

FREEDOM FROM RELIGION *foundation*

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September 19, 2016

Sent via U.S. Mail and Email: jbranch@oconeeschools.org

Dr. Jason Branch
Superintendent, Oconee County Schools
34 School Street
Watkinsville, GA 30677

Re: Multiple constitutional violations in OCS

Dear Dr. Branch:

I am writing on behalf of the Freedom From Religion Foundation regarding constitutional violations in Oconee County Schools. FFRF is a national nonprofit organization with over 23,500 members across the country, including more than 400 members in Georgia and a state chapter. We protect the constitutional principle of separation between state and church. We prefer to protect that principle through education, but will resort to litigation if education is insufficient. We recently concluded a successful case against Emanuel County Schools, in Swainsboro, GA, which refused to stop teachers from praying with students after receiving our letter on that issue.¹

We understand that basketball coaches at North Oconee High School organize and lead the team in prayers. We understand that on one occasion, the head coach, Mr. David Gascho, instructed a student to lead the team in the Lord's Prayer. The student did not know the Lord's Prayer, and was forced to stand in humiliated silence in front of his teammates. We are told that the assistant coach, Mr. Sherman Reynolds, then attempted to coerce the child, pounding on his back in front of the other students and shouting "Come on son! Come on son!" to get him to lead the team in the Lord's Prayer. The child was understandably humiliated in front of his peers. Students began harassing him on an OCS bus chanting "he's a Jew"; "Kill the Jews"; "Kill his Dad"; "Massacre the Jews."

We've been told that OCS students began terrorizing the child's family at night: pounding on their doors, shining lights through their windows, vandalizing their property, and eventually setting their mailbox on fire. We understand the Sheriff's office arrested the perpetrators (all OCS high school students) but that it does not appear that OCS took disciplinary action against OCS employees.

We also understand that Gascho displays a 12-inch crucifix on the front and center NOHS desk in full view of all students.

¹ See <https://ffrf.org/news/news-releases/item/24220-ffrf-court-victory-ga-school-stops-school-prayer>.

We understand that because of a school culture of religious bullying and harassment in OCS a student felt so unsafe he had to withdraw from his school. But it wasn't just the misconduct of the OCS students that concerned him. He believed that because of the misconduct of OCS employees including Gashco and Reynolds, that these and other OCS personnel may tolerate discrimination, harassment, and specifically anti-Semitism, creating a culture in which he would again be targeted, in danger, and subject to retaliation for reporting acts of harassment and discrimination. The misconduct of OCS students and employees interfered with his educational opportunity in a state and federally funded program including losing an entire semester of educational opportunity, suffering stress related illness, and other irreparable harms.

Finally, we understand that OCS is considering a partnership with the Oconee County Christian Learning Center for religious release time classes and possibly a bible class for credit. According to reports, the bible class would also cover current issues, "divisive topics like abortion, evolution and gay marriage. [OCCLC plans to take] a hard line on abortion, saying that babies born out of rape deserve a chance at life. The theory of evolution will be replaced with creationism. And homosexuality, they said, is a sin just as gluttony or pride is a sin."²

Coaches praying and proselytizing

It is illegal for public school staff to lead students in prayer or to organize a prayer for students. The Supreme Court has continually struck down formal and teacher or school-led prayer in public schools. *See, e.g., Lee*, 505 U.S. 577 (1992) (ruling prayers at public high school graduations an impermissible establishment of religion); *Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer."); *Schempp*, 374 U.S. 203 (1963) (declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel*, 370 U.S. 421 (1962) (declaring prayers in public schools unconstitutional); *Jager v. Douglas County Sch. Dist.*, 862 F.2d 825 (11th Cir. 1989), *cert. denied*, 490 U.S. 1090 (1989) (pre-game invocations at high school football games are unconstitutional).

Public school coaches must refrain not only from leading prayers themselves, but also from participating in students' prayers. It is unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990) (holding that public school faculty may only be at student-led religious meetings in a "nonparticipatory capacity"). Federal courts have held that even a public school coach's silent participation in student prayer circles is unconstitutional. *See, e.g., Borden v. Sch. Dist. of the Twp. of East Brunswick*, 523 F.3d 153 (3d Cir. 2008), *cert. denied*, 129 S. Ct. 1524 (2009) (declaring the coach's organization, participation and leading of prayers before football games unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995) (holding a basketball coach's participation in student prayer circles an unconstitutional endorsement of religion).

