

RECEIVED
8-22-12

August 20, 2012

VIA U.S. MAIL

Dr. Scott Mercer, Superintendent
Spartanburg County School District 2
4606 Parris Bridge Road
Boiling Springs, South Carolina 29316

Re: Religious Liberty and Freedom of Information Act Request

Dear Superintendent Mercer:

As public schools open for the 2012-2013 school year, we are pleased to announce the launch of *Religious Freedom Goes to School*, a campaign to strengthen religious freedom in South Carolina's public schools. Religious liberty requires that we protect both the right of free exercise for individuals of every faith and the right to remain free from governmental coercion and promotion of religion. *Religious Freedom Goes to School* will challenge all of our public schools to do more to protect these time-honored First Amendment rights. The national ACLU and the ACLU of South Carolina are asking every South Carolina school district to join us in this effort by reviewing existing policies and practices with an eye toward assuring that religious freedom is fully protected.

Many of the first Europeans to arrive in South Carolina came seeking freedom from state-established religions. For hundreds of years, that freedom has been part of the fabric of this state. Since its founding over 90 years ago, the ACLU has defended the freedom of religion and belief on behalf of people of all faiths – or no faith at all.²⁹³ We introduce this campaign in South Carolina to help restore our state's historic commitment to religious liberty, including the right to be free from government-imposed religion.

Religious liberty in public schools gives students the right to pray, read religious literature, express their faith, or engage in other religious activities during student activity times (like recess or lunch), provided that they do not cause a disruption or interfere with the education of other students. *Religious Freedom Goes to School* will encourage protection of these fundamental rights.

At the same time, the campaign seeks to ensure that schools do not impose or promote religion. Unfortunately, based on complaints received by the ACLU, many school districts are failing to honor this vital constitutional mandate. We have received a growing number of reports from students, parents, teachers, and others detailing clear constitutional violations in South

²⁹³ For a description of some our work in defense of religious exercise rights in the public schools, visit <http://www.aclu.org/defendingreligionpublicschools>.

Carolina's public schools. In the last two years alone, those complaints have described, for example: in-class daily prayer led by teachers; the distribution of Bibles to students; prayer and scriptural readings at graduation ceremonies, athletic events, awards ceremonies, and other school activities; school-day assemblies featuring evangelizing and other religious content; coach-organized and coach-led prayer at football practices; opening prayers at school board meetings; school officials leading and participating in student religious clubs; and school involvement in the planning and promotion of religious baccalaureate services.

These reported activities may be part of a broader pattern of disregard for every student's right to remain free from government-imposed religious viewpoints. Last school year, New Heights Middle School in Chesterfield County sponsored a school-day assembly featuring a Christian rapper and a youth minister who preached to students and urged them to sign pledges dedicating themselves to Jesus. The assembly was just the tip of the iceberg: The constitutional violations at the school district were numerous and pervasive. These activities did not stop until a brave student, represented by the ACLU and ACLU of South Carolina, filed a lawsuit. That case, *Anderson v. Chesterfield County School District*, was settled by consent decree once the district's attorneys were able to explain to the school board its constitutional responsibilities.²⁹⁴

We assume that your school district is committed to honoring its constitutional obligation to protecting students' freedom of religion and belief. We encourage you to use the upcoming school year to review and assess existing policies and informal practices to determine whether they respect both the right of free exercise and the separation of church and state.

The *Anderson* order, which was thoroughly and carefully negotiated, may provide a useful barometer for measuring the adequacy of your existing policies. If an existing policy or practice would violate the *Anderson* Consent Decree, you need to change that policy in order to comply with current settled law. If your policies fail to address an issue identified in the *Anderson* Consent Decree, you should consider adopting a policy that is consistent with the order. Religious liberty violations are more likely to arise when officials are left to their own devices to decide matters such as whether to use religious texts in academic lessons or whether to hold school events at religious venues.

