

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:14-cv-02878

AMERICAN HUMANIST ASSOCIATION, INC.,
and JOHN DOE, individually, and as a parent and next friend of DOECHILD-1 and
DOECHILD-2, minors,
and DOECHILD 1, a minor
and DOECHILD 2, a minor
and JACK ROE, individually, and as a parent on behalf of a minor,
and JILL ROE, individually, and as a parent on behalf of a minor,
and JANE ZOE, individually, and as a parent on behalf of a minor,

Plaintiffs, v.

DOUGLAS COUNTY SCHOOL DISTRICT RE-1,
and DOUGLAS COUNTY BOARD OF EDUCATION,
and ELIZABETH CELANIA-FAGEN, in her official capacity as Superintendent of Douglas
County School District,
and JOHN GUTIERREZ, in his official capacity as Principal of Cougar Run Elementary School,
and JERRY GOINGS, in his official capacity as Principal of Highlands Ranch High School
and WENDY KOCESKI in her official capacity as Elementary Principal of SkyView Academy,
and LISA NOLAN, in her official capacity as Executive Director of SkyView Academy,

Defendants.

SETTLEMENT AGREEMENT WITH REGARD TO DEFENDANTS
WENDY KOCESKI AND LISA NOLAN IN THEIR OFFICIAL CAPACITIES

Introduction

1. On October 22, 2014, Plaintiffs American Humanist Association, Inc., JOHN DOE, individually, and as a parent and next friend of DOECHILD-1 and DOECHILD-2, minors, and DOECHILD 1, a minor and DOECHILD 2, a minor and JACK ROE, individually, and as a parent on behalf of a minor, and JILL ROE, individually, and as a parent on behalf of a minor, and JANE ZOE, individually, and as a parent on behalf of a minor, (collectively “Plaintiffs”) filed a complaint (“Complaint”) asserting claims pursuant to 42 U.S.C. § 1983 against multiple

Defendants, including but not limited to Wendy Koceski and Lisa Nolan, in their official capacities as elementary principal and executive director, respectively, of SkyView Academy (collectively “SkyView Defendants”).

2. Plaintiffs’ Complaint alleges multiple violations of the Establishment Clause of the First Amendment of the United State Constitution as applied to Colorado by the Fourteenth Amendment.

3. The U.S. District Court for the District of Colorado has jurisdiction and venue of this action pursuant to 28 U.S.C. §§ 1331, 13143(a)(3), and 1392(b)(2).

4. Plaintiffs’ Complaint alleges that Defendants, through their policies and practices as administrators of SkyView Academy, violated the Establishment Clause by promoting, advancing, endorsing, sponsoring, and affiliating with an evangelical Christian organization known as “Samaritan’s Purse” and its evangelical program known as “Operation Christmas Child” (“OCC”), and its religious activities in a manner that violates the Constitution. The Complaint alleges that SkyView Academy participated in and sponsored OCC in 2012, 2013 and 2014. The Complaint further alleges that among other things, SkyView Academy has encouraged students and parents to assemble shoeboxes for OCC, asked parents to donate money to Samaritan’s Purse for OCC, and has organized for the OCC shoebox collection. The Complaint further alleges that in 2012 and 2013, SkyView Academy provided award-based incentives for students to participate in OCC, all in a manner that violates the Constitution.

5. The SkyView Defendants deny any wrongdoing and specifically deny that its agents and/or employees have violated the Establishment Clause of the First Amendment of the United States Constitution.

AGREEMENT

BY THE CONSENT OF THE PARTIES, IT IS HEREBY DECREED:

6. Some of the Defendants' policies, practices and customs alleged in the Complaint may have violated the Establishment Clause of the First Amendment to the Constitution. Some of Defendants' practices and customs may have: (a) lacked a secular purpose; (b) endorsed and promoted religion and Christianity; and (c) unconstitutionally entangled the government with religion.

7. The Plaintiffs are hereby declared the prevailing parties of this action.

Definitions

8. The following definitions shall apply to this settlement agreement:

(a) "OCC" means "Operation Christmas Child" and is the program that is described in Plaintiffs' Complaint.

(b) "Club" means a noncurricular student group that qualifies through the safe haven provisions 20 U.S.C. §4071(c) for protection under the Equal Access Act ("EAA").

(c) "School Event" means any activity or happening sponsored, planned, conducted or supervised by a School Official acting in his or her Official Capacity. It includes, but is not limited to, curricular activities (such as "Legacy Day" and activities by Student Government), school-day programs, field trips, and class instructional times. However, each of the following (but not necessarily limited to the following) is not a School Event:

- i. A student religious Club meeting or event, if all SkyView Academy 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 SkyView Academy facility that is used by a third-party pursuant to a neutral, limited public forum established by SkyView Academy to govern the use of SkyView Academy facilities if: (1) the terms of usage (including rent) are consistent with the terms applicable to other third-party users; (2) the use does not involve any School Official acting in his or her Official Capacity, and (3) the use does not take place during school hours.

(d) “School Official” means SkyView Academy Defendants and SkyView Academy 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 SkyView Academy Defendants.

(e) “Official Capacity”: This Settlement Agreement regulates only “official capacity” conduct by School Officials. It does not address the conduct of School Officials 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 SkyView Academy or (2) acting under or with a power or authority granted by virtue of employment by or association with SkyView Academy.

