

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

NIYA KENNY; TAUREAN NESMITH; GIRLS
ROCK CHARLESTON, INC.; D.S., by and through
her next of kin Juanita Ford, and S.P., by and through
her next of kin Melissa Downs, on behalf of themselves
and all others similarly situated,

Plaintiffs

v.

ALAN WILSON in his official capacity as Attorney
General of South Carolina; J.ALTON CANNON, JR.
in his official capacity as the Sheriff of Charleston
County, SC; GREGORY G. MULLEN in his official
capacity as the Chief of the Police Department of the
City of Charleston, SC; EDDIE DRIGGERS, JR in his
official capacity as the Chief of the Police Department
of the City of North Charleston, SC; CARL RITCHIE
in his official capacity as the Chief of the Police
Department of the City of Mt. Pleasant, SC; LEON
LOTT in his official capacity as the Sheriff of Richland
County, SC; W.H.HOLBROOK in his official capacity
as the Chief of the Police Department of the City of
Columbia, SC; STEVE LOFTIS in his official capacity
as the Sheriff of Greenville County, SC; KEN MILLER
in his official capacity as the Chief of the Police
Department of the City of Greenville, SC; LANCE
CROWE in his official capacity as the Chief of the
Police Department of the City of Travelers Rest, SC;
STEVE MOORE in his official capacity as Interim
Chief of the Police Department of the City of
Simpsonville, SC; M.BRYAN TURNER in his official
capacity as the Chief of the Police Department of the
City of Mauldin, SC; DAN REYNOLDS in his official
capacity as the Chief of the Police Department of the
City of Greer, SC; A. KEITH MORTON in his official
capacity as the Chief of the Police Department of the
City of Fountain Inn, SC; on behalf of themselves and
others similarly situated,

Defendants.

Civil Action No.: 2:16-cv-2794-CWH

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs challenge as unconstitutional S.C. Code § 16-17-420, commonly referred to as the “Disturbing Schools” statute, which sweeps within the purview of criminal law and the court system a broad swath of adolescent behavior. The Disturbing Schools statute violates fundamental concepts of fairness and the most basic tenets of due process.
2. By broadly labeling as criminal any “interference,” or “disturbance” of a school, any act of “loitering” and any “obnoxious” action, the Disturbing Schools statute creates an impossible standard for school children to follow and for police to enforce with consistency and fairness. The Disturbing Schools statute also chills the ability of students to speak out against abuses and to participate in conversations about policing of their own classrooms and campuses.
3. South Carolina Code § 16-17-420 was enacted almost 100 years ago and there is no indication that it was intended to apply, or was applied at the time, to students rightfully attending their own school. More recently, however, the law’s broad terms have been invoked to draw thousands of adolescents into the juvenile and criminal justice systems. The Disturbing School charge is consistently among the leading sources of referrals to the South Carolina Department of Juvenile Justice.
4. While the Disturbing Schools statute impacts hundreds of adolescents each year, some students in South Carolina feel the burdens of the law more than others. Statewide in 2014-2015, Black students were nearly four times as likely to be referred for charges of Disturbing Schools as were their white classmates. In Charleston County, young people were more likely to be referred to the juvenile justice system

for Disturbing Schools than for any other reason and Black students were more than six times as likely as their white peers to be referred for this offense.

5. When applied to school students, the Disorderly Conduct statute, which prohibits conducting oneself “in a disorderly or boisterous manner,” is similarly vague. S.C. Code §16-17-530. It fails to provide notice to students or guidance to those charged with determining which adolescent behavior falls under the terms of the law. Adolescents are also commonly referred to the Department of Juvenile Justice for Disorderly Conduct.
6. The types of incidents that lead to Disturbing Schools and Disorderly Conduct charges cannot be distinguished by any objective standard from the types of behaviors schools address regularly without resort to the criminal justice system. These include minor school infractions like cursing, refusing to follow directions, and involvement in a physical altercation that did not result in significant injuries and where the student was not the initiator. Students as young as seven have been charged with Disturbing Schools. At times, students have been arrested when they react to disruptions caused by those who are supposed to protect them.
7. School Codes of Conduct from across the state reflect the inability to distinguish criminal Disturbing Schools or Disorderly Conduct from minor school infractions. According to Codes of Conduct, students may experience consequences ranging from a verbal warning to criminal charges for the same behaviors.
8. The resort to charging students criminally occurs despite the substantial role played by school employees in shaping student behavior and the classroom environment.

Research demonstrates that teachers and schools can employ a range of effective approaches to prevent disruption, and to de-escalate disruption and conflicts when they do occur. In contrast, research also shows that educators who employ punitive approaches create negative experiences for all students and may escalate disruptions.

9. Referral to law enforcement during school greatly diminishes the likelihood that a student will graduate. Young people who are charged with crimes may feel stigma and fear, making it more difficult to engage with school. They may also face disciplinary consequences that can include years in alternative settings that fail to offer complete access to course work necessary to graduate.
10. Plaintiffs are individuals and a nonprofit organization whose members are directly impacted by and face ongoing risk of arrest or referral under S.C. Code § 16-17-420. Plaintiffs seek a declaratory judgment that S.C. Code § 16-17-420 violates their constitutional right to due process, as well as an injunction preliminarily and permanently enjoining enforcement of and reliance upon S.C. Code § 16-17-420 by Defendants.
11. Plaintiffs D.S. and S.P. are individuals who face an ongoing risk of arrest or referral under S.C. Code § 16-17-530 while attending school. Plaintiffs seek declaratory judgment that S.C. Code § 16-17-530 violates their constitutional right to due process when applied to elementary and secondary school students, as well as an injunction preliminarily and permanently enjoining enforcement of and reliance upon S.C. Code § 16-17-530 as applied to students by Defendants.

JURISDICTION AND VENUE

12. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution.
13. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4).
14. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2).
15. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

PARTIES

A. Plaintiffs

16. Plaintiff Niya Kenny (“Plaintiff Kenny” or “Ms. Kenny”) is a nineteen year-old African-American female who resides in Richland County, South Carolina. Ms. Kenny obtained her G.E.D. Diploma from Richland County School District Two in June, 2016.
17. Ms. Kenny was arrested and charged under S.C. Code § 16-17-420 while a student at Spring Valley High School in Richland School District Two. Ms. Kenny fears future arrest and prosecution under the Disturbing Schools statute if, while on or around the grounds of a school, her actions are interpreted to fall under any of the broad terms of the statute.

18. Plaintiff D.S. is a seventeen year-old African-American female who resides in Charleston, South Carolina. She brings this case through her grandmother and next of kin, Juanita Ford. D.S. was enrolled at Stall High School in the Charleston County School District during the 2015-2016 school year. D.S. plans to enroll at Summerville High School in Dorchester County School District Two in August 2016. D.S. experienced lead poisoning as a young child and has an Individualized Education Plan.

19. D.S. was charged under S.C. Code § 16-17-420 while attending school. D.S. fears being charged under the Disturbing Schools or Disorderly Conduct statutes in the future if, while on or around the grounds of a school, her actions are interpreted to fall under any of the broad terms of the statutes.

