by the MTCA.
 - HOLDING – Bringing both federal and state-law causes of action in the same federal lawsuit creates supplemental jurisdiction but does not circumvent conditions precedent to a state’s consent to such suits; therefore, Plaintiff’s failure to comply with the MTCA’s notice requirement is fatal as to the state-law causes of action against the District in federal court.
 - The Court did not dismiss the causes of action against persons in their individual capacities presumably because the issue of whether or not they were acting within the scope of their employment had not been argued before the Court.

- ❖ *Blackledge v. Vicksburg-Warren School District*, No. 3:16-CV-00727-CWR-FKB (N.D. Miss. Oct. 17, 2017)
 - Due Process and Equal Protection under § 1983; Rehabilitation Act (Section 504) and Americans with Disabilities Act (ADA); and various state-law claims
 - Student alleges that he was subjected to severe and pervasive bullying and harassment by other students due to his disability (ADHD) in violation of Due Process and Equal Protection clauses.
 - Student also alleges a violation of Section 504 and ADA because he had to take a test in the principal’s office after he was bullied. The student claims that this punished him instead of the bullies.
 - HOLDING – The Due Process claim was dismissed because a school district has no constitutional duty to protect students from private violence.
 - In order to succeed in an Equal Protection claim in a class of one, the Plaintiff must show that (1) he was treated differently from others similarly situated and (2) there was no rational basis for the disparate treatment.
 - HOLDING – the Equal Protection claim was dismissed because the student said he was bullied by other students and did not allege how the District treated him differently from other similarly-situated students or groups in preventing or responding to the incidents of bullying and harassment.
 - The Section 504 and the ADA have the same liability standards – the District must have refused to provide reasonable accommodations which would have allowed the disabled student to receive the full benefits of the school program. This means that there is a requirement that the Plaintiff allege that the District intentionally discriminated against the student on the basis of his disability.

- HOLDING – The Section 504 and ADA claims are dismissed because the student’s claim was a “mere disagreement with the correctness of the educational services rendered to him” and not an alleged claim for disability discrimination.
 - HOLDING – The Court declined supplemental jurisdiction since all federal claims were dismissed, and therefore dismissed the state-law claims without prejudice.
 - HOLDING - The District’s 2(b)(6) Motion to Dismiss was upheld because the Plaintiff’s complaint did not have enough factual information to state a claim for relief that is plausible on its face allowing the Court to draw the reasonable inference that the Defendant is liable.
- ❖ *Doughty v. Natchez-Adams School District, et al*, No. 5:17-CV-43-KS-MTP (S.D. Miss. Sept. 27, 2017)
- Due Process, Freedom of Association, Legislative Scheme and various other claims
 - Plaintiff was an assistant principal at NASD. Her contract for the 2014-2015 school year was non-renewed, and she was given sufficient notice under EEPL. Plaintiff did not request a hearing pursuant to EEPL but filed a lawsuit in federal court.
 - Plaintiff claims that she was denied due process when NASD refused to renew her contract.
 - HOLDING – In federal court, all due process requires is notice and an opportunity to be heard. While a Plaintiff can choose to forego state remedies, she cannot then argue that a denial of those state remedies was a violation of the Due Process Clause.
 - Since she was an assistant principal, Plaintiff wanted the March 1 notice deadline from Miss. Code Ann. § 37-9-105(a) to apply to her.
 - HOLDING – The March 1 notice deadline only applies to principals and not assistant principals.
 - Plaintiff claims that by not renewing her contract, NASD violated her First Amendment Freedom of Association by preventing her “from communicating or even having any association with students and others whom she had shared an established professional and academic relationship.”
 - HOLDING – the First Amendment does not include a generalized right of social association and does not protect the type of relationship the Plaintiff had with her co-workers and students.
 - Plaintiff alleges that the District, along with the Superintendent and MDE, established and maintained a legislative scheme and statutory laws which directly violated her constitutional rights, interests and privileges.
 - HOLDING – Since the District has no control over the statutory laws of Mississippi, this claim was dismissed.
- ❖ *Lambert, et al v. Booneville School District, et al*, No. 1:16-CV-41-NBB-DAS (N.D. Miss. Sept. 20, 2017)
- Due Process; Rehabilitation Act and state law claims
 - Student sues the District and a teacher after he was paddled alleging that he was on a “no-paddle” list. The District did not have a no-paddle list “policy”, but the school had a no-paddle list “procedure”. The school contends that it looked at their no-paddle list prior to the paddling, and the student’s name was not on it. However, the parent contends that

she told the school that her son was not to be paddled. The parent also contends that the paddling was excessive in that it caused bruising on the student's buttocks.

