

Elliot,

My apologies for the delay in getting back to you. I have reviewed the written responses to interview questions, considered them in connection with your public record request, and concluded that I cannot provide you with copies for at least two reasons.

First, and foremost, the documents are legally privileged and exempt from disclosure under the Public Records Act pursuant to G.S. 132-1.9 because they were prepared in anticipation of litigation at the direction of legal counsel. The questions that were circulated to staff were drafted by school system attorneys in response to specific legal concerns, including a complaint submitted by an advocacy group. The purpose of the questions was to obtain accurate, factual information to assess anticipated litigation and advise school system leadership on potential liabilities and responses. As you know, a miscommunication led to the questions being submitted in written form; the intent was to interview employees face-to-face along with the assurances included in the first page of the "guidance" document I sent you. We acknowledge that the process could have been managed better to avoid incorrect assumptions on the part of employees.

Second, at least some of the documents identify individual staff members by name, and others are sufficiently detailed such that the identity of individual staff members could be deduced even if names were redacted. To the extent the documents contain specific information about specific employees, they may also be protected from disclosure under personnel privacy laws. See G.S. 115C-319 et seq.

Per our previous discussions, rest assured that it was never the intent to gather information on individual employees so as to take any adverse action against them, and the superintendent has assured me that he will not use any responses received for any such purpose. Rather, the motivation behind the questions was to give legal counsel the information needed to provide appropriate legal guidance. To that end, the superintendent has instructed me to keep the written responses in my files and will not even read them himself. Instead, he will rely on me to summarize their contents and provide appropriate legal guidance. You have already seen the legal memorandum that was provided to school system staff on employee religious expression in public schools. The principles and guidance contained in that memo remain the district's position on these important issues – including the rights that staff are afforded by the First Amendment's free speech and free exercise clauses as well as the restrictions imposed by its establishment clause. The district remains committed to a fair and accurate understanding of the constitutional rights and obligations of school employees and will continue to exercise due diligence to see that they are all respected.

As always, I would be happy to speak by telephone if you have further questions or concerns.

Best,  
Neal

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