20. Plaintiff S.P. is a fifteen year-old Caucasian female who resides in Travelers Rest, South Carolina. She brings this case through her mother and next of kin, Melissa Downs. S.P. was enrolled at Travelers Rest High School in the Greenville County School District during the 2015-2016 school year. She plans to continue school at Travelers Rest High School in the 2016-2015 school year. S.P. has been diagnosed with mood and conduct disabilities. She has requested special education services to address her disability and has had a behavior intervention plan.

21. S.P. was referred under S.C. Code § 16-17-0530 (disorderly conduct) while attending school. S.P. fears being charged under the Disturbing Schools or Disorderly Conduct statutes in the future if, while on or around the grounds of a school, her actions are interpreted to fall under any of the broad terms of the statutes.

22. Plaintiff Girls Rock, Charleston (“Girls Rock”) is a non-profit organization with its principal office in Charleston, SC. Girls Rock provides mentorship, music and arts education, and leadership development to young people in Charleston, South Carolina. Girls Rock operates an afterschool program serving at-risk youth and youth who have been involved in the justice system. Girls Rock is guided by core principles that include challenging criminalization and promoting collective accountability for behavior.

23. Girls Rock sues on behalf of its members, students who risk arrest or referral under S.C. Code § 16-17-420 or S.C. Code § 16-17-530 while attending school. Girls Rock also sues on its own behalf. Girls Rock is substantially burdened in its mission by the continued practice of charging students under S.C. Code § 16-17-420.

24. Plaintiff Taurean Nesmith (“Plaintiff Nesmith” or Mr. Nesmith”) is a twenty-one year-old African American male who resides permanently in Kingstree, South Carolina. Mr. Nesmith is a student at Benedict College in Columbia, South Carolina.

25. Mr. Nesmith was arrested and charged with Disturbing Schools under S.C. Code § 16-17-420 at his college-owned apartment building. Mr. Nesmith fears future arrest and prosecution under the Disturbing Schools statute in the future if, while on or around the grounds of a school, his actions are interpreted to fall under any of the broad terms of the statute.

B. Defendants

26. Defendant Alan Wilson (“Defendant Wilson” or “Mr. Wilson”) is sued in his official capacity as the Attorney General of South Carolina. Pursuant to the South Carolina

Constitution, it is Defendant Wilson's duty in his capacity as Attorney General of South Carolina to assist and represent the Governor in the faithful execution of the laws. S.C. Const. art. IV § 15. Further, pursuant to South Carolina law, "[h]e shall appear for the State in the Supreme Court and the court of appeals in the trial and argument of all causes, criminal and civil, in which the State is a party or interested, and in these causes in any other court or tribunal when required by the Governor or either branch of the General Assembly." S.C. Code § 1-7-40, and "[i]n all cases wherein the right of the State may be involved, the persons claiming under the State shall call on the Attorney General . . . to defend the right of the State." S.C. Code § 1-7-710. Mr. Wilson is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law in all circumstances relevant to this complaint.

Charleston Defendants

27. Defendant J. Alton Cannon, Jr. ("Defendant Cannon" or "Mr. Cannon") is sued in his official capacity as the Sheriff of Charleston County, S.C. The jurisdiction of the Charleston County Sheriff's Office includes schools within Charleston County.
28. Defendant Gregory G. Mullen ("Defendant Mullen" or "Mr. Mullen") is sued in his official capacity as the Chief of the City of Charleston, S.C. Police Department. The jurisdiction of the Charleston Police Department includes schools within Charleston County.
29. Defendant Eddie Driggers, Jr. ("Defendant Driggers" or "Mr. Driggers") is sued in his official capacity as Chief of the North Charleston, S.C. Police Department. The jurisdiction of the North Charleston Police Department includes schools within Charleston County.

30. Defendant Carl Ritchie (“Defendant Ritchie” or “Mr. Ritchie”) is sued in his official capacity as Chief of the Mount Pleasant, S.C. Police Department. The jurisdiction of the Mount Pleasant Police Department includes schools within Charleston County.

Columbia Defendants

31. Defendant Leon Lott (“Defendant Lott” or “Mr. Lott”) is sued in his official capacity as the Sheriff of Richland County, S.C. The jurisdiction of the Richland County Sheriff’s Department includes schools within Richland County.

32. Defendant W.H. Holbrook (“Defendant Holbrook” or “Mr. Holbrook”) is sued in his official capacity as Chief of the Columbia, S.C. Police Department. The jurisdiction of the Columbia Police Department includes schools within Richland County.

Greenville Defendants

33. Defendant Steve Loftis (“Defendant Loftis” or “Mr. Loftis”) is sued in his official capacity as the Sheriff of Greenville County, S.C. The jurisdiction of the Greenville County Sheriff’s Department includes schools within Greenville County.

34. Defendant Ken Miller (“Defendant Miller” or “Mr. Miller”) is sued in his official capacity as Chief of the City of Greenville, S.C. Police Department. The jurisdiction of the Greenville Police Department includes schools within Greenville County.

35. Defendant Lance Crowe (“Defendant Crowe” or “Mr. Crowe”) is sued in his official capacity as Chief of the Travelers Rest, S.C. Police Department. The jurisdiction of the Travelers Rest Police Department includes schools within Greenville County.

36. Defendant Steve Moore (“Defendant Moore” or “Mr. Moore”) is sued in his official capacity as Interim Chief of the Simpsonville, S.C. Police Department. The

jurisdiction of the Simpsonville Police Department includes schools within Greenville County.

37. Defendant M. Bryan Turner (“Defendant Turner” or “Mr. Turner”) is sued in his official capacity as Chief of the Mauldin, S.C. Police Department. The jurisdiction of the Mauldin Police Department includes schools within Greenville County.

38. Defendant Dan Reynolds (“Defendant Reynolds” or “Mr. Reynolds”) is sued in his official capacity as Chief of the City of Greer, S.C. Police Department. The jurisdiction of the Greer Police Department includes schools within Greenville County.

39. Defendant A. Keith Morton (“Defendant Morton” or “Mr. Morton”) is sued in his official capacity as Chief of the Fountain Inn, S.C. Police Department. The jurisdiction of the Fountain Inn Police Department includes schools within Greenville County.

40. Defendants, through their respective duties and obligations, are responsible for enforcing S.C. Code § 16-17-420 and S.C. Code § 16-17-530. Each Defendant, and those subject to their direction, supervision, and control, has or intentionally will perform, participate in, aide and/or abet in some manner the acts alleged in this complaint, has or will proximately cause the harm alleged herein, and has or will continue to injure Plaintiffs irreparably if not enjoined. Accordingly, the relief requested herein is sought against each Defendant, as well as all persons under their supervision, direction, or control, including but not limited to their officers, employees, and agents.

STATUTORY FRAMEWORK

41. South Carolina Code § 16-17-420 provides:

It shall be unlawful:

- (1) for any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or
- (2) for any person to (a) enter upon any such school or college premises or (b) loiter around the premises, except on business, without the permission of the principal or president in charge.

S.C. Code § 16-17-420(A).

