

FREEDOM FROM RELIGION *foundation*

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March 27, 2024

SENT VIA EMAIL & U.S. MAIL: Bduty@covingtoncountyschools.org

Superintendent Babette Duty
Covington County School District
108 Main Street
Collins, MS 39428

Re: Unconstitutional religious assignment

Dear Superintendent Duty:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding constitutional violations occurring at Seminary Elementary School. FFRF is a national nonprofit organization with over 40,000 members across the country, including members in Mississippi. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned District parent has informed us that Ms. [REDACTED] has scheduled a religious assignment for first grade students tomorrow, March 28, at Seminary Elementary School. The assignment is a coloring page of an Easter egg split into six sections with a different color assigned to every section. The student is expected to color each section the corresponding color.

Every color has a supposed religious meaning noted in each section. The first color is yellow which “represents God’s perfect light.” Red “represents the blood Jesus shed for us,” white “represents the cleansings of our sins,” green “represents the new life we have in Jesus,” and blue “represents the baptism that identifies us with Jesus.” Please see the enclosed screenshot.

Our complainant reports frequently having to counteract religion that their child learns at school. We write to request that the District stop this assignment from being given out, and ensure that its teachers at Seminary Elementary and all other schools understand their constitutional duty to respect the religious rights of students.

It is well settled that public schools may not show favoritism towards or coerce belief or participation in religion. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCullum v. Bd. of Ed.*, 333 U.S. 203 (1948). Moreover, public schools may not provide religious instruction. In the seminal Supreme Court case on this issue, *McCullum v. Board of Education*, the Court held that bible classes in public schools are unconstitutional. 333 U.S. 203 (1948). The district in *McCullum* allowed religious teachers, employed by private religious groups, to teach students a regular bible class. The Court held, “here not only are the state’s tax-supported public school buildings used for the dissemination of religious doctrines.

The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state’s compulsory public school machinery. This is not separation of Church and State.” *Id.* at 212.

Using a religious holiday, Easter, as a pretext to teach religious lessons in a public school is unconstitutional. Certainly, “a school can direct a teacher to ‘refrain from expressions of religious viewpoints in the classroom and like settings.’” *Helland v. S. Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). The Supreme Court has recognized that “[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). If the District turns a blind eye to the overt proselytization in its classroom, it becomes complicit in an egregious constitutional violation and breach of trust.

Giving students—through their parents—an option out of the assignment does not redress the constitutional concern. Teachers may not promote concepts like “cleansing of sin” and “new life in Jesus” to students, regardless of how many students share those beliefs. Furthermore, assigning sectarian classwork places non-Christian students and families in an unfair position; either they must out themselves as non-believers—risking their standing in the community—or comply, against their sincerely held beliefs. That is unfair and the exact ultimatum the Establishment Clause guards against. Furthermore, students who participate in an alternative assignment will be outcast as “different” or “other,” through no fault of their own. This assignment “sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” *Santa Fe*, 530 U.S. at 310 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (O’Connor, J., concurring)). This alienates community members who are non-Christians, including those who are among the nearly 30 percent of adult Americans who are religiously unaffiliated, as well as the additional six percent of Americans adhering to non-Christian faiths.¹ Forty-nine percent of Generation Z are religiously unaffiliated.²

Please note that it is not a violation of the free speech rights of teachers when a school district regulates what they teach to students while acting in their official capacities. Teachers have access to a captive audience of students due to their position as public educators. Therefore, the District has a duty to regulate religious proselytizing during school-sponsored activities. “Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire.” *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012) (upholding decision of school board to require a math teacher to remove two banners with historical quotes referencing “God”); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) (“We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the

¹ Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.

² Ryan P. Burge, *2022 Cooperative Election Study of 60,000 respondents*, Apr. 3, 2023, <https://religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/> (last accessed Mar. 21, 2024).

Constitution does not insulate their communications from employer discipline.”). Courts have upheld the termination of teachers who violate the principle of separation between church and state. *See, e.g., Grossman v. S. Shore Pub. Sch. Dist.*, 507 F.3d 1097 (7th Cir. 2007) (upholding termination of guidance counselor who prayed with students).

The Supreme Court’s decision in *Kennedy v. Bremerton School District*, did not change the law or overrule any of the above cases. The *Kennedy* court repeatedly stressed the private nature of Kennedy’s prayer and that it occurred when he was not on duty. Not so here; this assignment falls within the scope of a teacher’s official public duties and thus *Kennedy* is inapplicable.

