

Kluge v. Brownsburg Community School Corp. Asks What’s In a Name?: An Indiana School District Enforces Pronoun Policy After Teacher’s Pushback

I. OVERVIEW 289

II. BACKGROUND..... 290

 A. *First Amendment* 291

 B. *Title VII* 292

III. COURT’S DECISION..... 294

 A. *Holding on Kluge’s Speech*..... 294

 B. *Free Exercise of Religious Beliefs Holding* 295

 C. *Civil Rights Act*..... 296

IV. ANALYSIS..... 298

I. OVERVIEW

Individuals that are gender nonconforming, transgender, agender, or experiencing gender dysphoria are confronted with the antiquated gender binary every day, whether it be when using a gendered public facility like a restroom or filling out paperwork. For children and young adults, this is compounded by the fact that their schools do not always encourage choice in use of facilities like locker rooms, preferred pronoun or name usage, and/or adherence to a uniform policy or school code.¹ Federally, Title IX of the Education Amendments of 1972 obligates schools to create a safe learning environment for students that is free from discrimination, harassment, and bullying.² However, the state of Indiana, like over half of the United States, has not passed any nondiscrimination laws or policies that cover students that identify as LGBTQ+. ³ They also do not have anti-bullying laws that protect LGBTQ+ youth in effect, nor any policy that requires state curricular standards to be LGBTQ-inclusive.⁴ Public schools individually create policies for their faculty, staff, and students

1. ACLU, *A Guide for Transgender and Gender Nonconforming Students* (2017), https://www.aclu.org/sites/default/files/field_document/07-26-17tgnclistudentbrochure.pdf.

2. *Id.*

3. Movement Advancement Project, *Indiana’s Equality Profile* (2022), https://www.lgbtmap.org/equality-maps/profile_state/IN.

4. *Id.*

outlining behavioral or procedural expectations with respect to conforming to students' expressed gender identities.⁵

When a public school teacher was forced to resign under threat of termination, he brought legal action against the Brownsburg school district, alleging that his religious beliefs as an evangelical Christian prevented him from following the school's policy that required teachers to address transgender students by their preferred names and pronouns.⁶ Kluge, the plaintiff-teacher, refused to use updated pronouns and preferred names listed in the school's database.⁷ After being mandated by the administration to take a leave of absence to decide whether he would comply and use preferred names and pronouns, Kluge requested an accommodation in the form of addressing the students by their last names instead.⁸ The administration initially agreed to this accommodation, then withdrew the arrangement because it created "tension," and requested that he either resign or be fired.⁹ He claimed the school policy and his forced resignation violated Title VII, the First Amendment, the Fourteenth Amendment, and Indiana's state constitution.¹⁰ The United States District Court of Indiana *held* that the school district was not required to offer or discuss an alternative accommodation for the teacher's religious beliefs; the teacher's use of transgender students' last names only as an accommodation to his religious beliefs created an undue hardship for the school; and there was no evidence of a causal connection between the teacher's request for an accommodation and his resignation. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 814, 814 (S.D. Ind. 2021).¹¹

II. BACKGROUND

The First and Fourteenth Amendments of the United States Constitution and Title VII of the Civil Rights Act are pertinent in this case. At issue under the First Amendment is Kluge's right to engage in free speech and what is considered protected speech within the right to freely exercise one's religious beliefs. Under Title VII, the claims at issue were

5. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 432 F. Supp. 3d 823, 832 (S.D. Ind. 2020).

6. *Id.* at 833.

7. *Id.* at 834.

8. *Id.*

9. *Id.*

10. *Id.* at 836.

11. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 814, 839-40, 844, 848.

whether Kluge experienced religious discrimination in the form of being refused religious accommodation and retaliation for his religious beliefs, and whether a hostile work environment was created when he was disciplined for refusing to comply with school policy.

A. First Amendment

The First Amendment protects United States' citizens' rights to engage in free speech and freely assemble, and to freely exercise their religion.¹² The free exercise clause mandates that no law shall be passed that respects an establishment of religion or prohibits free exercise of religion.¹³ One of the limitations of this freedom potentially occurs when the speaker in question is in government service.¹⁴ These are cases in which the law recognizes that the government employer needs a "significant degree of control over their employees' words and actions," for the sake of efficient functioning of such government services.¹⁵ At the same time, the Supreme Court has recognized that citizens' ability to have "free and unhindered debate on matters of public importance" is fundamental to the values expressed in the First Amendment and must be protected.¹⁶

To determine whether the public employee's speech is protected speech, the private citizen's interest in speaking freely and contributing to an issue in public debate must be weighed against "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."¹⁷ In *Pickering v. Bd. of Ed.*, the Court looked at a public school teacher's letter to a local newspaper and determined it to be commentary on a subject in public attention, but not such that it impeded or interfered with the teacher's performance as an employee, even though it contained inaccuracies.¹⁸ Therefore, the Court found that firing the teacher because of the contents of his letter was a violation of the teacher's First Amendment right to free speech.¹⁹ The Court's inquiry was balancing the interests of the teacher in being able to

12. U.S. CONST. amend. I.

13. *Id.*

14. See *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

15. *Id.* at 410-11.