42. A violation of S.C. Code § 16-17-420 is punishable by fine of not more than \$1,000 or ninety days imprisonment. S.C. Code § 16-17-420(B).

43. Section 16-17-420, now commonly referred to as the “Disturbing Schools” statute, was enacted in 1919 and as originally drafted, applied to “any school or college in the State attended by women or girls.” 1919 S.C. Acts 239 (Appendix 1).

44. The Disturbing Schools statute was amended in 1968 to apply to “any school.” 1968 S.C. Acts 2308 (Appendix 2). It was subsequently applied to arrest protestors on a college campus. *See Bistrick v. Univ. of S. Carolina*, 324 F. Supp. 942 (S.C. 1971); *Herman v. Univ. of S. Carolina*, 341 F. Supp. 226, 229 (D.S.C. 1971), *aff’d*, 457 F.2d 902 (4th Cir. 1972). In 1972, the statute was amended to increase the applicable penalties. 1972 S.C. Acts 1426 (Appendix 3).

45. A Westlaw search generated cases referencing juveniles charged under § 16-17-420 beginning in 1989. *See Matter of Johnny J.*, 387 S.E.2d 251, 252 (S.C. 1989)(indefinite commitment for probation violation and status offenses was

inappropriate); *In Interest of Doe*, 458 S.E.2d 556, 560 (Ct. App. 1995)(conviction for Disturbing Schools upheld; S.C. Code § 20-7-2170 precluded residential evaluation for children ten years old and younger); *In re Amir X.S.*, 639 S.E.2d 144 (S.C. 2006)(statute not overbroad or vague as applied); *In re Joelle T.*, No. 2010-UP-547, 2010 WL 10088227, at *1 (S.C. Ct. App. Dec. 16, 2010) (Appendix 4).

46. In 2010, the law was amended to remove mandatory minimum sentences and fines and to expressly vest jurisdiction in summary courts or for juveniles, in family court. 2010 South Carolina Laws Act 273 (S.B. 1154).

47. Section 16-17-420 contains no intent requirement before imposing criminal penalties.

48. The terms “interfere,” “disturb,” “loiter,” and “act in an obnoxious manner” are not further defined by the statute.

49. South Carolina Code § 16-17-530 provides:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

S.C. Code § 16-17-530.

50. The terms “disorderly” and “boisterous” are not further defined by the statute.

51. A series of South Carolina Attorney General's Opinions discuss the reach of both the Disturbing Schools and Disorderly Conduct statutes to address student conduct.
52. Attorney General's Opinions conclude that the Disturbing Schools statute and the Disorderly Conduct statute may both be applied to prohibit "[u]se of foul or offensive language toward a principal, teacher, or police officer," or "[u]se of obscene or profane language near a 'schoolhouse.'" 1994 S.C. Op. Att'y Gen. 25, 1994 WL 199757 (Appendix 5).
53. The Attorney General's Office also concludes that "[f]ailure by a student . . . to leave a school campus or school bus, when requested to do so," *id.*, "fighting," *id.*, and becoming "uncooperative and disruptive," each may constitute Disturbing Schools. Letter from Robert D. Cook, S.C. Assistant Att'y Gen., to Hon. John W. Holcombe, Sheriff, Chester Co., 1999 WL 626642 (July 12, 1999) (Appendix 6).
54. Moreover, Attorney General's Opinions observe that "[n]o express limitations on the time of applicability of [§16-17-420's] prohibition are set forth," 1990 S.C. Op. Att'y Gen. 61, 1990 WL 482448 (Appendix 7), and reason that the law might "apply to any part of the campus regardless of whether students or other students [sic] or faculty were present." 1994 S.C. Op. Att'y Gen. 25.

FACTUAL ALLEGATIONS

A. The Impact of Educator Practices on Student Behavior

55. Normal adolescent development includes the development of behavioral and social skills.
56. Addressing student behavior is a regular part of school administration.
57. Research indicates that the ways in which schools and teachers approach student behavior and the school climate can shape student behavior for better or worse.
58. There are many techniques shown to reduce incidences of disruption and discipline when employed by educators. Evidence based practices exist to respond to a continuum of student needs, and effective approaches exist including for students requiring higher levels of support.
59. In contrast, schools and classrooms that are characterized by a punitive approach with high levels of discipline and fewer positive supports are experienced negatively by students and teachers.
60. Some educator practices and responses can escalate student misbehavior and conflict.
61. Black students and students with disabilities are disproportionately likely to be subjected to exclusionary discipline such as out-of-school suspension as well as referral to law enforcement and arrest at school.
62. Research does not suggest that racial disparities in discipline can be explained by differences in behavior across students of different races.

63. Disparities are most prevalent in categories of discipline that require subjective determination of whether the rule was violated, such as offenses of “disruption” or “excessive noise.”
64. Students who experience punitive discipline miss valuable educational time and may enter a cycle of negative consequences.
65. Students are frequently disciplined more harshly when their behavior is characterized as criminal, and their educational opportunities are diminished through expulsion, suspension, placement in an alternative program, or a combination of these consequences.
66. Disciplinary consequences can have lasting impact on a student’s ability to access educational opportunities. For example, students may be placed into alternative programs without significant support services, providing only computer based instruction, and with no fixed end period, from which they must instead earn their way out. These programs may not even provide the course work required to obtain a high school diploma, placing the prospect of educational reentry further and further out of reach.
67. Students may also experience stigma and increased negative feelings about school which may impact their ability to reengage with school.
68. Students who experience referral to law enforcement have significantly reduced likelihood of graduating from high school, even after a first referral.
69. Without a high school education, a young person’s future prospects are also dimmed.

B. Enforcement of S.C. Code § 16-17-420 and § 16-17-530 Across South Carolina

70. Between the 2010-2011 school year and March, 2016, over 9,500 young people in South Carolina were referred to the Department of Juvenile Justice on charges of Disturbing Schools.
71. This number provides only a partial picture of the law's impact. Students 17 and older are charged and prosecuted as adults.
72. Students as young as seven have been charged with Disturbing Schools.
73. Students have been charged with Disturbing Schools in every county in the state except for Chester County.
74. Disturbing Schools and Disorderly Conduct charges are consistently among the leading reasons that young people enter the juvenile justice system.
75. Although referrals for Disturbing Schools have decreased over time in some counties, Disturbing Schools charges have increased statewide from the 2012-2013 school year to the 2015-2016 school year.
76. Rates of racial disparity in referrals for Disturbing Schools have also increased. In the 2014-2015 school year, Black students statewide were nearly 4 times as likely as their white classmates to be charged with Disturbing Schools.
77. Substantial racial disparities in Disturbing Schools referrals exist in large and small counties and in counties that are more and less racially homogenous.

