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December 20, 2016

Via Email
Dr. Norm Ridder
Interim Superintendent
normridder@joplinschools.org

Matthew Harding, Principal
North Middle School
102 Gray St.
Joplin MO 64801
matthewharding@joplinschools.org

Re: Unconstitutional school-sponsored prayers and Bible study

Dear Dr. Ridder and Mr. Harding,

A parent of a student at North Middle School ("NMS") recently contacted this office regarding a situation that she correctly perceives as a serious constitutional violation. The parent reports that the school is conducting Bible study sessions – led by faculty, with assistance from outside clergy – during school hours on campus. Such religious activity in a public school is a clear violation of the Establishment Clause of the First Amendment of the United States Constitution.

Last year, the parent's daughter asked her if she could have donuts that the school offered for breakfast. The parent told her daughter that she could do so, having no idea that the donuts were part of a Bible study activity led by faculty. The parent later learned that the donuts were a lure to get students to attend the Bible study, which takes place immediately before classes start in the morning.

When she first learned that there was a religious element accompanying the donut giveaway, the parent assumed that the religious activity was student-initiated and student-led. This year, however, she learned that these Bible study sessions are not student-led at all, but instead are led by an outside church group and a school faculty. As is evidenced by the way her own daughter was enticed into attending, the donuts are essentially a bribe to get children in the door. In fact, the adults do not make the donuts available until *after* the religious activity, which includes prayer, preaching, and worship.

The Bible study sessions take place during school hours during breakfast period (8:00 – 8:20 a.m.) every Thursday morning and last for about the entire breakfast period. Students arrive

at school as early as 7:20 a.m. The first bell rings at 8:00 a.m. for breakfast, and the second bell rings at 8:25 am. The sessions are held in the auditorium. An NMS teacher, Mrs. Olsen, along with two to five people from a church, lead the meetings. Mrs. Olsen and/or the church staff stand at the auditorium doors to invite students in under the guise of "free donuts." Students cannot get the donuts until service is over.

Several prayers and religious lessons take place in each session. Adults typically ask if any of the student want to lead the group in prayer. If a student says "yes," staff calls on them to lead a prayer for the group. If no one says "yes," the adults will lead the group prayer. Adults (either Mrs. Olsen or church staff) read scripture to the students; this is called a "lesson." During the December 8, 2016 meeting, in addition to straight-out prayers occurring, Mrs. Olsen spoke to the students about Advent candles and the meaning behind them. During the December 15, 2016, meeting, one adult encouraged students to ask their friends to join for the "Christmas party." Mrs. Olsen then asked someone to lead the prayers and "talk to Jesus for us" and "pray for us." She then continued to talk about Advent candles from the previous week, and she also read scripture. One of the men from the church took over for more preaching. A child then closed the session with a prayer.

The parent, who this year has a son attending the school as well, is a member of the American Humanist Association (AHA), and she strongly objects to the promotion of Christianity, or any other religion, by her children's public school. The AHA is a national nonprofit organization with over 600,000 supporters and members across the country, including many in Missouri. The mission of AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate requiring a separation of church and state. Our legal center includes a network of cooperating attorneys from around the country, including Missouri, and we have litigated constitutional cases in state and federal courts from coast to coast, including in Missouri.

The First Amendment's Establishment Clause "commands a separation of church and state." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). It requires the "government [to] remain secular, rather than affiliate itself with religious beliefs or institutions." *Cnty. of Allegheny v. ACLU,* 492 U.S. 573, 610 (1989). The government "may not promote or affiliate itself with any religious doctrine or organization," "discriminate among persons on the basis of their religious beliefs and practices." *Id.* at 590-91. "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa." *Everson v. Bd. of Ed*, 330 U.S. 1, 16 (1947).

To comply with the Establishment Clause, governmental activity must pass the *Lemon* test,[1] pursuant to which it must: (1) have a secular purpose; (2) not have the effect of advancing or endorsing religion; and (3) not foster excessive entanglement with religion. *Allegheny*, 492 U.S. at 592. Government action "violates the Establishment Clause if it fails to satisfy any of these prongs." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). In addition, in *Lee v. Weisman*, the Supreme Court formulated the separate "coercion test," declaring that "at a minimum, the [Establishment Clause] guarantees that government may not coerce anyone to support or participate in religion or its exercise." 505 U.S. 577, 587 (1992).