16. *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563, 573 (1968).

17. *Id.* at 568.

18. *Id.* at 564, 572.

19. *Id.* at 564-65.

comment on public matters as any other citizen, against the state's interest of efficiency in its operation of public services.²⁰ Ultimately, because the school administration could not show that their interest in limiting teachers contributing to public opinion was "significantly greater" than their interest in limiting any citizen's contribution, the teacher's letter was protected speech.²¹

B. Title VII

Title VII of the Civil Rights Act names several unlawful employment practices, specifically prohibiting employers from discriminating against employees on the basis of certain characteristics, including their religion.²² It also requires that in situations where employees' religious beliefs may conflict with the rules of employment that employers provide an accommodation if providing such would not result in undue hardship.²³ The standard is if the employer is required to bear "more than a *de minimis* cost," or more than a slight burden, it may constitute an undue hardship.²⁴

In order for a plaintiff to show that religious discrimination occurred based on a failure to accommodate, they must show that it was the very need for a religious accommodation that was the motivation behind the employer's adverse and disparate treatment.²⁵ In *Summers v. Whitis*, the court found in response to a failure-to-accommodate claim that there was no objective conflict between the plaintiff's religious belief and her duty to process marriage licenses.²⁶ The plaintiff requested a religious accommodation so that she would not have to process marriage licenses for same-sex couples, but the court found that hers was a purely administrative duty that did not objectively conflict with her religious beliefs.²⁷ The court held for the defendants, finding that there was no duty to accommodate because Title VII was not "a license for employees to perform only those duties that meet their private approval" and her desire

20. *Id.* at 568.

21. *Id.* at 573.

22. 42 U.S.C. § 2000e-2(a)(1).

23. 42 U.S.C. § 2000e(j).

24. *E.E.O.C. v. Walmart Stores E., L.P.*, 992 F.3d 656, 658 (7th Cir. 2021) (quoting *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977)).

25. *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015).

26. *Summers v. Whitis*, 2016 WL 7242483, at *7 (S.D. Ind. Dec. 15, 2016).

27. *Id.*

to avoid handling forms in regards to matters she did not approve was not protected by federal law.²⁸

Retaliation, under Title VII, is established by a plaintiff showing that they were subjected to adverse employment action in response to what is a statutorily protected activity.²⁹ The protected activity must be specified and the plaintiff must be able to show that a material adverse employment action, such as disciplinary action, was taken in connection with and as a result of that protected activity.³⁰ In order for an adverse employment action to be legally actionable, it is not enough that the employee is displeased with the result, but instead requires a “significant change in employment status,” which could include hiring, firing, or reassignment that is causally connected to the protected activity.³¹

Finally, claims that an employer created a hostile work environment under Title VII must demonstrate that 1) the employee experienced harassment; 2) the harassment was based on a protected class under Title VII; 3) the harassment was severe and pervasive enough that it altered and created employment conditions that were hostile or abusive; and 4) there is a basis for employer liability.³² In determining whether the plaintiff has stated a claim showing the work environment was ‘objectively hostile,’ the Court must consider the totality of the circumstances, including “the frequency of the discriminatory conduct, its severity; whether it is physically threatening or humiliating . . . and whether it unreasonably interfered with an employee’s work performance.”³³ The relationship between the parties and pervasiveness of the harassment is also considered.³⁴ Disciplinary actions for a failure to follow an employer’s policy, however, do not necessarily meet the bar of establishing pervasive discrimination and altered working conditions.³⁵

28. *Id.*

29. *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 828 (7th Cir. 2014) (quoting *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1029 (7th Cir. 2013)).

30. *Id.*

31. *Bell v. EPA*, 232 F. 3d 546, 554-55 (7th Cir. 2000) (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)).

32. *Huri v. Office of the Chief Judge of the Circuit Court of Cook Cty.*, 804 F.3d 826, 833-34 (7th Cir. 2015).

33. *Alamo v. Bliss*, 864 F.3d 541, 549-50 (7th Cir. 2017).

34. *Id.* at 550 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)).

