

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JONATHAN ANDERSON, on his own behalf,)
and as parent and next friend of his)
minor child, **J.A.**, a student in Chesterfield)
County School District,)

Plaintiffs,)

v.)

**CHESTERFIELD COUNTY SCHOOL)
DISTRICT; CHESTERFIELD COUNTY)
SCHOOL BOARD; JOHN WILLIAMS,)
in his official capacity as Superintendent)
of the Chesterfield County School District;)
and **LARRY STINSON**, in his official capacity)
as Principal of New Heights Middle School,)**

Defendants.)

NO. 4: 11-cv-03300-RBH

CONSENT DECREE AND ORDER

INTRODUCTION

On December 5, 2011, Plaintiff Jonathan Anderson filed a Complaint – on his own behalf and on behalf of his minor child, J.A. – asserting claims pursuant to 42 U.S.C. §1983 against Defendants Chesterfield County School District (“District”), Chesterfield County School Board (“School Board”), John Williams in his official capacity as Superintendent of the Chesterfield County School District, and Larry Stinson, in his official capacity as Principal of New Heights Middle School (collectively “Defendants”). Plaintiffs’ Complaint alleges that Defendants have a custom, policy, and practice of violating the Establishment Clause by, among other actions, incorporating official prayer into myriad school events; proselytizing students; subjecting students to religious iconography via displays in classrooms, hallways, and other locations; and granting religious groups special access to school facilities and students.

Religious liberty, as embodied by the Free Exercise Clause and the Establishment Clause of the First Amendment, and free speech are hallowed constitutional rights to which all are entitled. To ensure that these rights of plaintiffs and all students, parents, and families are protected, as well as to avoid further costly and protracted disputes, the parties have agreed voluntarily to entry of this Consent Decree and Order in settlement of all claims in the Complaint. Accordingly, the Parties respectfully submit this Consent Decree for entry by the Court.

ORDER

BY THE CONSENT OF THE PARTIES, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Some of the Defendants’ District-wide policies, practices, and customs alleged in the Complaint violate the Establishment Clause of the First Amendment to the U.S. Constitution. Some of the Defendants’ policies, practices, and customs (a) endorse and promote religion and (b) have the purpose or effect of advancing religion.
2. The Clerk shall enter judgment in favor of the Plaintiffs. In adopting this Consent Decree, the Court has ensured that it comports with the First Amendment to the U.S. Constitution.

Definitions

3. The following definitions shall apply to this Order. In construing these definitions, the singular shall include the plural and the plural shall include the singular:

(a) “Club” means a noncurricular student group that is recognized by the School District and that qualifies through the five safe-haven provisions (20 U.S.C. §4071 (c)) for protection under the Equal Access Act.

(b) “Prayer” means a communication (written or audible) with a deity, including, but not limited to, a benediction, an invocation, the Lord’s Prayer, or otherwise calling upon a deity to offer guidance, assistance, or a blessing. Accordingly, “Prayer” does not include customary, polite expressions and greetings, including “God Bless You” or “Thank Heavens,” or a student’s religious expression responsive to a legitimate academic class assignment. “Prayer” also does not include a moment of silence, provided that School Officials do not direct, encourage, or imply that students should use the moment of silence for Prayer.

(c) “Religious Service” means a convocation for a religious purpose, including, but not limited to, baccalaureates, religious youth group meetings or events, worship services, Bible study, and religious rallies, festivals, and concerts.

(d) “Religious Title” means Benediction, Invocation, Prayer, Blessing, Inspirational Message, Sermon, Devotional Pledge, Bible Reading, Devotion or any other title that in any way relates to Prayer.

(e) “Religious Venue” means a property, facility, building, or place that is maintained and controlled by or for a religious body that is organized, in whole or in part, to sustain public worship.

(f) “School District” means the Chesterfield County School District.