[1] The test is derived from *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

The Supreme Court "has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools," *Edwards*, 482 U.S. at 583-84, where "there are heightened concerns with protecting freedom of conscience from [even] subtle coercive pressure." *Lee*, 505 U.S. at 592. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000) (student-led, student-initiated prayers before high school football games unconstitutional); *Lee v. Weisman* (nondenominational prayer at graduation unconstitutional); *McCollum v. Bd. of Ed.*, 333 U.S. 203, 231 (1948).

School "officials have long been prohibited by the Establishment Clause from inserting religious exercises into school activities." *S.D. v. St. Johns Cnty. Sch. Dist*., 632 F. Supp. 2d 1085, 1093 (M.D. Fla. 2009). *Lee* and *Santa Fe* are "merely the most recent in a long line of cases carving out of the Establishment Clause what essentially amounts to a per se rule prohibiting public-school-related or -initiated religious expression or indoctrination." *Doe v. Duncanville Indep. Sch. Dist*., 994 F.2d 160, 165 (5th Cir. 1993). The Supreme Court has issued numerous decisions "of considerable parentage that prohibits prayer in the school classroom or environs." *Id.* at 164.[2] As the Eighth Circuit pointed out, "the cases are quite clear that government-mandated prayer for students in public schools is impermissible, see, e.g., *Lee v. Weisman*, . . . as is student-led and student-initiated prayer at public school functions, see *Santa Fe*." *Warnock v. Archer*, 380 F.3d 1076, 1080 (8th Cir. 2004).

The Establishment Clause "absolutely prohibit[s] government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith." *School Dist. v. Ball*, 473 U.S. 373, 385 (1985). Constitutional doctrine teaches that a school cannot endorse religion in the classroom, *Wallace*, 472 U.S. 38; *Stone*, 449 U.S. 39; *Schempp*, 374 U.S. 203; *Engel*, 370 U.S. 421, or at events it hosts, *Santa Fe*, 530 U.S. 290; *Lee*, 505 U.S. 577. *See also Doe v. Elmbrook Sch. Dist*., 687 F.3d 840, 856 (7th Cir. 2012), *cert. denied*, 134 S. Ct. 2283 (2014). In *Stone*, for instance, the Court held that simply posting a small copy (16 x 20 inches) of the Ten Commandments in a classroom had an unconstitutional religious effect. 449 U.S. at 41. The Court recognized that "[p]osting of religious texts on the wall serves no such educational function. If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause." *Id.* at 42.

"The State must be certain … that subsidized teachers do not inculcate religion." *Lemon*, 403 U.S. at 619. School districts must not permit any "of its teachers' activities [to] give[] the impression that the school endorses religion." *Marchi v. Board of Coop. Educ. Servs.*, 173 F.3d 469, 477 (2d Cir. 1999). *See Bell v. Little Axe Indep. Sch. Dist*., 766 F.2d 1391, 1396-97 (10th Cir. 1985) (unconstitutional endorsement when teachers "participat[ed] in religiously-oriented

[2] *See Santa Fe*, 530 U.S. at 294 (student prayers at football games unconstitutional); *Lee*, 505 U.S. at 580-83 (1992) (prayers at graduation ceremonies unconstitutional); *Wallace v. Jaffree*, 472 U.S. 38, 40-42 (1985) (moment of silence to start school day unconstitutional); *Stone v. Graham*, 449 U.S. 39 (1980) (posting of Ten Commandments on classroom walls unconstitutional); *Sch. Dist. Abington v. Schempp*, 374 U.S. 203, 205 (1963) (daily scripture readings unconstitutional); *Engel v. Vitale*, 370 U.S. 421, 422-23 (1962) (school prayer unconstitutional); *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981), *aff'd*, 455 U.S. 913 (1982) (prayers by students and teachers in classroom unconstitutional)

meetings"); *Karen B*, 653 F.2d 897; *Borden v. Sch. Dist.*, 523 F.3d 153, 174 (3rd Cir. 2008) (coach silently bowing head and kneeling while team prayed violated Establishment Clause); *Holloman v. Harland*, 370 F.3d 1252, 1285 (11th Cir. 2004) (teacher's practice of initiating silent prayer with her students violated Establishment Clause); *Doe v. Duncanville Indep. Sch. Dist*., 70 F.3d 402 (5th Cir. 1995); *Roberts v. Madigan*, 921 F.2d 1047, 1056-58 (10th Cir. 1990) (teacher's Bible in classroom "had the primary effect of communicating a message of endorsement"). A teacher's "[religious] speech can be taken as directly and deliberately representative of the school." *Bishop v. Aronov*, 926 F.2d 1066, 1073 (11th Cir. 1991).