In *Borden*, the Third Circuit Court of Appeals held the high school football coach's extensive history of organizing, leading and participating in prayers before games was unconstitutional

² http://www.oconeeenterprisecenter.com/news/article_1835f59e-6a4e-11e6-8259-23e6d49ac51f.html

because it violated the Establishment Clause. *Borden*, 523 F.3d at 174. In that case, the court stated that the coach's involvement in the prayer by "taking a knee" and "bowing his head" during the prayers, even when student-led, "would lead a reasonable observer to conclude he was endorsing religion." *Id.* at 176. The court continued, "if while acting in their official capacities, [school district] employees join hands in a prayer circle or otherwise manifest approval and solidarity with the student religious exercises, they cross the line between respect for religion and the endorsement of religion." *Id.* at 178 (quoting *Duncanville*, 70 F.3d at 406).

The court in *Borden* also rejected the coach's argument that the school district's policy of prohibiting its employees from engaging in prayer with students violated the employee's right to free speech. *Id.* at 174. In fact, the court found that the school district had a right to adopt guidelines restricting this activity because of its concern about potential Establishment Clause violations. *Id.*

Failure of schools to address and stop the bullying of minority students based on religion

If children observe their coaches and teachers ridiculing or singling out nonconforming students, they will imitate. The employee's behavior is a signal to the students that bullying those who are different is acceptable. This is precisely why religion has no place in our public schools.

The Supreme Court has stated several times that one of the major reasons the founders chose to keep our government separate from religion is because religion is divisive: "The Framers and the citizens of their time intended to guard ... against the civic divisiveness that follows when the government weighs in on one side of religious debate; nothing does a better job of roiling society," and "the divisiveness of religion in current public life is inescapable." *McCreary County, Ky. v. American Civil Liberties Union of Ky.*, 876, 881 (2005). In fact, the "purposes of the First Amendment's Religion Clauses [are] to assure the fullest possible scope of religious liberty and tolerance for all, to avoid the religious divisiveness that promotes social conflict, and to maintain the separation of church and state." *Van Orden v. Perry*, 545 U.S. 677, 678 (2005).

The United States Supreme Court allows suits for private damages against schools for acting with deliberate indifference to known acts of student-on-student sexual harassment. *See Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ.*, 526 U.S. 629, 633 (1999). Other school districts have been sued for failing to address bullying of LGBTQ students. *See* <http://www.splcenter.org/get-informed/case-docket/anoka-hennepin-school-district> which quickly ended in a consent decree. While it is true that these two cases were based on discrimination because of sex and sexual orientation, 42 U.S.C. §1983 would allow a similar suit for the denial of Equal Protection on the basis of religion.

Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally assisted programs and activities, including religious discrimination, and expressly prohibits any act of retaliation against any person reporting an unlawful educational practice including a prohibition against any student-on-student retaliation ("we must remain particularly attentive to the claims of students who may be targeted for harassment based on their membership in groups that exhibit both ethnic and religious characteristics . . . OCR aggressively investigates alleged race or ethnic harassment against Arab Muslim, Sikh and Jewish students." *Title VI and Title IX Religious Discrimination in Schools and Colleges*, OCR Letter of Guidance, Sept. 13, 2004).

We note that the above failures by OCS employees also violate several OCS policies, including:

Official Neutrality Regarding Religious Activity Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the Establishment Clause from soliciting or encouraging religious activity and from participating in such activity with students. Teachers and administrators are also prohibited from discouraging activity because of its religious content and from soliciting or encouraging antireligious activity.

OCS policy further mandates: “Teachers and school administrators should ensure that no student is, in any way, coerced to participate in religious activity.” and OCS policy expressly recognizes that: “**Harassment and discrimination are against the law and will not be tolerated under any circumstances**” (emphasis in original).

If their inappropriate actions are confirmed, teachers involved in, permitting, or tolerating this harassment and discrimination must be disciplined if not released, and all teachers in the district must be instructed, “to refrain from expressions of religious viewpoints in the classroom and like settings.” *Helland*, 93 F.3d 327 (quoting *Arnov*, 926 F.2d 1066, 1077). Moreover, this district has a zero tolerance policy that must apply equally to all, regardless of the religious affiliation of the victim. I cannot overstate the seriousness of these allegations. This district’s reported lack of concern or appropriate response could be construed as negligence and possibly a reckless disregard for the safety of young children in its charge.