78. Across the state, there are wide discrepancies in how charges of Disturbing Schools are handled, including whether they will be dismissed, diverted, or prosecuted. In about twenty percent of cases in which DJJ recommended diversion, solicitor's offices moved forward with prosecution.
79. School Codes of Conduct from across South Carolina reflect the impossibility of attempting to distinguish criminal Disturbing Schools or Disorderly Conduct from behaviors that should be addressed through school responses, including responses as minimal as a verbal warning or a parent conference.
80. Infractions including "disruption," "behavior that significantly interrupts the learning environment," "fighting," "excessive noise," "boisterous play or pranks," and "profanity" have all been listed as behaviors that can be addressed through lesser school interventions. Yet the same behaviors may lead students to be charged with the crimes of Disturbing Schools or Disorderly Conduct.
81. The prior experiences of named Plaintiffs exemplify the arbitrary and discriminatory application of the Disturbing Schools and Disorderly Conduct statutes to charge or refer students.
82. Students have been arrested and charged with Disturbing Schools when expressing concern over police actions.
83. On October 26th, 2015, Niya Kenny was a student at Spring Valley High School when she was arrested under S.C. Code § 16-17-420. Ms. Kenny was in her math class. Students were instructed to work on their laptops on a practice math lesson. Ms.

Kenny was working on her lesson when she noticed her teacher whispering to a student a couple desks away. She thought that the teacher must have been helping the other student with her work until she saw him walk over to his desk and call for someone to escort the student from the class. Ms. Kenny wondered what the girl could have done wrong, because she had not noticed anything out of the ordinary.

84. Shortly thereafter, a School Resource Officer (“SRO”), a sworn police officer of the Richland County Sheriff’s Office, known among students as “Officer Slam” entered the room. Ms. Kenny witnessed her classmate forcefully pulled from her desk by the SRO, dragged on the floor, and handcuffed. Deeply frightened by the officer’s actions, Ms. Kenny attempted to document the incident and called out for someone to do something to stop the violent treatment of her classmate.

85. In response, Ms. Kenny was herself arrested. She was handcuffed in front of her classmates, berated by the police officer and the school administrator for voicing her concern and distress, held in an adult detention center for several hours, patted down, finger printed and photographed.

86. The police incident report described her offense as a crime of disorderly conduct and she was charged with Disturbing Schools.

87. Throughout her experience, Ms. Kenny was scared and humiliated. Although she would have liked to complete her senior year with friends and classmates, due to the humiliation and anxiety she experienced, Ms. Kenny did not feel that she could return to Spring Valley High School. She withdrew and entered a GED program.

88. Taurean Nesmith was arrested and charged with Disturbing Schools at his college-owned apartment building. A campus police officer who had repeatedly stopped and searched Mr. Nesmith and his friends was patrolling in the apartment complex parking lot as Mr. Nesmith and friends left the building and got into their cars. The officer approached Mr. Nesmith's friend and proceeded to ask him for his identification.
89. Mr. Nesmith complained to another friend that the officer was again stopping them because of their race. The Officer then turned his attention to Mr. Nesmith and asked for his identification. Mr. Nesmith asked why the officer needed to see his identification and continued to question the officer's actions. Other residents came out to their balconies to see what was happening.
90. Mr. Nesmith was eventually handcuffed and transported to a detention center where he remained overnight. He was charged with Disturbing Schools and Disorderly Conduct. His charges were later dropped.
91. In other instances, students have been charged with Disturbing Schools as the result of behaviors that could just as possibly have met with less severe school discipline or other interventions.
92. In Richland School District One, an eight-year-old African-American student was charged with Disturbing Schools and assault when, after being directed to leave class, the student attempted to slam the classroom door and the teacher's arm was caught.

93. In Charleston, an African American student was charged with Disturbing Schools and adjudicated delinquent after she and a group of other students were reported for taking photographs of themselves and other students in the girls' restroom. The student was referred to Girls Rock as a condition of her probation.

94. When K.B., a Latina student in Charleston, was thirteen years old, she was charged with Disturbing Schools and adjudicated delinquent after an incident that started with her late arrival to gym class. A School Resource Officer was called when K.B. began to loudly protest being made to leave the gym class and being followed to the "tardy sweep" room. The police officer physically restrained K.B., taking her to the ground and causing bruises, and placed her in handcuffs. She was searched before being released to her mother. The police incident report indicated that K.B. would be charged with Disorderly Conduct. She was subsequently charged with Disturbing Schools.

95. K.B. was sentenced to probation and referred to Girls Rock by her probation officer. K.B. took honors courses in middle school. When K.B. returned to her high school after being charged, she was placed in a program called "Twilight," through which she was provided no more than three hours of computer-based education per day, and which did not provide access to the courses necessary to obtain a high school diploma. Because K.B. was only permitted to be on campus during program hours, which were shorter than the normal school day, K.B. had to find her own transportation to school, which was a costly expense for K.B. and her mother.

96. K.B. and her mother may move to Texas soon. Although K.B. believes she will be able to return to her regular classes if she begins school in South Carolina, she believes that she will no longer be on track to graduate from high school.
97. D.D., an African American female who has struggled with homelessness, was charged with Disturbing Schools after an incident at her Charleston middle school. D.D. was sent out of class for talking. While she was seated on a bench outside of the classroom, another girl walked past her and began speaking to her. A School Resource Officer noticed her speaking to another student and she was detained, handcuffed, and charged with Disturbing Schools. She was placed on probation and became involved with Girls Rock.
98. When D.D. left the alternative middle school and started high school, she was placed in the Twilight program. Although she has remained in the Twilight program for two years, she continues to attend school and struggle to obtain an education. D.D. must find her own transportation to and from Twilight. Her family does not own a car and navigating the bus system was difficult. D.D. was detained for violating the terms of her probation after being picked up for truancy. While attending Twilight, D.D. also does not have access to the school lunch services that she would receive if attending school regularly.
99. S.P. was charged with Disorderly Conduct as a freshman in the Greenville County School District. S.P. has diagnosed disabilities that impact her mood and conduct and has seen a therapist for several years. S.P. had a Behavior Intervention Plan with her school. On the day that S.P. was charged with Disorderly Conduct, she had an

ongoing altercation with a girl who had been making fun of her throughout the morning. S.P. encountered the girl in the library and told her to stop talking about her before sitting down at a table with friends. The principal came to the library and told S.P. that she needed to leave with him. When she refused and complained that the girl who was making fun of her did not get in trouble, the principal told S.P. he was addressing her because she could be arrested for not leaving with him. An SRO came to the library and S.P. eventually agreed to leave the library with him. As she was leaving, S.P. cursed at the student who had been teasing her. Other students in the library also began to clap as S.P. was escorted out of the library, and S.P. cursed at them.

100. Several months later, S.P. was charged with Disorderly Conduct for these actions.

101. D.S., an African American student in Charleston, was charged with Disturbing Schools after becoming involved in a physical altercation which she did not initiate and in which she was the only person who sustained an injury, a lump on her head.

102. Charged as adults, D.S., her friend, and the other two students involved in the altercation plead guilty to Disturbing Schools without legal representation. D.S. received a suspended sentence of a \$400 fine or 20 days imprisonment conditioned on completion of a Pretrial Intervention program (PTI). D.S. subsequently learned that participation in PTI costs \$300 or more, a cost that she could not afford. D.S. was rejected from the PTI program and spent many stressful weeks fearing that she would be sent to jail before she obtained a public defender who was able to reopen her case, which was eventually dismissed.