- Plaintiff argues that the "practice" of maintaining a no-paddle list amounts to a "policy" that gave her and her child due process rights when he was paddled without her knowledge.
- HOLDING – Regarding the Due Process claim, a student receives all constitutionally affordable due process if he receives "adequate post-punishment remedies to deter unjustified or excessive punishment and to redress that which may nevertheless occur even though infliction of corporal punishment may transgress constitutionally protected liberty interests". Furthermore, "there can be no deprivation of substantive rights as long as disciplinary corporal punishment is within the limits of common law", and Mississippi has adequate state remedies (Mississippi Code Ann. §§ 11-46-9 and 37-11-57) which would preclude a substantive Due Process claim.
- HOLDING – The terms "policy" and "practice" are not synonymous, and there is no law, state or federal, and no policy in the BSD handbook that mandates a no-paddle list. Therefore, Plaintiff's Due Process claims fail.
- HOLDING - Plaintiff's Rehabilitation Act claims fail because the student was not a disabled student at the time of the paddling. He wasn't tested for learning disabilities until 15 months after the paddling.
- Plaintiff also brought state-law claims of excessive corporal punishment, failing to keep the student safe from bullying and intentional infliction of emotional distress.
- Defendants had governmental immunity over administering corporal punishment unless Plaintiff can show that the Defendants "acted in bad faith or with malicious purpose in a manner exhibiting wonton or willful disregard of human rights or safety" (Mississippi Code Ann. § 11-46-9(1)(x)).
- Wonton and willful is defined as when "the actor has intentionally done an act of unreasonable character and reckless disregard of the risks known to him, or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to consequences, amounting almost to a willingness that harm would follow."
- HOLDING – Plaintiff could not show "wonton and willful", so the excessive corporal punishment claim was dismissed via Summary Judgment. The Court also granted Summary Judgment on the other state law claims.

❖ *Bright, et al v. Tunica County School District, et al*, No. 3:16-CV-197-DMB-RP (N.D. Miss. Sept. 11, 2017)

- Title IX and Due Process and State-Created Danger through § 1983
- Doe was a 15 year old special education student. One afternoon, Stubbs, a male student, came to Doe's class and asked that she be allowed to leave class with him. The teacher allowed this to happen although Stubbs had no authorization for this. Stubbs took Doe to a computer lab where she was sexually assaulted by three male students. Doe immediately reported the assault to the principal who called Doe's parents. The principal then directed the custodial staff to clean the area where the assault occurred. After the area was cleaned, the principal called the sheriff's office. The sheriff's office took the three males into custody, and Doe was taken to the ER where a rape kit was conducted. This resulted in findings "consistent with rape."

- Two days after the attack, all three attackers returned to school, and Doe had to ride the school bus with one of them. This continued for approximately three months until the media started reporting the attack, after which the three attackers were placed in the alternative school, which was on the same campus as Doe's school, for the remainder of the school year (approximately four months).
 - During this time, the attackers and their friends harassed and intimidated Doe at school calling her a slut, whore and liar. Students posted vulgar and harassing messages on Facebook which questioned Doe's integrity and sexuality. Doe's parents reported this to school officials who took no action.
 - Doe's grades dropped and she began suffering from anxiety and depression.
 - At the beginning of the next school year, the three attackers returned to regular school, and Doe had to have classes with two of them until her mother complained.
 - In her federal complaint, Doe does not seek relief for the assault, but instead seeks relief for the aftermath, and in doing so alleges a Due Process claim.
 - HOLDING – the Fourteenth Amendment includes a liberty interest in the right to be free from unjustified intrusions on personal security and bodily integrity. HOWEVER, verbal assault does not violate a student's constitutional rights. Therefore, the § 1983 harassment claim failed.
 - Plaintiffs also raise a state-created danger theory through § 1983 which states that “a state actor may be liable under § 1983 if the state actor created or knew of a dangerous situation and affirmatively placed the plaintiff in that situation.”
 - HOLDING – Several Circuits have adopted the state-created danger theory of liability, but the 5th Circuit refused to do so in a prison inmate case, so the District Court refused to adopt the theory in this case.
 - Plaintiff was given 14 days to amend her Complaint. (The parties later reached a settlement)
- ❖ *Cox v. Sunflower County Consolidated School District*, No. 4:16-CV-192-DMB-JMV (N.D. Miss. Mar 18, 2017)
- Fair Labor Standards Act and retaliatory discharge
 - Cox filed a complaint against the SCCSD alleging overtime violations of the FLSA and retaliatory discharge. After some time, Cox and the SCCSD entered into an Agreed Stipulation of Dismissal of Actions with Prejudice.
 - Many courts have held that a FLSA claim settlement is prohibited unless approved by the DOL or the Court.
 - The District Court refused to allow the dismissal stating that it was unable to determine if there “was a bona fide dispute or that the resolution reached reflects a fair and reasonable settlement” of the dispute.
 - The settlement was finally approved but the parties had to file a settlement agreement; show that there was as bona fide dispute as to the wages claim and show that the resolution was fair and reasonable.