35. See *Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 814, 847 (S.D. Ind. 2021).

III. COURT'S DECISION

In the noted case, the Court of the Southern District of Indiana *held* that the school district was not required to offer or discuss an alternative accommodation for the teacher's religious beliefs,³⁶ the teacher's use of transgender students' last names only as an accommodation to his religious beliefs created an undue hardship for the school,³⁷ and there was no evidence of a causal connection between the teacher's request for an accommodation and his resignation.³⁸

A. *Holding on Kluge's Speech*

Kluge's claim under the First Amendment was that the school district's threat of punishment was retaliation against his expression of views about gender dysphoria, which was protected speech.³⁹ He also claimed that he was punished for his refusal to communicate a mandated message about gender dysphoria with which he ideologically disagreed.⁴⁰ By virtue of being a public school teacher, Kluge was a government employee which necessitates "accept[ing] certain limitations on [his] freedom."⁴¹ However, the court acknowledged that even such employment is not a complete surrender of one's First Amendment rights, but instead must be applied under a two-part inquiry as a matter of law to determine whether Kluge's speech was, in fact, constitutionally protected.⁴²

To balance the interests of a teacher as a citizen against the interests of the state as an employer, the court looked to whether 1) the employee spoke as a citizen on a matter of public concern, and 2) the government entity had an adequate justification for treating the employee in question differently from any other member of the general public.⁴³ If the answer to the first part of the inquiry was no, then the employee necessarily has no First Amendment cause of action.⁴⁴ It is only if the employee is, in fact,

36. *Id.* at 844.

37. *Id.* at 846.

38. *Id.* at 848.

39. *See id.* at 847.

40. *Id.* at 829-830.

41. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 432 F. Supp. 3d 823, 837 (S.D. Ind. 2020) (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)).

42. *Id.* at 837-38.

43. *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cty., Ill.*, 391 U.S. 563, 572-74 (1968).

44. *Kluge*, 432 F. Supp. 3d at 838.

speaking as a citizen on a matter of public concern that gives rise to a possibility of a First Amendment claim.⁴⁵ Not only were the literal statements themselves taken into account, but also the form and context of the statements and the employee's motives behind the specific content.⁴⁶ For example, if the employee's motive behind the particular statement is only to express something personal to them, not to express something of interest to the public, then it would not necessarily be protected under the First Amendment.⁴⁷

In response to the school district's motion to dismiss, the court found that the speech was not constitutionally protected.⁴⁸ The court determined the speech in question, Kluge's stating and refusal to state students' preferred pronouns and names, was not a matter of public concern, but instead was part of his official duties as a teacher.⁴⁹ Not only is the manner in which teachers relate to their students and run their classroom part of their job,⁵⁰ but part of Kluge's argument in previous claims was that there was no proof that students were offended at his use of last names only, because he did not explain why he was only using last names in his classroom.⁵¹

This assertion indicated that Kluge's opposition to affirming transgender students' gender identities and his decision to use last names were merely private interactions, not speech that added to the public discourse in any way.⁵² Considering that this speech was directly related and confined to his performance as a public employee, the court found that it was not constitutionally protected, and therefore did not give rise to a valid claim of protection under the First Amendment.⁵³

B. Free Exercise of Religious Beliefs Holding

Kluge also claimed that the school district's policy violated his First Amendment right to freely exercise and express his religious beliefs.⁵⁴

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 838-39.

49. *Id.* at 839.

50. *Wozniak v. Adesida*, 932 F.3d 1008, 1010 (7th Cir. 2019).

51. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 836, 844-45 (S.D. Ind. 2021).

52. *See Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563, 573 (1968).

53. *Kluge*, 432 F. Supp. 3d at 838-39.

54. *Id.* at 840.

Not only did he claim that his usage of the preferred pronouns as listed would violate his religious beliefs, but also that the school district's transgender policies and practices "specifically target religious expression."⁵⁵ However, the court found that a violation of the Free Exercise Clause of the First Amendment does not exist "where a burden on religious exercise is the incidental effect of a neutral, generally applicable, and otherwise valid regulation."⁵⁶

Here, the school district's policy of using the preferred names and pronouns listed in the school database did not violate or discriminate against religious beliefs or expression because the policy was neutral and applied to any and every teacher in the district, regardless of their specific religious beliefs.⁵⁷ Kluge's claim that it targeted his specific religious beliefs or affiliation did not hold any weight because the district's policies were specifically put into effect to affirm students' expressed gender identities and gender dysphoria.⁵⁸