103. Enforcement of the Disturbing Schools and Disorderly Conduct laws has also impacted Girls Rock as an organization. Recognizing that Disturbing Schools charges are a primary cause of youth involvement with the justice system, Girls Rock has taken up efforts to challenge the Disturbing Schools statute and bring awareness to the statute's negative impact on Charleston area young people. For example, Girls Rock teen leaders have engaged in an organizing apprenticeship in which they learned about school-based referrals to law enforcement and the Disturbing Schools law and spoke about these issues at public events, Girls Rock After School Program ("GRASP") participants performed a skit on the issue during the program's annual showcase, and created a short video about their advocacy.

104. Girls Rock volunteers have also expended significant time and resources to address the impacts of Disturbing Schools adjudications through mentorship and support of young people in the GRASP program. Girls Rock volunteers also attended hearings with members. They present testimony to speak on a participant's character and her progress in GRASP. Volunteers have spent hours, at times across multiple days, to attend these hearings.

105. Girls Rock is a primarily volunteer run organization with limited resources. The significant time and resources that Girls Rock staff members spend in mentoring and supporting young people who have been caught up in the justice system for charges of Disturbing Schools detracts from Girls Rock's ability to help other young people. In addition, time spent addressing ongoing court involvement and other collateral consequences of a Disturbing Schools adjudication detract from the positive mentorship activities that Girls Rock seeks to provide. Time spent at court hearings

would otherwise be spent developing programming and providing direct services to young people and attending to administrative business necessary to sustain the operations of the organization, such as writing grant proposals and conducting fundraising activities.

106. The experiences of named Plaintiffs and other students in South Carolina reflect the Disturbing Schools and Disorderly Conduct statutes' broad reach and arbitrary and discriminatory enforcement. The terms of § 16-17-420 are vague and fail to provide notice to students and others expected to comply with its terms or to provide sufficient guidance to those charged with its enforcement, permitting arbitrary and discriminatory enforcement. When applied to elementary and secondary school students, the terms of §16-17-530 are equally vague.

107. Plaintiffs have an objectively reasonable fear that they will be charged with Disturbing Schools under § 16-17-420 or Disorderly Conduct under § 16-17-530.

108. Plaintiffs have no adequate remedy at law.

CLASS ALLEGATIONS

Plaintiff Class

109. Plaintiffs D.S and S.P. bring this action on behalf of themselves and on behalf of all elementary and secondary public school students in South Carolina ("Plaintiff Class"), each of whom faces a risk of arrest or juvenile referral under the broad and overly vague terms of the challenged statutes.

110. The class is so numerous that joinder of all members is impracticable. F. R. Civ. P. 23(a)(1). Upon information and belief, there are over 750,000 elementary and secondary public school students residing South Carolina. Each of these students faces a risk of arrest or juvenile referral under the broad and overly vague terms of S.C. Code § 16-17-420 or S.C. Code § 16-17-530.
111. Plaintiffs' claims share common issues of law and fact, including but not limited to whether each of the challenged statutes is overly vague and violates the Due Process Clause of the Fourteenth Amendment. Fed. R. Civ. P. 23(a)(2).
112. The claims or defenses of the named Plaintiffs are typical of the claims of members of the Plaintiff Class. All Plaintiffs' claims arise from S.C. Code § 16-17-420 and S.C. Code § 16-17-530 and are based on the same constitutional provisions and arguments.
113. The named Plaintiffs will fairly and adequately protect the interests of the Plaintiff Class. The named Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the class. Named Plaintiffs and the Plaintiff Class both seek to enjoin enforcement of S.C. Code § 16-17-420 and S.C. Code § 16-17-420 and to obtain a declaration that each law violates the due process guarantees of the Fourteenth Amendment. The attorneys representing the Plaintiffs are experienced civil rights attorneys and are considered able practitioners in federal constitutional litigation.
114. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2). Class certification is also proper because S.C. Code § 16-17-420 and S.C. Code § 16-

17-530 each apply generally to the class, thereby making final injunctive and declaratory relief appropriate as to the whole.

The Defendant Class

115. Plaintiffs bring this action against named Defendants individually and, pursuant to Rules 23(a) and 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all South Carolina law enforcement agencies who may enforce S.C. Code §§ 16-17-420 and 16-17-530 against Plaintiffs. The proposed Defendant Class consists of all South Carolina law enforcement agencies with authority to enforce S.C. Code § 16-17-420 and S.C. Code § 16-17-530 against Plaintiffs.

116. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Upon information and belief, there are more than 200 state and local law enforcement agencies in South Carolina, employing over 11,000 personnel. S.C. Code § 16-17-420 has been enforced against Plaintiffs in each county in South Carolina, apart from Chester County.

117. There are questions of law and fact common to the members of the class, including but not limited to whether the challenged statutes are overly vague and violate the Due Process Clause of the Fourteenth Amendment. Fed. R. Civ. P. 23(a)(2).

118. The claims against the named Defendants are typical of the claims against the Defendant Class, particularly because this is a facial challenge to the statute. All claims arise from S.C. Code § 16-17-420 and S.C. Code § 16-17-530 and are based on the same constitutional provisions and arguments. The Defenses expected to be

asserted by the named Defendants likewise are common to the members of the Defendant Class.

119. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1).

Prosecution of separate actions against individuals would create the risk of inconsistent and varying adjudications.

120. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2).

Plaintiffs' claims to enjoin enforcement of S.C. Code § 16-17-420 and S.C. Code § 530 apply generally to the class, thereby making final injunctive and declaratory relief appropriate as to the whole.

CLAIMS FOR RELIEF

First Cause of Action

S.C. Code § 16-17-420 Violates Due Process

Under the United States Constitution, 42 U.S.C. § 1983

121. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

122. S.C. Code § 16-17-420's vague terms violate Plaintiffs' rights to due process guaranteed by the Fourteenth Amendment to the United States Constitution. U.S. Const. amend. XIV, § 1.

Second Cause of Action

S.C. Code § 16-17-530 Violates Due Process

**Under the United States Constitution as Applied to Elementary and
Secondary Students, 42 U.S.C. § 1983**

123. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

124. S.C. Code § 16-17-530's vague terms as applied to elementary and secondary school students violate Plaintiffs' rights to due process guaranteed by the Fourteenth Amendment to the United States Constitution. U.S. Const. amend. XIV, § 1.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court:

A. Issue a declaratory judgment that S.C. Code § 16-17-420 is unconstitutional;

B. Issue a declaratory judgment that S.C. Code § 16-17-530 is unconstitutional;

C. Issue injunctive relief:

1. preliminarily and permanently enjoining enforcement by Defendants of S.C. Code § 16-17-420;

2. preliminarily and permanently enjoining enforcement by Defendants of S.C. Code § 16-17-530 against elementary and secondary school students;

3. enjoining Defendants from considering any Plaintiffs' records relating to being taken into custody, charges filed, adjudication, or disposition under S.C. Code § 16-17-420 or S.C. Code § 16-17-530, and from retaining such records except as would be permissible following expungement under S.C. Code § 17-1-40;

3. enjoining Defendants from considering any Plaintiffs' records related to arrest, booking record, associated bench warrants, mug shots, fingerprints, charges filed, proceedings, or sentencing under S.C. Code § 16-17-420 or S.C. Code § 16-17-530, and from retaining such records except as would be permissible following expungement under S.C. Code § 17-1-40;

D. Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Grant such other, further, and different relief as the Court deems just and proper.