Mississippi State Court Cases of Note

- ❖ *Lefoldt, et al v. Rentfro, et al*, 2017-FC-00486-SCT (Miss. Dec. 14, 2017)
 - Torts Claim Act and statute of limitations
 - The Natchez Regional Medical Center filed Chapter 9 bankruptcy, and the trustee of the bankruptcy sued former directors and officers of NRMC for breach of fiduciary duties of care, good faith and loyalty.
 - HOLDING - The State, and its subdivisions, are not precluded from suing its own employees under the Mississippi Tort Claims Act
 - HOLDING- Statute of limitations does not apply to any civil claim by the State

- ❖ *Clarksdale Municipal School District, et al v. State of Mississippi*, 2015-CA-01227-SCT (Miss. Oct. 19, 2017)
 - Appropriations
 - Clarksdale and 20 other school districts sued the State of Mississippi for more than \$235 million dollars alleging that Mississippi Code §37-151-6 is a mandate for the Legislature to fully fund MAEP.
 - HOLDING - Mississippi Code §37-151-6 is not a mandate.

- ❖ *Ekanem v. Greenville Public School District*, 2016-CC-01093-COA (Miss. Oct. 10, 2017)
 - Nonrenewal
 - Ekanem was nonrenewed after being placed on two improvements plans in which she did not show significant improvement, and her students' overall performance did not meet the District's benchmarks.
 - Ekanem was sent multiple letters informing her that she was not following her improvement plans; she did not successfully complete the plans; she had several letters of reprimand regarding her behavior; she had almost thirty absences and frequent tardies; several students wrote notes stating that they heard Ekanem use profanity when talking about another teacher; and Ekanem's students did not meet the District's benchmarks in several areas.
 - HOLDING - The scope of a chancery court's review in nonrenewal cases "shall be limited to a review of the record made before the school board or hearing officer to determine if the action of the school board is unlawful for the reason that it was: (a) Not supported by any substantial evidence; (b) Arbitrary or capricious; or (c) In violation of some statutory or constitutional right of the employee." 37-9-113(3)
 - HOLDING - "Substantial evidence is more than a scintilla or a suspicion" *Giles v. Shaw Sch. Dist.*, 203 So.3d 1165 (Miss. Ct. App. 2016)
 - HOLDING - "The terms arbitrary and capricious imply a lack of understanding of or a disregard for the surrounding facts and settled controlled principles." "If the reasons for nonrenewal are a sham... the Board acts arbitrarily and capriciously." *Giles v. Shaw Sch. Dist.*, 203 So.3d 1165 (Miss. Ct. App. 2016)
 - Nonrenewal was upheld

- ❖ *Lowe v. City of Moss Point*, 2016-CA-01012-COA (Miss. Oct. 3, 2017)
 - Discretionary function immunity under the Torts Claim Act
 - On a city owned lawn, Lowe stepped in a grass-covered hole, fell and injured her ankle.
 - *Brantley* test - The Court first must consider the broadest function involved in order to make a baseline determination of whether the overarching function is discretionary or ministerial. The Court then must examine any narrower duty associated with the activity at issue to determine whether a statute, regulation, or other binding directive renders that particular duty a ministerial one, notwithstanding that it may have been performed within the scope of a broader discretionary function.
 - Mississippi law gives municipalities the power to purchase and hold real estate for municipal purposes and gives municipalities the general authority to care, manage and control their property. (Schools have a similar statute – 37-7-301)
 - HOLDING - The law does not impose an affirmative duty on the City to purchase, maintain, care or control the property. Thus, the overarching function of owning and holding real property is discretionary.
 - There are no laws, regulations or other binding directives that impose a duty on the City to maintain the grass, lawn, grounds or premises of its property.
 - HOLDING - A duty not imposed by law is discretionary.
 - HOLDING - Whether governmental immunity applies is a matter of law and is a proper matter for summary judgment, and the award of summary judgment here was proper.

- ❖ *Mayor and City Council and City of Columbus v. The Commercial Dispatch*, 2016-CC-00897-SCT (Miss. Sept. 7, 2017)
 - Open Meetings Act
 - Mayor met with council members on four different days where he met with three council members in the morning and then three different council members in the afternoon to discuss the same official business. These meetings were not open to the public.
 - The City Council violated the Open Meetings Act.
 - HOLDING - Prearranged, nonsocial gatherings on public business that were held in subquorum groups with the intent to circumvent the Act were required to be open to the public under Section 25-41-1 of the Open Meetings Act.
 - HOLDING - The Open Meetings Act prohibits closing to the public subquorum sized meetings where the discussion of public business occurs.