C. *Civil Rights Act*

Kluge also put forth three claims based on Title VII of the Civil Rights Act, first claiming that he experienced religious discrimination because of the school district's refusal to provide him with an accommodation for his religious beliefs.⁵⁹ One of the ways Title VII protects employees from discrimination by their employers for their religious beliefs is a requirement of employers to provide employees with a religious accommodation where their beliefs "conflict with rules of employment and where providing an accommodation would not result in undue hardship."⁶⁰ Kluge claimed that addressing students by their preferred pronouns conflicted with his religious beliefs because it would be in effect expressing approval, acceptance, and even celebration.⁶¹

The court found that, as held in *Summers*, it was true that an objective conflict must exist between an employee's religious beliefs and their duties in order for the employer to be responsible for providing a

55. *Id.*

56. *Id.* (quoting *Vision Church v. Vill. of Long Grove*, 468 F. 3d 975, 998 (7th Cir. 2006)).

57. *Id.* at 841.

58. *Id.*

59. *Id.* at 844.

60. *Id.* at 845.

61. *Id.* at 844.

reasonable accommodation for those beliefs.⁶² However, it was not true that application of this reasoning supported finding that no conflict existed for Kluge.⁶³ It was inconsistent, the court reasoned, to suggest that using students' preferred names would be considered a "purely administrative duty," while at the same arguing that Kluge's refusal to comply was significant enough that it was causing harm to students.⁶⁴ This led to a finding that the school district's requirements regarding how faculty and staff address transgender students did "objectively conflict" with Kluge's religious beliefs.⁶⁵

With respect to providing Kluge a reasonable accommodation, however, the court found that Kluge's request to use students' last names resulted in undue hardship for the school district because it interfered with the district's ability to educate all students.⁶⁶ The school's policy and its philosophy was to support and affirm students, and Kluge's accommodation burdened their ability to do so.⁶⁷ They reasoned that making students feel targeted and uncomfortable, and causing potential emotional harm, required the district to bear more than a *de minimis* cost in "its mission to provide adequate public education that is equally open to all."⁶⁸

To support his retaliation claim under Title VII, Kluge needed to show that his expression was statutorily protected, that he was subjected to adverse employment action, and that there was a causal connection between the two.⁶⁹ Here, Kluge alleged that his request for a religious accommodation was statutorily protected, which resulted in eventual refusal to accommodate and request for resignation.⁷⁰ The court found that there was no evidence of a causal connection between Kluge's request for accommodation and his resignation, that there was any discriminatory pretext, nor that the district's actions were "motivated by retaliatory animus."⁷¹ Instead, the evidence suggested there was no motive other than

62. *Id.* at 842.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 844.

67. *Id.* at 843-44.

68. *Id.* at 844-45.

69. *Robertson v. Dep't of Health Servs.*, 949 F. 3d 371, 378 (7th Cir. 2020) (quoting *Burton v. Bd. Of Regents of Univ. of Wisconsin Sys.*, 851 F3d 690, 694 (7th Cir. 2017)).

70. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 432 F. Supp. 3d 823, 847 (S.D. Ind. 2020).

71. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 814, 848 (S.D. Ind. 2021).

to reasonably ensure that “its instructors [would] teach classes in a professional manner that does not distress the students.”⁷²

Kluge’s hostile work environment claim had to demonstrate that 1) he experienced harassment; 2) the harassment he experienced was based on religious discrimination, which was protected under Title VII; 3) this harassment was so severe and pervasive that it altered his condition of employment; and that 4) this resulted in employer liability.⁷³ Kluge’s allegations that the school took disciplinary action in response to his refusal to follow the school’s policy did not meet this standard, as he did not show that he was harassed or that his work environment became hostile or abusive.⁷⁴ For these reasons, in response to the school district’s motion to dismiss, the court dismissed this claim, finding that the school district’s decision to take disciplinary action against Kluge did not allege a valid claim of creating a hostile work environment under Title VII.⁷⁵

IV. ANALYSIS

This court’s decision takes a positive direction, but suggests that its practical positive implications may only be for a very specific context. Particularly hopeful, for example, is that the court’s opinion seems to fortify this school’s transgender policy, which is a step towards acknowledging students who wish to use names and pronouns that are closer in conformity with their gender identity experience. It invalidates what must be a fairly common claim that acknowledgment of a student’s preferred pronouns or name is an indirect affront to the individual’s religious or moral beliefs, but only with a showing that accommodating such religious beliefs would result in undue hardship.

However, the school’s policy was rather narrow in terms of scope. For one, the policy was limited, as it only extended to students who had parental consent and a medical diagnosis of gender dysphoria.⁷⁶ Name changes in the school’s database required a letter from the student’s parents and a letter from a healthcare professional that affirmed the student had gender dysphoria.⁷⁷ This limits access to students who have parental support and access to specific healthcare, such as gender-

72. *Id.* (quoting *Smiley v. Columbia Coll. Chicago*, 714 F. 3d 998, 1002 (7th Cir. 2013)).

