

In the
United States Court of Appeals
For the Seventh Circuit

No. 21-2475

JOHN M. KLUGE,

Plaintiff-Appellant,

v.

BROWNSBURG COMMUNITY
SCHOOL CORP.,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:19-CV-02462 — **Jane Magnus-Stinson**, *Judge*.

ARGUED JANUARY 20, 2022 — DECIDED APRIL 7, 2023

Before ROVNER, BRENNAN, and ST. EVE, *Circuit Judges*.

ROVNER, *Circuit Judge*. John M. Kluge brought a Title VII religious discrimination and retaliation suit against Brownsburg Community School Corporation (“Brownsburg”) after he was terminated from his employment as a teacher for refusing to follow the school’s guidelines for addressing students. Brownsburg requires its high school teachers to call all students by the names registered in the school’s official

student database, and Kluge objected on religious grounds to using the first names of transgender students to the extent that he deemed those names not consistent with their sex recorded at birth. After Brownsburg initially accommodated Kluge's request to call all students by their last names only, the school withdrew the accommodation when it became apparent that the practice was harming students and negatively impacting the learning environment for transgender students, other students both in Kluge's classes and in the school generally, as well as the faculty. The district court granted summary judgment in favor of the school after concluding that the undisputed evidence showed that the school was unable to accommodate Kluge's religious beliefs and practices without imposing an undue hardship on the school's conduct of its business of educating all students that entered its doors. The district court also granted summary judgment in favor of Brownsburg on Kluge's retaliation claim. We agree that the undisputed evidence demonstrates that Kluge's accommodation harmed students and disrupted the learning environment. Because no reasonable jury could conclude that harm to students and disruption to the learning environment are *de minimis* harms to a school's conduct of its business, we affirm. Our dissenting colleague asserts that there are genuine issues of material fact regarding undue hardship but he mischaracterizes the harms claimed by the school and focuses on fact questions that are not legally relevant to the outcome of the discrimination claim, in particular suggesting that a jury should reweigh the harms using information not known to the school at the time of the occurrences in issue, and not relevant to the ultimate question.

No. 21-2475

3

I.

On summary judgment, we must construe the facts in favor of the nonmovant, and may not make credibility determinations or weigh the evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *McCottrell v. White*, 933 F.3d 651, 655 (7th Cir. 2019); *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003). We therefore construe the facts in favor of Kluge. Brownsburg is a public school corporation in Brownsburg, Indiana. The Indiana Constitution requires the State's General Assembly "to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all." Ind. Const. art. VIII, § 1. School attendance is compulsory in the State by statute. Ind. Code § 20-33-2-4. Brownsburg is governed by an elected Board of Trustees. R. 120-1, at 2. At the relevant time, the corporation and school leadership included the Board President, Phil Utterback; the Superintendent, Dr. Jim Snapp; the Assistant Superintendent, Dr. Kathryn Jessup; the Human Resources Director, Jodi Gordon; and the principal, Dr. Bret Daghe. R. 120-1, at 2–3; R. 120-2, at 3; R. 113-3, at 5; R. 113-4, at 5. Brownsburg High School was the sole public high school in the district. R. 120-2, at 2.

Brownsburg hired Kluge in August 2014 to serve as the sole music and orchestra teacher at the high school. R. 113-2, at 2; R. 120-2, at 3. In that capacity, he taught beginning, intermediate, and advanced orchestra; beginning music theory; and advanced placement music theory. He also assisted the middle school orchestra teacher in teaching classes at the middle school. R. 120-3, at 19–20. Kluge remained employed in

that capacity until the end of the 2017–2018 academic year. R. 120-2, at 3.

Prior to the start of that school year, officials at Brownsburg became aware that several transgender students were enrolled as freshmen. R. 120-1, at 3. This awareness led to discussions among the Brownsburg leadership to address the needs of these students. Gordon and Drs. Snapp, Jessup, and Daghe reached a “firm consensus” that transgender students “face significant challenges in the high school environment, including diminished self-esteem and heightened exposure to bullying.” R. 120-1, at 3. According to Dr. Jessup, the Brownsburg leaders concluded that “these challenges threaten transgender students’ classroom experience, academic performance, and overall well-being.” R. 120-1, at 3. The group began to discuss and consider practices and policies that could address these challenges.¹ R. 120-1, at 3–4.

The staff of the school first became aware of these discussions in January 2017, when administrators invited Craig Lee, a Brownsburg teacher and faculty advisor for the high school’s Equality Alliance Club, to speak about transgenderism at a faculty meeting.² R. 15-3, at 2; R. 58-2, at 1–2. At

¹ The policies and practices eventually adopted by Brownsburg to address concerns about transgender students were not formally ratified by the Board, but they did operate as directives that teachers were required to follow. We refer to them as policies for convenience.

² The Equality Alliance Club is a student club at the school that meets weekly to discuss social and emotional issues affecting all students, including LGBTQ students. R. 58-2, at 2; R. 112-5, at 9. Attendance varied from twelve to forty students at any given meeting, and often included

(continued)

No. 21-2475

5

another faculty meeting in February 2017, Lee and guidance counselor Laurie Mehrrens gave a presentation on what it means to be transgender and how teachers can encourage and support transgender students. R. 15-3, at 2.

After these faculty meetings, Kluge and three other teachers approached Dr. Daghe on May 15, 2017, to speak about issues related to transgender students. R. 15-3, at 2; R. 113-5, at 6; R. 120-3, at 11. The four teachers presented Dr. Daghe with a seven-page letter expressing religious objections to transgenderism, taking the position that the school should not treat gender dysphoria as a protected status, and urging the school not to require teachers to refer to transgender students by names or pronouns that the teachers deemed inconsistent with the students' sex recorded at birth. R. 113-1, at 26-32. Kluge identifies as Christian and is a member of Clearnote Church. R. 113-1, at 4. Kluge believes that gender dysphoria "is a type/manifestation of effeminacy, which is sinful." R. 113-1, at 5. Kluge describes "effeminacy" as "for a man to play the part of a woman or a woman to play the part of a man and so that would include acting like/dressing like the opposite sex." R. 120-3, at 6. In addition to believing that gender dysphoria itself is sinful, Kluge believes that it is sinful to "promote gender dysphoria." R. 120-3, at 7. Because the transgender students changed their first names in order to "present[] themselves as the opposite sex," Kluge believes

transgender students. R. 120-14, at 6. Dr. Daghe described it more broadly as a club trying to make the culture and climate of the school the best it could be. R. 112-5, at 9.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.