(g) “School Event” means any activity or happening (1) at a School Board facility or (2) sponsored, planned, conducted, or supervised by a School Official acting in his or her Official Capacity. It includes, but is not limited to, graduation or grade-promotion ceremonies; awards programs or induction ceremonies; school board meetings; assemblies or other school-day programs; athletic practices and competitions; rehearsals and performances; class instructional times; and Club meetings or events. However, each of the following excepted activities is not a School Event:

(i) A student religious Club meeting or event, if all School Board employees and agents are only present at the meeting or event in a “nonparticipatory capacity,” as used in the Equal Access Act;

(ii) An activity at a School Board facility, if (I) it is outside the presence of School District students and (II) no School Official acts in his or her Official Capacity; and

(iii) An activity at a School Board facility that is used by a third-party pursuant to a neutral, limited public forum established by the School Board to govern the

use of School Board facilities, if (I) the terms of usage (including rent) are consistent with the terms applicable to other third-party users, (II) the use does not involve any School Official acting in his or her Official Capacity, and (III) the use does not take place during school hours. This exception does not apply and an activity will be deemed a School Event if the activity takes place (A) during instructional time, (B) when the majority of school employees assigned to the subject school facility are contractually obligated to be present, or (C) during the transitional period before or after school when students are embarking or disembarking from school buses or private transportation. School Officials may supervise students between instructional time and the third-party use period if the supervision is neutral with respect to religion.

(h) “School Official” means the Defendants and their officers, agents, affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert or privity or participation with them, but only to the extent such a person acts in his or her Official Capacity or is in active concert or privity or participation with the Defendants. Outside organizations that receive no support from the Defendants, do not receive remuneration of any kind from the Defendants, are not controlled by the Defendants, and are not given preferential treatment or access (e.g., to sell wares) by the Defendants are not School Officials when they satisfy these requirements.

(i) “Official Capacity”: This Consent Decree regulates only “official capacity” conduct by District employees. It does not address the conduct of school employees in any context other than their official capacity. A person acts in his or her “Official Capacity” when (1) performing official duties or furthering the work of the District or School Board or (2) acting under or with a power or authority granted by virtue of employment by or association with the District or School Board. However, where the only power or authority the School Official exercises is the authority to be present at a District School Board facility and the School Official is not interacting with or in the presence of a student, then the School Official is not in his or her Official Capacity by virtue of subsection (i)(2).

Equal Access Act

4. No provision in this Order is intended to supplant or alter the rights afforded student clubs by the Equal Access Act. School Officials shall comply with the Equal Access Act. 20 U.S.C. §4071 et seq.

Permanent Injunction

5. *Prayer at School Events.* School Officials are permanently enjoined from promoting, advancing, endorsing, participating in, or causing Prayers during or in conjunction with School Events for any school within the School District:

(a) School Officials shall neither offer nor participate in a Prayer during or in conjunction with a School Event.

(b) School Officials shall prohibit non-student third-parties (including clergy or other religious leaders) during or in conjunction with a School Event from offering a Prayer addressed to an audience as part of the event or program, soliciting a Prayer from anyone as part of the event or program, or promoting a religious belief to anyone as part of the event or program.

(c) School Officials shall not include Prayer, whether or not it is noted in a printed program, during or in conjunction with a School Event. School Officials shall not give authorization to a group of students, a student body (e.g., through an election), or third parties to include Prayer, whether or not it is noted in a printed program, during or in conjunction with a School Event.

(d) School Officials shall not encourage, solicit, or invite any person, either implicitly or explicitly, to deliver or offer a Prayer during or in conjunction with a School Event. School Officials shall not set aside a time for Prayer during or in conjunction with a School Event. However, this provision does not bar School Officials from including a moment of silence in School Events, provided that School Officials do not direct, encourage, or imply that students or others should use the moment of silence for Prayer.

(e) School Officials shall prohibit any segment of a School Event from having a Religious Title. School Officials shall not give any segment of a School Event a Religious Title. School Officials shall not permit students, student groups, or third parties to give a segment of a School Event a Religious Title.

(f) If School Officials select persons to make an address during or in conjunction with School Event, they shall do so by a selection process that is neutral to religion and in compliance with a written policy.