We realize that these constitutional issues may be difficult to navigate. Using your responses to the attached Freedom of Information Act ("FOIA") request, we are prepared to provide guidance as needed and requested. We also have set up a special webpage for students, parents, teachers, and others connected with South Carolina's public schools to report potential violations.²⁹⁵ Complaints will receive priority review from attorneys who specialize in religious

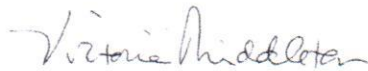
²⁹⁴ We have included a copy of the *Anderson* Consent Decree and a brief summary of it with this letter.

²⁹⁵ Religious freedom violations may be reported at <http://www.aclu.org/religious-freedom-tell-your-story>. For more information about the campaign, visit <http://www.aclu.org/religious-freedom-goes-school>.

freedom law. If we receive complaints relating to your school district, we will contact you in an attempt to resolve the issue. Litigation will be a last resort.

Our public schools are “at once the symbol of our democracy and the most pervasive means for promoting our common destiny.”²⁹⁶ All students, regardless of faith or belief, should feel safe and welcome in our schools. We are convinced that, with a renewed focus on religious liberty and a collaborative approach, we can reach this goal. Please do not hesitate to contact us if you have questions about this letter, the FOIA request, or the ***Religious Freedom Goes to School*** campaign.

Sincerely,



Victoria Middleton
Executive Director
ACLU of South Carolina
P.O. Box 20998
Charleston, SC 29413
(843) 723-1423
vmiddleton@aclusouthcarolina.org

Daniel Mach
Director
ACLU Program on Freedom of Religion and Belief

²⁹⁶ See *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (quoting *Ill. ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948)).



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VIA U.S. MAIL

Dr. Scott Mercer, Superintendent
Spartanburg County School District 2
4606 Parris Bridge Road
Boiling Springs, South Carolina 29316

Re: Freedom of Information Act Request

Dear Superintendent Mercer:

This is a request under the South Carolina Freedom of Information Act (S.C. Code §§ 30-4-10 et. seq.) by the American Civil Liberties Union of South Carolina and the American Civil Liberties Union Program on Freedom of Religion and Belief. The ACLU defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and South Carolina constitutions. The requests seek materials relating to certain policies and practices pertaining to religion. *Please limit your production to responsive materials from 2009 to present.*

Requests

1. All policies, rules, or guidelines, referring or relating to religion, prayer, proselytization, or other religious activities, groups, materials, beliefs, or exercise.
2. All programs, schedules, itineraries, calendars, agendas, minutes, or news publications referring to, relating to, or reflecting the inclusion of prayer, invocations, benedictions, blessings, proselytizing, or other religious remarks or exercise in any school-sponsored event, including but not limited to:⁷⁴
 - a. Commencement or graduation ceremony programs for all grade levels;
 - b. Programs, schedules, or itineraries for athletic events;
 - c. Agendas and minutes for school board meetings;
 - d. Programs, schedules, or itineraries for awards ceremonies and banquets;
 - e. Programs, schedules, or itineraries for baccalaureate services;
 - f. School event calendars;

⁷⁴ Please note that we only seek these materials insofar as they evince religious policies, practices, or activities. There is no need to produce materials that do not refer to the identified religious activities.

- g. Schedules, itineraries, or agendas for morning or afternoon announcements; and
 - h. School newsletters.
3. All materials referring to, relating to, or reflecting the text or content of any prayers, invocations, benedictions, blessings, proselytizing, or other religious remarks or exercise included in any school-sponsored event.
 4. All materials referring to, relating to, or reflecting any agreement or arrangement, whether formal or informal, pertaining to the presentation to students, by a non-school individual or group, of any program or assembly (e.g., character development, sex education, or anti-drug programs) containing religious content.
 5. All materials referring to, relating to, or reflecting any agreement or arrangement, whether formal or informal, pertaining to the distribution of Bibles or other religious literature to students.
 6. All materials referring or relating to any course or class regarding the Bible, the New Testament, or the Old Testament.
 7. All materials referring or relating to religious baccalaureate services or other religious services involving prayer or worship.
 8. All materials referring to, relating to, or reflecting the display of religious symbols and iconography or scripture (e.g., crosses, Ten Commandments) in any District school.
 9. All materials referring or relating to complaints or other objections – whether made by District officials, students, parents, community members, or any other person or group – regarding either the infringement by District officials of religious exercise rights or the promotion of religion in District schools.