73. *Kluge*, 432 F. Supp. 3d at 848.

74. *Id.* at 849.

75. *Id.*

76. *Id.* at 833.

77. *Id.*

affirming psychological care. Gender dysphoria is specifically the form of mental distress that “stem[s] from strong feelings of incongruity between one’s anatomy and one’s gender identity,” and is not a catchall diagnosis for students who are questioning their gender identities or experiencing lack of conformity with their biological sex.⁷⁸ Youth who identify as transgender, agender, or gender non-conforming do not and cannot always necessarily receive a diagnosis of gender dysphoria.⁷⁹

The decision, nevertheless, acknowledges that identity markers like a name and pronouns are important enough that refusal to comply with a student’s wishes can cause the student to feel targeted, dehumanized, and to experience emotional harm.⁸⁰ It also validates the responsibility of a school district to create a safe, supportive, and affirming environment for all students, “not just a majority of students or the students that were unaware of or unbothered by [a teacher’s] practice of using last names only.”⁸¹ In considering the potential liability the school district could face in response to accommodating Kluge’s beliefs, for example, the court acknowledged that these circumstances could put the district at risk of a Title IX lawsuit in the future.⁸² This was just one way in which the school would incur hardship, but if accommodation of Kluge’s religious beliefs required the school district to also violate federal law, the school was not required to do so.⁸³

Because teachers’ relationships with their students is considered a core part of their academic duty,⁸⁴ the fact that speech within the context of this responsibility may not be protected speech could help or harm. However, the court’s emphasis that the undue hardship that would be imposed upon the school due to the conflict the accommodation would create with the “obligation to meet the needs of *all*” students is perhaps reasoning that will continue to weigh in favor of practices of inclusivity and, by extension, rights for LGBTQ+ students.⁸⁵ Similarly, the court’s acknowledgement of the importance of the teacher-student relationship,

78. Campbell v. Kallas, 936 F.3d 536, 538 (7th Cir. 2019) (citing AM. PSYCHIATRIC ASS’N, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 451 (5th ed. 2013)).

79. ACLU, *A Guide for Transgender and Gender Nonconforming Students* (2017), https://www.aclu.org/sites/default/files/field_document/07-26-17tgnstudentbrochure.pdf.

80. Kluge, 548 F. Supp. 3d at 845-46.

81. *Id.* at 843-45.

82. *Id.* at 846.

83. *Id.* at 845.

84. Wozniak v. Adesida, 932 F.3d 1008, 1010 (7th Cir. 2019).

85. Kluge, 548 F. Supp. 3d at 844-45.

not only here but reflected in precedent, seems to acknowledge the positive impact a teacher's words can make, as well as the harm of humiliation.⁸⁶

The court's discussion of the school district's specific philosophy of "creating a safe and supportive environment for all students,"⁸⁷ rather than an overarching responsibility of all schools, raises an interesting question in regards to how other school policies would fare in response to similar legal claims. However, the responsibility and duty of public schools to provide a safe learning environment for all students, paired with acknowledgement of the failure to do so creating emotional harm, suggests that the meaning of an "adequate public education" is expanding for the better.⁸⁸ By ensuring that the school policy is neutral, applicable to all teachers, and that any burden on one's religious beliefs is only an incidental effect,⁸⁹ this is hopefully just the beginning of more public school policies that are bolder and more explicitly put practices into place that create safe and inclusive learning environments for students. There are still strides to be made for students to feel like their experiences with gender are affirmed and respected. It is promising, though, that this court acknowledges that there is an important link between students' gender identities, acknowledgement of pronouns, and infliction of emotional harm, and what's more, that this step towards inclusivity is part of a school's responsibility to create a safe and supportive environment for all students.⁹⁰

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86. See *Wozniak*, 932 F.3d at 1010.

87. *Kluge*, 548 F. Supp. 3d at 844.

88. *Id.* at 844-45.

89. *Kluge v. Brownsburg Cmty. Sch. Corp.*, 432 F. Supp. 3d 823, 840 (S.D. Ind. 2020).

90. *Kluge*, 548 F. Supp. 3d at 844-45.

* © 2023 Nuwani A. Irizarry. Junior Member, Volume 32, Tulane Journal of Law & Sexuality. J.D. Candidate 2024, Tulane University Law School; M.S. 2021, John Hopkins University School of Education; B.A. 2016, Fordham University. The author would like to thank teachers—for all the hats they wear and the underappreciated, crucial work they do.