F. The declaratory and injunctive relief requested in this action is sought against each Defendant; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

Pursuant to Local Rule 3.01(B), undersigned counsel hereby endorses and certifies that this action is properly filed in the Charleston Division.

Dated: Aug. 11, 2016

Respectfully submitted,

s/Susan K. Dunn

SUSAN K. DUNN (Fed. Bar #647)
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Foundation of South Carolina
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**Pro Hac Vice Motions to be submitted*
ATTORNEYS FOR PLAINTIFFS

Acts and Joint Resolutions
of the
GENERAL ASSEMBLY
of the
State of South Carolina

Passed at the Regular Session of 1919

Printed by Order of the General Assembly and Designed to Form a
Part of the Thirty-First Volume of the Statutes at Large,
Commencing With the Acts of the Regular
Session of 1919

THE R. L. BRYAN COMPANY
COLUMBIA, S. C.
1919

Appendix 1

OF SOUTH CAROLINA.

239

§ 3. **When Effective.**—This Act shall go into effect March 15, 1919.

§ 4. **Inconsistent Acts Repealed.**—All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Approved the 7th day of March, A. D. 1919.

No. 156.

AN ACT to Protect Schools and Colleges Attended by Women and Girls.

Section 1. Disturbing Schools Attended by Girls or Women Unlawful.—Be it enacted by the General Assembly of the State of South Carolina, That it shall be unlawful for any person wilfully or unnecessarily to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State attended by women or girls or to loiter about such school or college premises, or to act in an obnoxious manner thereon, or for any person to enter upon any such school or college premises, or loiter around the premises, except on business, without the permission of the principal or president in charge.

§ 2. **Violation of This Act a Misdemeanor—Penalty.**—Any person violating any of the provisions of Section 1 of this Act shall be guilty of a misdemeanor, and, on conviction thereof, shall pay a fine of not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail for not less than ten days nor more than thirty days.

Approved the 7th day of March, A. D. 1919.

No. 157.

AN ACT to Establish a Bureau for the Registration and Employment of Teachers and to Make Provision Therefor.

Section 1. Teachers' Employment Bureau Established.—Be it enacted by the General Assembly of the State of South Carolina, A bureau for the registration and employment of teachers is hereby created.

Acts and Joint Resolutions
OF THE
GENERAL ASSEMBLY
OF THE
State of South Carolina

REGULAR SESSION OF 1968

Second Part
of Fifty-fifth Volume of Statutes at Large

(The Acts and Joint Resolutions of 1967
Constituted the First Part)

PRINTED UNDER DIRECTION OF
HENRY L. LAKE
CODE COMMISSIONER

Appendix 2

2308

STATUTES AT LARGE
GENERAL AND PERMANENT LAWS—1968

[No. 943]

the postmaster at the time of preliminary approval, and must be approved or modified by the postmaster within fifteen days.

Changes in existing property numbering systems for individual streets, subdivisions, municipalities, and water and sewer districts may be initiated by petition of seventy-five per cent of the property owners affected or by the governing body or postmaster or the Planning Commission. No property number will be changed by the Planning Commission until all affected property owners and the postmaster have been notified in writing concerning the proposed change. All involved persons shall be given fifteen days in which to communicate to the Planning Commission any suggestions, comments, or complaints concerning the proposed change."

SECTION 3. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 28th day of February, 1968.

(R975, H1416)

No. 943

An Act To Amend Section 16-551, Code of Laws of South Carolina, 1962, Relating To Disturbances At Schools Attended By Women Or Girls, So As To Include All Schools Within The Provisions Of The Section.

Be it enacted by the General Assembly of the State of South Carolina :

SECTION 1. Unlawful to disturb students or teachers.—Subsection (1) of Section 16-551, Code of Laws of South Carolina, 1962, relating to disturbances at schools attended by women or girls, is amended to include all schools by striking "attended by women or girls" on line three so that, when so amended, subsection (1) shall read :

"(1) For any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or".

SECTION 2. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 2nd day of March, 1968.

Acts and Joint Resolutions
OF THE
GENERAL ASSEMBLY
OF THE
State of South Carolina

REGULAR SESSION OF 1972

Second Part
of Fifty-Seventh Volume of Statutes at Large
(The Acts and Joint Resolutions of 1971
Constitute the First Part)

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HENRY L. LAKE
CODE COMMISSIONER

2620

STATUTES AT LARGE
GENERAL AND PERMANENT LAWS—1972

[No. 1426]

commodations, included within subsection (a) or any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(c) Nothing in this section shall require any person renting, leasing, or providing for compensation real property to modify his property in any way or provide a higher degree of care for a blind person, visually handicapped person, or other physically disabled person than for a person who is not physically disabled.

(d) Every totally or partially blind person who has a guide dog, or who obtains a guide dog, shall be entitled to full and equal access to all housing accommodations provided for in this section, and he shall not be required to pay extra compensation for such guide dog but shall be liable for any damage done to the premises by such a guide dog.

SECTION 8. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 23rd day of June, 1972.

(R1647, H3094)

No. 1426

An Act To Amend Section 16-551, Code Of Laws Of South Carolina, 1962, As Amended, Relating To School Disturbances, So As To Increase The Penalty.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. School disturbances—penalties.—Section 16-551 of the 1962 Code, as amended by Act No. 943 of 1968, is further amended to read as follows:

“Section 16-551. It shall be unlawful:

(1) For any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or

(2) For any person to (a) enter upon any such school or college premises or (b) loiter around the premises, except on business, without the permission of the principal or president in charge.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall pay a fine

No. 1427]

OF SOUTH CAROLINA
GENERAL AND PERMANENT LAWS—1972

2621

of not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not less than thirty days nor more than ninety days.”

SECTION 2. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 23rd day of June, 1972.

(R1648, H3099)

No. 1427

An Act To Amend Section 56-1705, Code Of Laws Of South Carolina, 1962, Relating To The License Fee For Nursing Home Administrators, So As To Eliminate An Obsolete Date Reference.

Be it enacted by the General Assembly of the State of South Carolina :

SECTION 1. License fee.—Section 56-1705 of the 1962 Code, added by Section 8, Part II of Act 984 of 1970, is amended by striking the section and inserting :

“Section 56-1705. Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the Board, which fee shall not exceed one hundred dollars, and shall be renewable biennially upon payment of the license fee on such dates as established by the Board.”

SECTION 2. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 23rd day of June, 1972.

(R1649, H3107)

No. 1428

An Act To Amend Section 7 Of Act No. 445 Of 1971, Relating To The Regulation Of Controlled Substances And Dangerous Drugs, So As To Further Provide For The Definition Of A Practitioner.