In the above requests, the term “District” means the school district to which this request is addressed, as well as its school board, agents, officers, employees, representatives, servants, attorneys, or anyone acting on its behalf. *The requests seek responsive materials from each and every District school.*

The term “materials” includes, but is not limited to, any and all documents, charts, tables, electronic or computerized data compilations, agendas, minutes, emails, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including, but not limited to, drafts and copies with notations. Responsive materials, including emails, should be produced in electronic form where possible.

“Proselytization” or “proselytizing” includes evangelizing, preaching, or other communication of religious messages. “School-sponsored event” includes, but is not limited to, classes, assemblies, athletic practices and events, awards ceremonies, concerts and performances,

graduation or promotional ceremonies, field trips, faculty meetings, faculty trainings, and school board meetings.

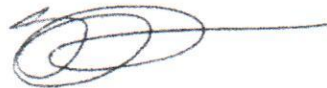
Because the ACLU is a non-profit public interest organization and seeks these documents to assist the District in revising its relevant policies and practices, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. *Please inform us in advance if the cost will be greater than \$100.*

Thank you for your prompt attention to this matter. Please send all applicable hard copy records to the ACLU of South Carolina, P.O. Box 20998, Charleston, SC 29413 and all applicable electronic records to sdunn@aclusouthcarolina.org.

Please provide these records in a timely manner. A 15-day response time is permitted by South Carolina Code § 30-4-30. If you will have difficulty meeting the statutory deadline, please contact Susan Dunn as soon as possible.

If you have questions relating to this request, please contact Susan Dunn via email at the address listed above or by telephone at (843) 720-1425.

Sincerely,

A handwritten signature in black ink, appearing to be 'Susan Dunn', with a long horizontal line extending to the right.

Susan Dunn
Legal Director
ACLU of South Carolina

About The Anderson Consent Decree

Last year, a student and his father (the Andersons), represented by the ACLU and ACLU of South Carolina, filed a lawsuit against the Chesterfield County School District, seeking to stop widespread violations of the separation of church and state. The violations included teachers preaching to students, prayers incorporated into many school events, and the display of religious messages and symbols throughout the district's schools. After recognizing the extent of these problems, how these practices violated the law, and how they harmed students and families, the school district worked with the ACLU to reach a settlement agreement. The agreement, the Consent Decree, was entered by a federal court on January 24, 2012.

The Consent Decree

The Consent Decree was carefully negotiated to ensure that it protects students from official promotion or imposition of religion, while also guaranteeing students' right to practice and express their beliefs to the greatest extent authorized by the U.S. and South Carolina Constitutions. It complies with current settled law in this area.

Under the Consent Decree:

- School officials may not incorporate prayer into class or any school event.
- Public schools may not plan, promote, or finance religious services.
- Public schools may not hold school events at religious venues when an alternative non-religious venue is reasonably available.
- School officials may not, either in class or during school events, promote their personal religious beliefs to students, participate in prayer with students, or encourage students to pray.
- School officials may not participate in student religious clubs (but they may serve in a non-participatory role as chaperones when adults are required to be present for meetings and events).
- Teachers may not post religious symbols or messages or use religious materials and texts unless for non-religious, educational purposes.
- Teachers may not cite the Bible or other sacred texts as authority for historical or scientific fact.
- Private, non-school-sponsored materials may be made available to students only as part of a neutral forum that is open to all outside groups and contains adequate safeguards against religious coercion and school endorsement of religious materials.
- School facilities should be used by, or rented to, outside groups under a neutral forum policy.

Importantly, under the Consent Decree, students are – as they always have been – permitted to pray, read religious materials, express their faith, and engage in other religious activities during non-instructional time, provided that they do not disrupt or interfere with the education of other students.