Teacher’s displaying crucifixes and other religious iconography is unconstitutional

Courts have continually held that school districts may not display religious messages or iconography in public schools. *See, e.g. Stone v. Graham*, 449 U.S. 39 (1980) (ruling that the Ten Commandments may not be displayed on classroom walls); *Lee v. York County*, 484 F.3d 689 (4th Cir. 2007) (ruling that a teacher may be barred from displaying religious messages on classroom bulletin boards); *Bannon v. Sch. Dist. of Palm Beach Cnty.*, 387 F.3d 1208 (11th Cir. 2004) (ruling that a school may restrict students from painting religious messages in murals on the school walls); *Washegesic v. Bloomington Public Schools*, 813 F. Supp. 559 (W.D. Mich. 1993), *aff’d*, 33 F. 3d 679 (6th Cir. 1994) (ruling that a picture of Jesus may not be displayed in a public school).

FFRF and ACLU recently sued and settled a lawsuit over a portrait of Jesus in a Jackson, Ohio public school. The district chose to ignore our initial letters and instead spent \$95,000 on a losing court battle that settled before a judge even got to decide the case.³

Proposed partnership with the Christian Learning Center

The Supreme Court held that release time is acceptable only if school authorities “do no more than release students whose parents so request.” *Zorach v. Clauson*, 343 U.S. 306, 311 (1952).

³ <https://ffrf.org/outreach/item/19730-ffrf-aclu-settle-jesus-portrait-case>

This means OCS cannot coordinate, endorse, or promote any release time program an outside entity, such as OCCLC, may provide. Courts have repeatedly struck down public school practices that affiliate schools with religious groups and religious instruction. *See, e.g., Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004) (Striking down school's allowance of private group to provide bible instruction in case brought by FFRF); *HS v. Huntington County Community School Corp.*, 616 F.Supp.2d 863 (N.D. Ind. 2009) (Issued preliminary injunction against school that allowed trailers on school property for religious instruction because to do so conveyed a message of support and endorsement of religion); *Doe by Doe v. Shenandoah County School Bd.*, 737 F. Supp. 913 (W.D. Va. 1990) (Issued temporary restraining order against school finding that buses used for religious instruction parked in front of the school gave the appearance of school involvement and that school employees took part in recruitment efforts).

This means that the schools cannot collect permission forms for the release time program and certainly cannot give students school credit for any time spent in release time classes.

The Establishment Clause of the First Amendment prohibits public school sponsorship or involvement in devotional religious instruction. *See McCollum*, 333 U.S. 203. OCS cannot show any preference for religion over non-religion or Christianity over other faiths. As the Supreme Court said in *McCollum*:

Jefferson's metaphor in describing the relation between Church and State speaks of a 'wall of separation,' not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. 333 U.S. at 232.

Put another way, just as OCS cannot not teach the bible as truth or creationism as science, it cannot give credit to students who receive those lessons outside school.

OCS should be very wary of entering into any partnership with OCCLC. FFRF will be keeping a close eye on any arrangement and to that end, we are requesting records.

Open Records Request

Pursuant to the Georgia Open Records Act (O.C.G.A. §§ 50-18-70–50-18-77), I hereby request a copy of the following:

1. All communications between Oconee County Schools staff, employees, board members, or representatives and any representative of the Oconee County Christian Learning Center. This includes, but is not limited to any emails sent or received, including attachments, any letters sent or received, and any testimony or notes on testimony.
2. Any records relating to any Oconee County Christian Learning Center release time or bible class, whether for Oconee County Schools credit or not, in the possession of Oconee County Schools.
3. Any records relating to any Oconee County Christian Learning Center curriculum.

As per state statute, I request these copies within three days of your receipt of this request and without delay. If your agency does not maintain these public records, please let me know the proper custodians of these records. Please provide their names and addresses.

If you choose to deny this request, please respond with a written explanation of the denial, including any references to applicable statutory exemptions upon which you rely. If any of these records are available through electronic media, they may be e-mailed to aseidel@ffrf.org. If I can provide any clarification that will help expedite your attention to my request, please contact me at 608-256-8900.

Conclusion

In conclusion, there appears to be serious constitutional violations occurring in OCS. To correct them, OCS should:

1. Train all staff on the separation of state and church.
 - a. No organizing, endorsing, sponsoring, or coercing prayers.
 - b. No promotion of religion in school or in your official capacity as an OCS employee, including religious displays on school grounds.
2. Investigate all harassment and bullying incidents. Discipline and dismiss the staff involved in harassment, bullying, and allowing non-Christian students to be bullied. Discipline student bullies.
3. Avoid any entanglement with the Oconee County Christian Learning Center and not award any credit for students taking classes there.

We look forward to your prompt written response.

Sincerely,



Andrew L. Seidel
Staff Attorney