Be it enacted by the General Assembly of the State of South Carolina :

SECTION 1. Practitioner defined.—Section 7 of Act 445 of 1971 is amended by striking the following :

In re Joelle T., Not Reported in S.E.2d (2010)
2010 WL 10088227

2010 WL 10088227

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

In the Interest of JOELLE T., a minor
under the age of seventeen, Appellant.

No. 2010-UP-547.

|
Submitted Dec. 1, 2010.

|
Decided Dec. 16, 2010.

Appeal From Richland County; Deborah Neese, Family
Court Judge.

Attorneys and Law Firms

Appellate Defender Kathrine H. Hudgins, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Assistant

Attorney General Julie M. Thames, and Solicitor Warren
B. Giese, all of Columbia, for Respondent.

Opinion

PER CURIAM.

*1 Joelle T. appeals her adjudication of delinquency for disturbing schools, arguing the family court judge erred in denying her motion for a directed verdict. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C.Code Ann. § 16-17-420(1)(a) (2003) ("It shall be unlawful ... for any person willfully or unnecessarily ... to interfere with or to disturb in any way ... the students or teachers of any school...."); *In the Interest of Bruce O.*, 311 S.C. 514, 515, 429 S.E.2d 858, 859 (Ct.App.1993) (reviewing the denial of a directed verdict motion for acquittal on a delinquency adjudication, an appellate court must affirm if any evidence reasonably tends to prove the guilt of the accused).

AFFIRMED.

HUFF, KONDUROS, and LOCKEMY, JJ., concur.

All Citations

Not Reported in S.E.2d, 2010 WL 10088227

Footnotes

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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1994 S.C. Op. Atty. Gen. 62 (S.C.A.G.), 1994 S.C. Op. Atty. Gen. No. 25, 1994 WL 199757

Office of the Attorney General

State of South Carolina

Opinion No. 94-25

April 11, 1994

*1 Mr. Joseph P. Madden
Public Information Officer
Jasper County Schools
Post Office Box 848
Ridgeland, SC 29936

Dear Mr. Madden:

You have requested the opinion of this Office as to certain matters relating to the arrest of students "disturbing a school." You have set forth two different circumstances which are discussed below.

The first circumstance concerns fighting. Under S.C. Code Ann. § 16-17-420 (1976) for a person "... to interfere with or to disturb in any way ... the students or teachers of any school ..." is unlawful. No case has apparently addressed the question of whether fighting would constitute interference or disturbance of a school, however, giving "interfere" and "disturb" their plain meanings¹ would include fighting which was, in fact, disruptive of a classroom, school corridor or any other part of the school campus where students or faculty are engaged in school activities. The Court might construe these terms to apply to any part of the campus regardless of whether students or other students or faculty were present. The fighting might also constitute assault and battery. See *State v. Hill*, 254 S.C. 321, 175 S.E.2d 227 (1970).

If your school district believes that a crime has occurred by students fighting on campus, the district should report the matter to its local law enforcement agency. That agency could determine whether an arrest should be made. Certainly, too, the students could be subject to discipline in accordance with any applicable parts of your school district's disciplinary policy. We have not seen your District's policy.

The other circumstance that you have mentioned is a student's refusal to leave the school campus or school bus when requested to do so by a principal. Depending upon the facts, this conduct could constitute disturbance of a school. Moreover, it might also constitute loitering (§ 16-17-420) or trespass pursuant to §§ 16-11-530, 16-11-600 and 16-11-620 assuming that the principal has properly directed the student to leave, and the student has failed or refused to do so. Refusal to leave might also violate § 16-17-420 as to entry of a school campus without permission. If a crime has been committed in the refusal to leave, law enforcement officers could be called to handle the matter.

In connection with the refusal of a student to leave campus, you have asked whether the student's use of offensive language toward the principal or police officer may make the student subject to arrest. If the language included the threat to take the life of or inflict bodily harm on the principal, the conduct could constitute a crime pursuant to § 16-3-1040 (Supp.1993). This statute would probably also apply to such conduct directed to a law enforcement officer as a "public official" under § 16-3-1040. See *Ops. Att'y Gen.* September 8, 1992. Use of obscene or profane language near a "schoolhouse" might constitute disorderly conduct under § 16-17-530 or it might constitute disturbing the school under § 16-17-420. Of course, use of obscene language may be subject to sanction under the school district's disciplinary policy if such conduct is prohibited thereunder.

*2 The purpose of this response is not to outline each and every possible crime that might be applicable to a given set of circumstances. Whether a crime has been committed would depend upon the particular facts of a situation; however, I hope that this letter provides you with some guidance to the general applicability of criminal laws as to fighting and trespass on school premises and threats to kill or do bodily harm to school officials and other public officers. Should you need additional information, please do not hesitate to contact me.

CONCLUSION

South Carolina possesses laws which provide for a tough, but fair, policy in the schools to protect administrators, teachers and students. If these laws are used forcefully, firmly and fearlessly, they will greatly help to make schools the safe zones we need.

Emphasis by school officials should be on using existing laws to make the school safe, not just in name, but in fact. That includes every classroom, every hallway, each restroom, all gyms and parking lots. Fighting constitutes disrupting a school and is against State law. Failure to leave a school campus when directed to do so by a principal is against State law, too. So is using foul or abusive language against a teacher, staff member or police officer.

If school officials use the legal tools that are available to them, administrators, staff, teachers and students will not forfeit their right to safety and security at the schoolhouse door.

1. South Carolina Code Section 16-17-420 makes it unlawful to interfere with or to disturb in any way the students or teachers of any school.
2. Fighting would be included within the prohibition of Section 16-17-420.
3. This statute could be interpreted to include any part of the school campus, regardless of whether students or other students or faculty are present.
4. Such fighting may also constitute assault and battery.
5. If a school district believes a crime has occurred by students fighting on campus, the matter should be reported immediately to local law enforcement.
6. Students fighting on school grounds would be subject to a school's disciplinary policy, in addition to any criminal penalties contained in Section 16-17-420.
7. Failure by a student or other person to leave a school campus or school bus, when requested to do so by a principal, could, under particular circumstances, constitute a criminal offense.
8. Such failure could constitute disturbance of a school, loitering (Section 16-17-420), trespass (Sections 16-11-530, 16-11-600, 16-11-620) (assuming the principal has directed the student to leave and the student does not), or entry of a school without permission (Section 16-11-420).
9. Calling local law enforcement would be the proper procedure to remove a student or other person who fails to leave when directed by a principal.
10. Use of foul or offensive language toward a principal, teacher, or police officer can constitute a crime. Such conduct could, depending on the circumstances, be a threat to harm a teacher or principal (Section 16-3-1040 [[Supp.1993]]). Such conduct may also constitute disorderly conduct (Section 16-17-530) or disturbing the school (Section 16-17-420).

Mr. Joseph P. Madden, 1994 S.C. Op. Atty. Gen. 62 (1994)

*3 11. Use of obscene or offensive language may also be subject to discipline under a school's policy in addition to criminal penalties.

Sincerely yours,

T. Travis Medlock
Attorney General

Footnotes

- 1 “Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning.” *South Carolina Department of Highways and Public Transportation v. Dickinson*, 288 S.C. 134, 341 S.E.2d 134 (1986).