Equal Access Act

9. No provision in this Settlement Agreement 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.

Permanent Injunctive Relief

10. SkyView Academy and School Officials are permanently enjoined from promoting, advancing, endorsing, participating in, or sponsoring Samaritan's Purse, OCC, or any other religious charity, during or in conjunction with School Events. The Permanent Injunction specifically prohibits:

(a) SkyView Academy teachers and staff from distributing, collecting, or making available, OCC boxes, flyers and other OCC materials during class hours or School Events;

(b) SkyView Academy from facilitating in the offering or collecting OCC boxes or materials; this provision does not prohibit SkyView Academy from permitting student-initiated, student-led activity subject to the provisions set forth in this Settlement Agreement;

(c) SkyView Academy from offering prizes, including but not limited to pizza parties, free dress days, no homework days, for participating in OCC and any other religious charities;

(d) SkyView Academy from promoting, sponsoring, or endorsing OCC and other religious charities on its website and on other official SkyView Academy publications and distributions (including the "principal's corner").

11. *Use of School email.* School Officials must not use their official school assigned email accounts to promote, endorse, or sponsor OCC or other religious charities.

12. *Distribution of Materials in the School.* 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. Under no circumstances may the designated location be a classroom or administrative offices.

(b) School Officials shall refrain from specifically promoting or announcing, to the exclusion of all other materials, the availability of OCC's materials. The availability of private organizations' materials must be announced on an equal basis.

(c) 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, so long as the distribution is not materially or substantively disruptive.

(d) 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) Any announcements relating to OCC (and other religious charities) must be wholly student-initiated and student-led and the school must not appear to be promoting OCC or any other religious charity. Any such announcement, including announcements made over the PA system, shall be conducted on equal terms with the announcements concerning non-religious student-initiated and student-led activities.

13. Any activity, including distribution of OCC flyers, in the carpool area prior to or after school "office hours" must be pursuant to the school's neutral equal access policy governing private outside group activity. Any activity in the carpool area during school "office hours" (7:45 a.m. to 4:00 p.m.) must be pursuant to the school's neutral equal access policy governing student activity. Nothing herein prohibits private citizens from collecting or distributing OCC materials outside SkyView Academy's campus.

Enforcement

14. The Defendants shall provide a copy of this Settlement Agreement to all current School Officials and staff. Defendants shall provide a copy of this Settlement Agreement to all persons who later become School Officials. This Settlement Agreement shall be disseminated in the same manner as SkyView Academy Policies and Procedures and shall be maintained in any electronic or paper policy manual.

15. The Defendants' currently existing grievance process shall be available for the investigation of complaints regarding School Officials' promotion of religion. School Officials shall not prohibit or discourage any complainant from contacting the American Humanist Association to report potential violations of the Settlement Agreement.

16. School Officials are permanently enjoined from taking retaliatory action against Plaintiffs or any other SkyView parent or student for bringing this lawsuit or for enforcing this Settlement Agreement.

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

18. On the Plaintiffs' counsel's request, counsel for SkyView Academy shall provide information reasonably available to him or her so that the Plaintiffs' counsel may ensure School Officials' compliance with this Settlement Agreement and evaluate, in context, the Defendants' compliance with this Settlement Agreement.

19. In the event Defendants violate any provision of this Settlement Agreement, each Plaintiff, or any affected student – present or future – may contact the Plaintiffs’ counsel. As may be appropriate, counsel may then move the Court to impose any remedy authorized in law or equity. Plaintiffs shall be entitled to reasonable attorneys’ fees and case costs if they prevail in any action against Defendants’ arising from a breach of the Settlement Agreement.

20. This Court retains jurisdiction of this case to enforce the terms of this Settlement Agreement.

Other Terms

21. *Nominal Damages.* In connection with the Settlement Agreement entered in favor of the Plaintiffs, and against the SkyView Defendants, SkyView Defendants shall pay each Plaintiff damages in the amount of \$1.

22. *Attorneys’ Fees, Costs, and Litigation Expenses.* Pursuant to 42 U.S.C 1988, Plaintiffs are the prevailing parties on all claims filed against SkyView Academy in this matter. Accordingly, SkyView Defendants are liable for the Plaintiffs’ reasonable attorneys’ fees, costs, and litigation expenses in accordance with applicable law. The parties agreed that \$15,000 shall be the amount of fees and costs to which Plaintiffs are entitled pursuant to 42 U.S.C 1988.

23. Nothing in this Settlement Agreement will be construed to limit any party’s right to enforce this Settlement Agreement according to its terms.

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

By their signatures, the Plaintiffs and Defendants, by and through their attorneys, agree to the terms of this Settlement Agreement:

/s/ Monica L. Miller

MONICA L. MILLER

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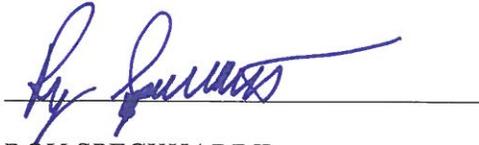
SKYVIEW ACADEMY

By: Lorrie Grove

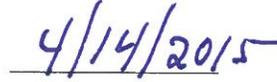
LORRIE GROVE, President

4.17.15

Date



ROY SPECKHARDT



Date

Roy Speckhardt; Executive Director of the American Humanist Association, attorney-in-fact for the plaintiffs whose pseudonyms appear above