(g) To the extent that School Officials permit a person during or in conjunction with School Events to give an address that a School Official shapes, reviews, or edits for content, substance, message, style, or theme, then School Officials shall ensure the person's address excludes Prayer. Nothing in this provision shall relieve School Officials of their obligation to prohibit or curb efforts by third parties to introduce Prayer during a School Event or otherwise comply with Section 5 of this Order.

6. *Religious Services.* School Officials are permanently enjoined from planning, organizing, financing, promoting, or otherwise sponsoring in whole or in part a Religious Service:

(a) School funds shall not be used to plan, organize, finance, promote or otherwise sponsor a Religious Service, including, but not limited to (1) printing programs for a Religious Service, (2) compensating or reimbursing expenses for a speaker at a Religious Service, or (3) paying for overhead costs (lighting, heating, cooling, janitorial, etc.) for a Religious Service.

Subsection (a)(3) shall not apply when School Board facilities are used for a Religious Service by a third-party pursuant to a standard facility use agreement, on terms and schedules (including rental rates) that are applicable to all applicants.

(b) School Officials in their Official Capacity shall not attend or be tasked with official responsibilities at any Religious Service, except serving as the faculty advisor to supervise a Club meeting or event. School Officials shall not monitor behavior of students or require them to conform to any standards at any Religious Service, including delineating proper dress at baccalaureate, except to supervise a Club meeting or event. School Officials shall not plan or organize any Religious Service on school time or do so by using School District equipment or supplies.

(c) School Officials, during or in conjunction with a School Event, shall not require or encourage students to attend any Religious Service, including baccalaureate, church services and student religious Club meetings. School bands, choirs, and military guards shall not perform as part of a Religious Service, including baccalaureate and church services. Provided however, that individual students, in their personal capacities, may not be prohibited from such performance.

(d) No Religious Service commemorating the graduation or grade-promotion of a class of students shall be comprised, led, or directed by School Officials in their Official Capacity.

(e) School Officials shall not require employees to attend any Religious Service, including baccalaureate. Nothing herein restricts a School Board employee or agent's non-Official Capacity promotion of, participation in, or speech or conduct during, a private Religious Service, including baccalaureates and church services.

7. *School Events at Religious Venues.* School Officials are permanently enjoined from holding School Events for any school within the School District at a Religious Venue when an alternative venue is reasonably suitable that is not a Religious Venue. When it is reasonably necessary for a School Event to be held at a Religious Venue, the secular justification for the use of the Religious Venue shall be documented pursuant to subparagraph 7(a).

(a) If a School Event is held at a Religious Venue, School Officials shall document in writing before the event takes place the following: (1) the Religious Venue's physical address, (2) the Religious Venue's owner and contact information, (3) the owner's affiliation with a house of worship or congregation, if any, (4) the nature of the School Event, the expected number and category (students, School Officials, and others) of attendees, and the available parking, (5) the venue for the last three years for past school events of this nature for this school, (6) the compensation that will be paid to use this Religious Venue, (7) the compensation typically paid to use this Religious Venue, if known, (8) the distance from the applicable school, whose event this is, and the Religious Venue, (9) the identity of the School Officials involved in selecting the

Religious Venue, and (10) a certification that no other venue that is not a Religious Venue would be reasonably suitable for this School Event. The written documentation shall be verified by the signature of at least one School Official. School Officials shall transmit a copy of this written documentation to the superintendent's office or his or her delegatee for maintenance and review by the public. The use of a Religious Venue for a School Event may only be done with the approval of the Superintendent or his or her delegatee.

(b) Notwithstanding the foregoing and without complying with this procedure, School Officials may hold School Events at a venue, facility, or property owned or maintained by (1) another School Board or School (e.g., an opposing team in a football game); (2) a state or any political subdivision or agency thereof; or (3) any Non-Religious Venue.

8. *Promotion of Personal Religious Beliefs.* The District and School Board are permanently enjoined from permitting School Officials at any school within the School District to promote their personal religious beliefs to students in class or during or in conjunction with a School Event.