Faculty "inviting or encouraging students to pray violates the First Amendment." *Herdahl v. Pontotoc County Sch. Dist*., 933 F. Supp. 582, 591 (N.D. Miss. 1996). Even "permit[ting] [a teacher] to discuss his religious beliefs with students during school time on school grounds would violate the Establishment Clause." *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994). Yet here, a teacher is not merely "discussing" religious beliefs with students, which alone would be constitutionally problematic, but is actively promoting and leading prayer and Bible study during school hours. Undoubtedly, such conduct fails each prong of the disjunctive *Lemon* test as well as the separate coercion test, *infra.*

No possible secular purpose exists for the teacher's actions in leading a Bible study club and promoting prayer during school hours. Where, as here, the government promotes an "intrinsically religious practice," it "cannot meet the secular purpose prong." *Jager v. Douglas Cnty. Sch. Dist*., 862 F.2d 824, 829-30 (11th Cir. 1989).[3] A religious purpose may be inferred in this instance since "the government action itself besp[eaks] the purpose . . . [because it is] patently religious." *McCreary*, 545 U.S. at 862-63. *See also Santa Fe*, 530 U.S. at 309-10 ("infer[ring] that the specific purpose of the policy" permitting but not requiring student-led prayers was religious thus failing the purpose prong); *Karen*, 653 F.2d at 901 (no secular purpose in authorizing teacher-initiated prayer at the start of school day) *aff'd*, 455 U.S. 913 (1982).

Indeed, because "prayer is 'a primary religious activity in itself,'" a "teacher or administrator's intent to facilitate or encourage prayer in a public school is *per se* an unconstitutional intent to further a religious goal." *Holloman v. Harland*, 370 F.3d 1252, 1285 (11th Cir. 2004) (teacher's practice of initiating silent prayer with her students with "let us pray" and ending it with "amen" violated Establishment Clause). *See, e.g*., *Duncanville*, 70 F.3d 402 (5th Cir. 1995) (school district's practice of allowing its employees to participate and supervise student prayers during basketball practices and games violated Establishment Clause); *Steele*, 845 F.2d at 1493 (8th Cir. 1988) (affirming district court order that held that the school "violated the establishment clause . . . by permitting teachers to conduct prayer and religious activities at mandatory school functions.").

In *Peloza*, the Ninth Circuit held that a teacher's mere discussion of religion with students before and after class "would not have a secular purpose." 37 F.3d at 522. *See also Collins v. Chandler Unified Sch. Dist*., 644 F.2d 759, 760-63 (9th Cir. 1981) (opening "assemblies with prayer has no apparent secular purpose"); *Holloman*, 370 F.3d at 1285-86 (teacher's participation in silent prayer with students "during the school day" lacked secular

[3] *See Stone*, 449 U.S. at 41; *Jaffree v. Wallace*, 705 F.2d 1526, 1534-35 (11th Cir. 1983), *aff'd* 472 U.S. 38 (1985); *N.C. Civil Liberties Union v. Constangy*, 947 F.2d 1145, 1150 (4th Cir. 1991)

purpose); *Karen B. v. Treen*, 653 F.2d 897, 901 (5th Cir. 1981) (no secular purpose in authorizing teacher-initiated prayer at the start of school day) *aff'd*, 455 U.S. 913 (1982).

Yet regardless of the purposes motivating it, the teacher's actions in leading and promoting a Bible study fails *Lemon*'s effect prong. The "effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion]." *Wallace*, 472 U.S. at 56 n.42 (quotation marks omitted). The "prohibition against governmental endorsement of religion 'preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred.'" *Allegheny*, 492 U.S. at 593 (citation omitted). Whether "the key word is 'endorsement' 'favoritism,' or 'promotion,' the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief[.]" *Id.* at 593-94.

