

Released-Time Offers Fresh Choices in Religious Education
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Moss v. Spartanburg County School District Seven, a June 2012 Fourth Circuit case, expands possibilities for religious education for public school students. The main educational paradigms in the United States are public school, private school, and home school. Conventional wisdom holds that religious education takes place more effectively in the second two. But released-time is a viable option for religious education within the public school paradigm.

In released-time, a public school student is released from campus for a class period to take religious instruction off-campus. While such programs must meet certain requirements, when they do so, they are consistently held constitutional. Typically, the students do not get credit for classes, and at least one case, *Lanner v. Wimmer*, was critical of the credit option.

In 2006, the South Carolina General Assembly passed the Released Time Credit Act, which provided that high schools could award up to two elective credits for completion of released-time classes, as long as the classes were evaluated on the basis of secular criteria and the decision to award credits was neutral. The Spartanburg Bible School approached a number of school districts, and arranged a program in which students would take classes that were supervised by an accredited private Christian school. The credits were transferred in the same way they would be if a private school student transferred to public school. The public school merely accepted the credits.

Two plaintiffs sued individually, together with the Freedom From Religion Foundation, alleging that the policy violated the Establishment Clause. The school district responded that the plaintiffs lacked standing, because they were not injured by the policy. The Fourth Circuit agreed that one plaintiff and her child lacked standing, because they did not receive an informational letter about the course, did not participate, and had no adverse repercussions from it. This was also true for the FFRF. The grievance for these plaintiffs was merely disagreement with the policy. The other student and her parent did receive the letter, and claimed to feel marginalized and excluded, and the Fourth Circuit concluded they had standing. The Court then went on to discuss the Establishment Clause issue.

As a prelude to its holding, the Court reviewed the history of released-time cases. Released-time instruction may not be held on school grounds, nor may it be financed by the public school system. The program must pass muster under the *Lemon* test, which states that the government conduct (1) must have, at least in part, a secular purpose; (2) must have a primary effect that neither advances nor inhibits religion; and (3) does not excessively entangle church and state. Other released-time programs have passed this test. The secular purpose is to accommodate wishes of parents; the policy's primary effect does not advance religion, because it responds passively to parents' rights to direct the education of their children; and the program will not entangle church and state when carefully structured.

The Fourth Circuit concluded that accepting transfer credits did not alter the analysis. The problem in *Lanner v. Wimmer* was that the school officials had to apply a religious test and monitor the religious content of the classes, which was not the case here. The policy here passively accommodated genuine choice by allowing transfer credits supervised by the private school. Students were neither encouraged nor discouraged from participating. Recruiting access to campus by the Bible school program was similar to that provided to secular organizations.

While not binding in other circuits, this case could signal an important development in released-time law. Organizing a released-time program is a large expense and administrative burden, and students and families have previously received no secular benefit from the time and effort put into the course. On the contrary, participation has limited the credit hours they could earn in high school. Now, potentially, students can receive a secular as well as spiritual benefit. Private school, home school, and public school all have pros and cons. Access to religious education is a huge negative for a public school education, and released-time partially addresses this problem.