1994 S.C. Op. Atty. Gen. 62 (S.C.A.G.), 1994 S.C. Op. Atty. Gen. No. 25, 1994 WL 199757

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1999 WL 626642 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 12, 1999

*1 The Honorable John W. Holcombe
Sheriff
Chester County
P.O. Box 727
Chester, South Carolina 29706

Dear Sheriff Holcombe,

Thank you for your letter, dated May 13, 1999, to this Office which has been referred to me for a response. You ask for an opinion on South Carolina Code of Laws Sections 16-17-420 and 59-63-280, entitled Disturbing schools and Possession of paging devices by public school students under the age of eighteen prohibited, respectively.

You describe a situation in which a student became uncooperative and disruptive after his pager went off in a classroom and he was escorted to the Assistant Principal's office. You write that the student refused to provide his name and produce the pager to the Assistant Principal and the School Resource Officer. When told he would be placed under arrest for disturbing school if he did not relinquish the pager, he replied, Go ahead and arrest me. I'm not giving it up. The student became even more disruptive when placed under arrest and additional units had to be called in to assist the School Resource Officer.

In particular you ask whether under 16-17-420, a student can be charged with disturbing school, while at school. You also ask whether an officer may confiscate the pager, pursuant to 59-63-280, in such circumstances as described above.

In response to your first question, Section 16-17-420 does not limit the application of the disturbance of school offense to perpetrators entering from off campus. The statute says:

It shall be unlawful:

- (1) For any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner therein; or
- (2) For any person to (a) enter upon any such school or college premises or (b) loiter around on the premises, except on business, without the permission of the principal or president in charge.

Although provision (2) addresses people who enter from off campus or who remain on campus without a legitimate purpose, provision (1) certainly applies to students on campus or in the classroom, as well. In the attached opinion, dated April 11, 1994, this Office opined at some length on the application of 16-17-420 to students who were fighting at school. Furthermore, the South Carolina Court of Appeals upheld a ten year old boy's conviction under 16-17-420 after he became disruptive in a school cafeteria. See In the Interest of John Doe, 318 S.C. 527, 458 S.E.2d 556 (1995). In short, a student can be charged under 16-17-420 for an offense committed at school.

As to your second question, I have been unable to find any case law or previous Attorney General opinions addressing the confiscation of a pager under Section 59-63-280. However, [w]here the terms of a statute are clear and unambiguous, there

John W. Holcombe, 1999 WL 626642 (1999)

is no room for interpretation and we must apply them according to their literal meaning. South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986). South Carolina Code Section 59-63-280 says, in part:

*2 (D) A person who discovers a student in possession of a paging device in violation of this section shall report the violation to the appropriate school administrator, as determined by school policy, who shall order a peace officer or appropriate school employee to confiscate the device, which is forfeited to the school district.

This provision of the statute offers a clear and unambiguous response to your question. Absent the few exceptions for permissible pagers enumerated in provision (B), a School Resource Officer following the above procedures does have the right to confiscate the pager.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

1999 WL 626642 (S.C.A.G.)

End of Document

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Michael V. Woodall, Ph.D., 1990 S.C. Op. Atty. Gen. 175 (1990)

1990 S.C. Op. Atty. Gen. 175 (S.C.A.G.), 1990 S.C. Op. Atty. Gen. No. 90-61, 1990 WL 482448

Office of the Attorney General

State of South Carolina

Opinion No. 90-61

October 17, 1990

*1 Michael V. Woodall, Ph.D.
Superintendent
Lexington District Two School
715 Ninth Street
West Columbia, South Carolina 29169

Dear Dr. Woodall:

In a letter to this Office you questioned whether Section 16-17-420 of the Code can be applied on a twelve month a year, twenty-four hour basis. Such provision states:

It shall be unlawful:

(1) For any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or

(2) For any person to (a) enter upon any such school or college premises or (b) loiter around the premises, except on business, without the permission of the principal or president in charge.

A criminal penalty of a fine of not less than one hundred dollars nor more than one thousand dollars or a term of imprisonment of not less than thirty days nor more than ninety days is provided.

You stated that one of your middle schools is situated in an unsavory neighborhood, commonly referred to as “Crack Alley”, and individuals sometimes gather at the school on weekends, during the summer, and early morning hours. In light of such circumstances you have questioned whether Section 16-17-420 can be enforced regardless of whether a school is in session.

In *People In Interest of C.M.*, 630 P.2d 593 (Col.1981) the Colorado Supreme Court construed a statute which established a criminal offense if an individual

Loiters in or about a school building or grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any other specific, legitimate reason for being there, and not having written permission from a school administrator.

The Court in holding such statute to be unconstitutionally vague on due process grounds noted that the statute ... neither requires a demonstrable causality between the conduct and the impairment of school functions nor does it even require that the conduct occur while school is in session.

630 P.2d at 596.

Michael V. Woodall, Ph.D., 1990 S.C. Op. Atty. Gen. 175 (1990)

On its face, Section 16-17-420 makes no reference to the time period for enforcement. Moreover, I am unaware of any prior opinion of this Office or decision by a court in this State construing such provision in such regard. The prohibitions against interfering with or disturbing students or teachers and acting in an obnoxious manner appear to be applicable only when a school is in session or otherwise open. However, the statute further prohibits "loitering about" or entering school or college premises, except on business, without permission of the principal or president in charge. No express limitations on the time of applicability of such prohibition are set forth. Of course, such prohibitions should not be construed in a manner inconsistent with legitimate First Amendment privileges. Also, for purposes of this opinion, the provision is not being construed on constitutional grounds. See, e.g., 50 A.L.R.3d 340-382 where similar statutes have been reviewed on a variety of constitutional bases.

*2 As to your specific question of whether Section 16-17-420 can be applied on a twelve month a year twenty-four hour basis, it is my conclusion that there is no restriction in such regard. Therefore, such provision could be enforced regardless of whether school is in session. Of course, while this Office must presume the constitutionality of Section 16-17-420, any final determination as to constitutionality is a matter for the courts. See: Opin. of the Atty.Gen. dated March 23, 1990. Therefore, as to any questions regarding constitutionality you may wish to consult with your school attorney. Sincerely,

Charles H. Richardson
Assistant Attorney General

1990 S.C. Op. Atty. Gen. 175 (S.C.A.G.), 1990 S.C. Op. Atty. Gen. No. 90-61, 1990 WL 482448

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APPENDICES

Appendix 1:

1919 S.C. Acts 239

Appendix 2:

1968 S.C. Acts 2308

Appendix 3:

1972 S.C. Acts 1426

Appendix 4:

In re Joelle T., No. 2010-UP-547, 2010 WL 10088227, at *1 (S.C. Ct. App. Dec. 16, 2010)

Appendix 5:

1994 S.C. Op. Att'y Gen. 25, 1994 WL 199757

Appendix 6:

Letter from Robert D. Cook, S.C. Assistant Att'y Gen., to Hon. John W. Holcombe,
Sheriff, Chester Co., 1999 WL 626642 (July 12, 1999)

Appendix 7:

1990 S.C. Op. Att'y Gen. 61, 1990 WL 482448