(a) School Officials shall not participate in any way in a Prayer with students during or in conjunction with instructional periods or a School Event. During or in conjunction with a School Event, School Officials shall not offer a Prayer, recite a Prayer alongside or with students, bow their heads or otherwise posture in a manner that is likely to be perceived as an endorsement of the Prayer, or kneel or join hands with students. A School Official's remaining still and silent with hands folded, as a sign of respect, during a Prayer shall not alone constitute an endorsement.

(b) School Officials shall be present at meetings or events of student religious Clubs only in a non-participatory capacity. School Officials shall not lecture, proselytize, pray, or preach at meetings or events of student religious Clubs.

(c) School Officials shall not read or assign readings from a sacred text or a sermon absent a legitimate non-religious, educational objective. School Officials shall not cite to the Bible or any sacred text as authority for historical or scientific fact to students during or in conjunction with a School Event.

(d) School Officials, during or in conjunction with a School Event, shall not solicit, discourage, or encourage students to engage in religious activity or attend a Religious Service. School Officials, during or in conjunction with a School Event, shall not permit non-student third-parties to solicit, discourage, or encourage students to engage in religious activity or attend any Religious Service.

(e) School Officials shall not orally express personal religious beliefs to students during or in conjunction with instructional time or a School Event. School Officials shall not express personal religious beliefs to students through written or symbolic means (whether placed

on a classroom or hallway wall, erected on a classroom floor, or otherwise attached or placed on the District's tangible property). However, jewelry on the School Official's person or clothing or religious articles worn by the School Official (e.g. a yarmulke and a cross necklace) are permissible. Nothing herein shall prohibit a teacher from using religious symbols, articles, or books for a non-religious educational reason.

(f) School Officials shall not include any information that is not directly related to their official duties on their Teacher Pages or similar teacher-specific pages posted on or directly navigable from a District school's webpage. Except for educational background, School Officials shall exclude on such pages biographical information, e.g. personal interests, memberships, and activities.

(g) School Officials shall prohibit nonreligious Clubs and organizations from having an official position in the organization of "chaplain" or one whose responsibilities are to serve as a religious leader, counselor, or guide. Nor shall School Officials recognize such a position.

9. *Distribution of Materials in the Schools.* Private, non-school sponsored materials may be made available to students as part of a neutral limited or other public forum that may be used by outside groups to distribute materials.

(a) Charity, civic, or other non-profit, non-political organizations may make available materials for pickup by students at one location designated by School Officials in each District school. The designated location shall be easily accessible to students, but shall not be in a location where groups of students formally gather for a particular purpose (e.g., the cafeteria, or playground). Under no circumstances may the designated location be a classroom.

(b) To avoid coercion, proselytizing, or the appearance of endorsement, under no circumstances may individuals or representatives of non-school agencies or organizations interact personally with students as part of any distribution at the designated location.

(c) School Officials shall refrain from specially promoting or announcing, to the exclusion of all other materials, the availability of an individual private organization's materials.

(d) School officials shall require clear disclaimers of school endorsement to be posted at the designated location.

(e) This section shall not be deemed to limit or restrict the freedom of students, acting on their own, to distribute religious literature to a fellow student when conducted in a materially non-disruptive manner.

(f) Nothing herein prohibits School Officials from establishing a neutral limited or other public forum, like a "flyer system," for the limited purpose of allowing charity, civic, or

other non-profit, non-political organizations to announce – as through flyers sent home to parents – events and activities sponsored by those organizations.

(g) Nothing herein prohibits School Officials from authorizing the distribution of non-religious materials in connection with a curricular or educational program presented or conducted in conjunction with a School Event (e.g., drug and alcohol education assemblies).

10. *Retaliation.* School Officials are permanently enjoined from taking retaliatory action against Plaintiffs for bringing this lawsuit.

Enforcement

11. The Defendants shall provide a copy of this Order to all current School Officials throughout the School District. The Defendants shall provide a copy of this Order to all persons who later become School Officials. This Order shall be disseminated in the same manner as School Board Policies and Procedures and shall be maintained in any electronic or paper policy manual. This Order shall be included in the District's "Code of Student Conduct" or substantially equivalent publication.

12. The Defendants shall establish and maintain a process for the investigation of complaints regarding School Officials' promotion of religion. School officials shall not prohibit or discourage any complainant from contacting the ACLU of South Carolina or the ACLU Program on Freedom of Religion and Belief to report potential violations of the Consent Decree.