> [A]n important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.

School Dist. v. Ball, 473 U.S. 373, 390 (1985) (internal citation omitted).

There is no question that teachers encouraging "or facilitating any prayer clearly fosters and endorses religion over nonreligion, and so runs afoul of the First Amendment." *Holloman*, 370 F.3d at 1288. Numerous cases have specifically held that the second prong of *Lemon* is violated when faculty participate in prayer with students. *See id.* at 1286-87 (teacher's practice of saying "let us pray" and concluding with "amen" with students had "the effect of both endorsing religious activity, as well as encouraging or facilitating its practice," in violation of second prong); *Borden*, 523 F.3d at 176-77 (coach "was endorsing religion" in violation of the second prong when he silently kneeled and bowed head during prayer with students); *Duncanville II,* 70 F.3d at 405-06 (coach's participation in prayer was "an unconstitutional endorsement."); *Karen B.*, 653 F.2d at 899 (permitting teacher to lead students in prayer failed second prong).

NMS allows teachers to lead and participate in prayer with students during school hours thus inevitably endorsing religion. *See Bell*, 766 F.2d at 1396-97 (school unconstitutionally endorsed religion when teachers "participat[ed] in religiously-oriented meetings involving students"); *Roberts*, 921 F.2d at 1056-58. In *Karen B.*, the Supreme Court summarily affirmed the Fifth Circuit's holding that a policy, which permitted a teacher to lead the class in prayer, violated the Establishment Clause. 653 F.2d at 899, *aff'd*, 455 U.S. 913 (1982). The court reasoned that the "morning exercises take place on school property during regular school hours." *Id.* In *Duncanville*, the Fifth Circuit held that high school basketball coaches' "participation" in prayer with players was "an unconstitutional endorsement of religion." 70 F.3d at 406. The court explained that the "[d]uring these activities DISD coaches and other school employees are present as representatives of the school and their actions are representative of DISD policies." *Id.* As such, the court ruled: "DISD representatives' participation…signals an unconstitutional endorsement of religion." *Id.* Likewise, in *Borden*, the Third Circuit held that a football coach unconstitutionally endorsed religion when he silently bowed and took a knee while his team

prayed. 523 F.3d 153. The court held that merely "demonstrating some approval of … students' prayer" is unconstitutional. *Id.* at 167.

In *Holloman*, the Eleventh Circuit reiterated that "[s]chool personnel may not facilitate prayer simply because a student requests or leads it." 370 F.3d at 1287. Even "genuinely student-initiated speech may constitute state action if the State participates in" it. *Id*. Student religious speech "'must be without oversight, without supervision, subject only to the same reasonable time, place, and manner restrictions as all other student speech in school.'" *Id.*

As in the above cases, the teacher's involvement in the Bible study, "as a participant, an organizer, and a leader" clearly "lead[s] a reasonable observer to conclude that he was endorsing religion." *Borden*, 523 F.3d at 176. NMS has utterly "fail[ed] to divorce itself from the religious content" of the prayers. *Santa Fe*, 530 U.S. at 305. An objective student would undeniably perceive the Bible study and prayers as being "stamped with [the] school's seal of approval." *Id.* at 308. To make matters worse, the teacher uses donuts to encourage students to attend Bible study. In *Quappe*, a teacher "invited her students to attend [Good News] Club meetings." 772 F. Supp. at 1014. The court held that this "established a symbolic nexus between the school and the Club." *Id.*

The timing of the Bible study sessions – during school hours when students are required to be on campus – heightens the appearance of endorsement and coercion. In *Bell v. Little Axe Indep. Sch. Dist*., for instance, several teachers had been unconstitutionally "participating in religiously-oriented meetings involving students" during school hours "shortly after school buses arrived." 766 F.2d 1391, 1396-97 (10th Cir. 1985). The court stressed: "Nor does it matter that the meetings took place before classes actually began. The students were under the control and supervision of the school from the moment they boarded the school bus." *Id.* at 1406. Even more critically, "it was the 'compulsory education machinery that (drew) the students to school and (provided) any audience at all for the religious activities, whether the buses (had) run or the school day 'officially' begun.'" *Id.* (citations omitted). Eventually, the teachers were disallowed from participating, but one teacher was required to monitor the meetings pursuant to the school's policy. The court found it significant that the teachers had participated in the past when finding that the presence of "even one teacher would produce the same aura of school authorization and approval." *Id*. at 1405.

In *Quappe v. Endry*, a teacher had been promoting and participating in afterschool Good News Club ("GNC") meetings. 772 F. Supp. 1004, 1006, 1014 (S.D. Ohio 1991), *aff'd*, 979 F.2d 851 (6th Cir. 1992). The school refused to allow GNC to meet directly after school and required them to meet at 6:30 p.m. GNC argued that this violated its First Amendment rights while the school argued that an earlier time would violate the Establishment Clause. The court agreed with the school, reasoning that in "her capacity as a teacher, and during her regularly scheduled classes, [the teacher] has also recited prayers . . . allowed religious material to be placed on a table in her classroom, . . . and invited her students to attend Club meetings." *Id.* at 1006-07. The court found that the teacher's "active participation" tainted "the Club's activity and established a symbolic nexus between the school and the Club, thus providing the active government participation necessary to find a constitutional violation." *Id.* at 1014. *Cf. Mergens*, 496 U.S. at

251 (explaining that there is less risk of state "endorsement or coercion where . . . no school officials actively participate").

In *Good News Club v. Milford Cent. Sch*., the Court, in permitting a religious community group to use school buildings after school hours, emphasized that there was "simply no integration and cooperation between the school district and the" group, reasoning that its "activities take place *after* the time when the children are compelled by state law to be at the school." 533 U.S. 98, 115-16 n.6 (2001). Also relevant to its conclusion was the fact that "[t]he instructors are *not schoolteachers*." *Id.* at 117-18 (emphasis added). In stark contrast, the Bible study sessions here occur during school hours with the participation of the teacher. *See id.* ("obviously when individuals *who are not schoolteachers* are giving lessons after school . . . the [Establishment Clause] concerns [are reduced].") (emphasis added).

Wigg v. Sioux Falls Sch. Dist., 382 F.3d 807, 810 (8th Cir 2004), is also inapposite. A teacher's participation in a religious community group's meetings held after school, pursuant to the school's community lease policy, was deemed private speech. The rationale was based on *Good News Club*: "when a public school system permits after-hours access to its facilities by one non-school related group, it cannot refuse access to another." *Id*. at 810. Here, by contrast, the Bible study sessions are held *during school hours* and not pursuant to a community lease policy that opens facilities to outside groups on nights and weekends. Moreover, unlike in *Wigg* where "nonparticipating students . . . exited the building before the meetings began," nonparticipating students are on campus and can see the prayers occurring. 382 F.3d at 815.

The Seventh Circuit in *May* upheld a school's decision to prevent teachers from holding devotional sessions before school began even though "[s]tudents were not allowed in the building this early and apparently were unaware of the meetings." 787 F.2d at 1107. The court concluded that teachers have no First Amendment rights to use "school premises for unauthorized meetings unrelated to teaching." *Id.* at 1112.

The third *Lemon* prong, the question of excessive government entanglement with religion, is also violated here. When, as here, teachers are allowed to "occaision[ally] participat[e]" in religious clubs, there is an excessive entanglement with religion, failing *Lemon*'s third prong. *Bell*, 766 F.2d at 1406. *See Duncanville*, 70 F.3d at 406 (faculty's participation in "prayers improperly entangle[d] [the school] in religion"); *Karen B*., 653 F.2d at 902 (permitting teachers to lead prayers would result in "excessive governmental entanglement with religion."); *Mellen v. Bunting*, 327 F.3d 355, 375 (4th Cir. 2003) (university's sponsorship of prayer failed "*Lemon's* third prong."); *Peloza*, 37 F.3d at 522 (allowing a teacher to discuss religion with students "would entangle the school with religion").[4] And when faculty lead and participate in religious activity, they put additional coercive pressure on students. *See Roberts v. Madigan*, 702 F. Supp. 1505, 1516 (D. Colo. 1989) ("a teacher's silent reading of the Bible provokes students' curiosity about the Bible's religious teachings," which is "constitutionally impermissible.").