13. *Educational Period.* Defendants shall have a period of 45 days from the date of entry of this Order to educate School Officials regarding their responsibilities pursuant to the Consent Decree and Order. After the 45-day educational period expires, School Officials who violate this Order may be subject to contempt proceedings or other judicial relief.

14. This Order is designed to ensure that the School District's practices and policies do not violate, either currently or in the future, the First Amendment rights of students in the School District. The parties to this Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order before bringing such matters to the Court for resolution. On the Plaintiffs' counsel's request, counsel for the School District shall provide information reasonably available to him so that the Plaintiffs' counsel may ensure School Officials' compliance with this Order and evaluate, in context, the Defendants' guidance and interpretation of this Order and their enforcement efforts with respect to this Order. However, in the event that the Defendants either fail to perform in a timely manner any act required by this Order or act in violation of any provision of this Order, each Plaintiff or any affected student – present or future – who alleges a violation may contact the Plaintiffs' counsel. As may be appropriate, counsel may then move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of certain acts.

15. This Court retains jurisdiction of this case to enforce the terms of this Order.

Other Orders

16. *Nominal Damages.* In connection with the Judgment entered in favor of the Plaintiffs, Jonathan Anderson and J.A., and against the Defendants, Defendants shall pay Jonathan Anderson damages in the amount of \$1.00. Defendants shall pay J.A. damages in the amount of \$1.00. These nominal payments recognize the injury caused to Plaintiffs by the Defendants' custom, policy, and practice of promoting religion.

17. *Attorneys' Fees, Costs, and Litigation Expenses.* Pursuant to (a) 42 U.S.C. §1988, (b) Federal Rule of Civil Procedure 54, and Local Civil Rules 54.02 and 54.03, this Court concludes that the Plaintiffs are the prevailing parties on all claims filed in this matter. Accordingly, the Court concludes that the Defendants are liable for the Plaintiffs' reasonable attorneys' fees, costs, and litigation expenses in accordance with applicable law. The parties acknowledge that they are attempting to reach an agreement as to the amount of the attorneys' fees and costs to be paid to Plaintiffs. If no such agreement is reached within 15 days after the entry of this Consent Decree and Order, Plaintiffs may, pursuant to 42 U.S.C. §1988, Federal Rule of Civil Procedure 54, and Local Civil Rules 54.02 and 54.03, file an application with the Court for attorneys' fees and costs due to them. .

18. Nothing in this Order will be construed to limit any party's right to enforce this Order according to its terms. If any court of competent jurisdiction determines that any provision contained in this Order, or any part thereof, cannot be enforced, the parties agree that such determination shall not affect or invalidate the remainder of the Order.

19. This Order shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

20. After five years from the date of entry of this Order, one or both parties may contact the Court to discuss the need for further continuation of this Order.

21. If this Order does not expressly prohibit conduct, then it is permitted as authorized by law.

SO ORDERED, this 24th day of January, 2012

s/ R. Bryan Harwell

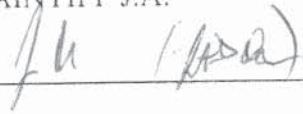
R. BRYAN HARWELL, U.S. District Judge

By their signatures on this and the following pages, the undersigned parties agree to, and request the entry of, this Order:

PLAINTIFF JONATHAN ANDERSON



PLAINTIFF J.A.



DEFENDANT CHESTERFIELD COUNTY SCHOOL DISTRICT

Vice Chair

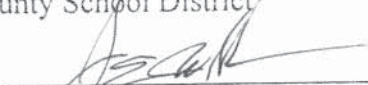
By Kirstin Buck

DEFENDANT CHESTERFIELD COUNTY SCHOOL BOARD

Vice-Chair

By Kirstin Buck

DEFENDANT JOHN WILLIAMS, in his official capacity as Superintendent of the Chesterfield County School District



By John Williams

DEFENDANT LARRY STINSON, in his official capacity as Principal of New Heights Middle School



By Larry Stinson