[4] *See also Jabr v. Rapides Parish Sch. Bd*., 171 F. Supp. 2d 653, 661 (W.D. La. 2001) ("[t]eachers, who did not actively participate in Bible distribution, but merely observed non-school personnel distribute the material, became excessively entangled with religion in violation of the Establishment Clause."); *Human*, 725 F. Supp. at 1507 (if "an evidently religious study course is taught on school grounds during regular school hours, the school is excessively entangled in it regardless of who teaches such classes.").

Finally, the Bible study sessions violate the Establishment Clause under the coercion test. *Lee*, 505 U.S. at 587-99 (recognizing that unconstitutional coercion may be exercised both directly, such as by mandatory attendance at a religious exercise, and indirectly). The "State exerts great authority and coercive power…because of the students; emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards*, 482 U.S. at 584. Thus, when a teacher or coach merely participates in student-led prayer, his actions are coercive because such involvement "no doubt 'will be perceived by the students as inducing a participation they might otherwise reject.'" *Duncanville*, 994 F.2d at 165 (quoting *Lee*). "'[T]he government may no more use social pressure to enforce orthodoxy than it may use more direct means.'" *Santa Fe*, 530 U.S. at 312 (quoting *Lee*). In the present case, the teacher is not merely participating in student-initiated religious activity but is both initiating and participating in such activity.

Notably, the Equal Access Act ("EAA") 20 U.S.C. § 4071 expressly limits faculty involvement in religious clubs to a "nonparticipatory capacity" to avoid unconstitutional "endorsement or coercion" or entanglement with religion. *Bd. of Educ. v. Mergens*, 496 U.S. 226, 249-50 (1990). The Court has made clear that "faculty monitors may not participate in any religious meetings, and nonschool persons may not direct, control, or regularly attend activities of student groups." *Id.* at 236, 250-53. Moreover, the "Act prohibits school 'sponsorship' of any religious meetings, § 4071(c)(2), which means that school officials may not promote, lead, or participate in any such meeting, § 4072(2)." *Id.* Teachers are limited to "custodial oversight … merely to ensure order and good behavior." *Id*. "The primary reason why the Act provides for nonsponsorship and nonparticipation of religious groups is to prevent … violations of the Establishment Clause." *Pope v. East Brunswick Bd. of Educ*., 1993 U.S. Dist. LEXIS 18661, *35-36 (D.N.J. 1993). *See Prince v. Jacoby*, 303 F.3d 1074, 1083 (9th Cir. 2002), *cert. denied,* 540 U.S. 813 (2003) (explaining that when a "School District went beyond the limits of section 4071(c), its activities could be deemed to violate the Establishment Clause"); *Wilson County*, 564 F. Supp. 2d at 801-02 (holding that teachers participated in student religious club activities when they "bowed their heads when prayers were offered" which "signaled to others that they supported . . . these Christian events" and "crossed the line of permissible supervision" under the EAA thereby violating the Establishment Clause); *Sease*, 811 F. Supp. at 187 (finding that a school's support of a gospel choir violated the EAA, reasoning, "[c]learly, a school employee's participation in, or sponsorship of, a public school gospel choir during school hours would be a violation of the Establishment Clause"). Here, the teacher's participation in the Bible study sessions goes far beyond "the minimal, 'custodial' oversight allowed by *Mergens*" and the EAA, and therefore violates the Establishment Clause as well. *Duncanville I*, 996 F.2d at 164.

The Establishment Clause places on the superintendent, "the affirmative duty to ensure that individual teachers are not, through their classroom conduct, violating the guidelines of the establishment clause." *Breen v. Runkel*, 614 F. Supp. 355, 358 (W.D. Mich. 1985). Teachers "have no right to make the promotion of religion a part of their job description and by doing so precipitate a possible violation of the First Amendment's establishment clause." *Grossman v. S. Shore Pub. Sch. Dist.*, 507 F.3d 1097, 1099 (7th Cir. 2007) (upholding school's decision to fire guidance counselor who twice prayed with students and replaced educational literature about contraceptives with literature on abstinence). This letter serves as official notice of the

unconstitutional conduct and demands that you terminate this and similar programming immediately.

We are most hopeful that you will recognize the concerns raised by this letter and address them properly. Please respond within seven (7) days. We thank you in advance for your attention to this matter.

Very truly yours,
Monica Miller, Esq.