The District must make certain that none of its employees are unlawfully and inappropriately indoctrinating students in religious matters by giving religious assignments, teaching about religion, or promoting their personal religious beliefs. We ask that the District immediately investigate this situation and ensure this coloring page is not assigned tomorrow. That any teacher thought this was an appropriate assignment in a public school suggests further education of your staff is necessary to ensure compliance with the Establishment Clause. Please respond in writing, outlining the steps the District will take to correct this serious constitutional violation so that we may notify our complainant.

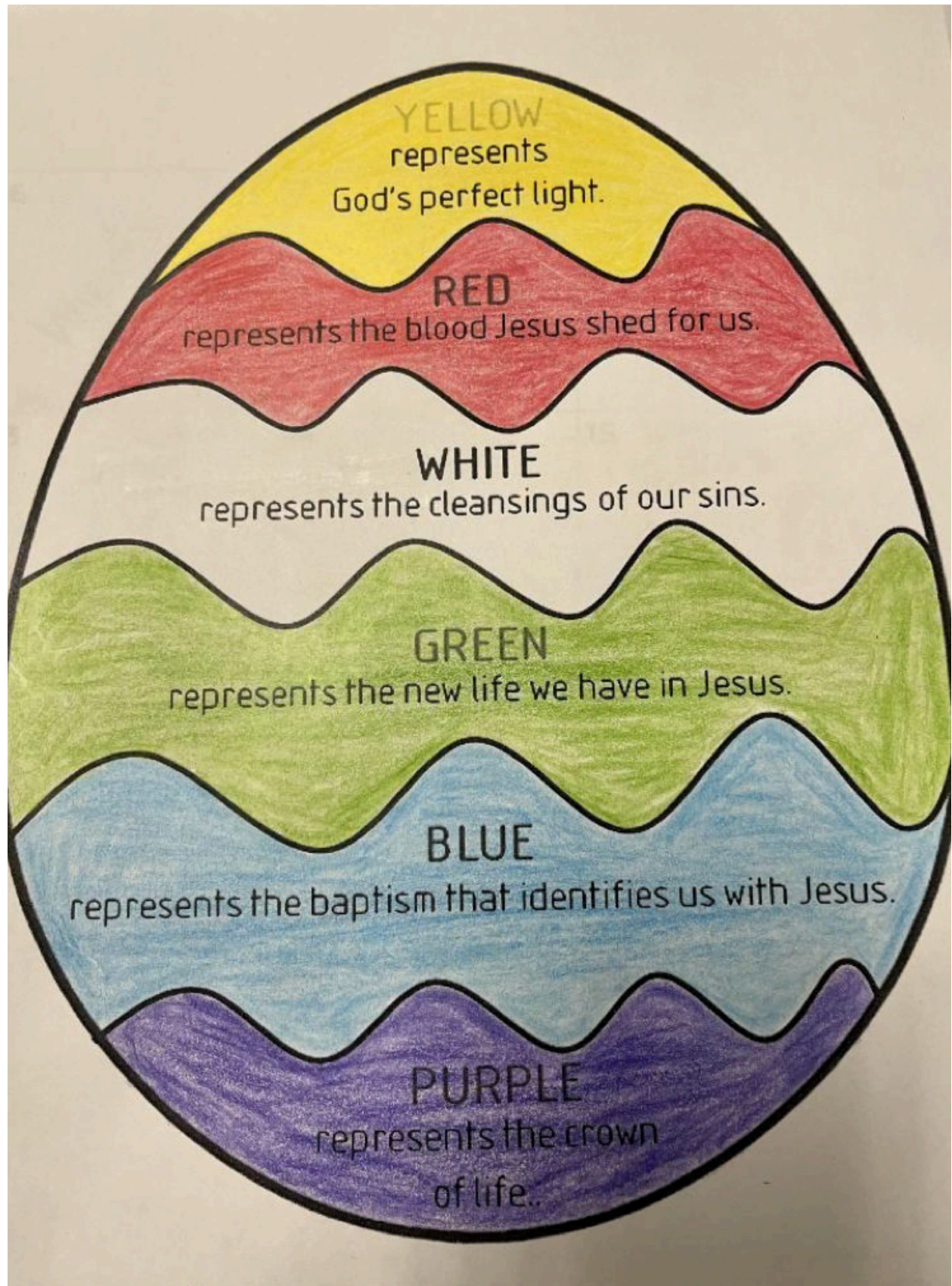
Sincerely,

A handwritten signature in cursive script that reads "Madeline Ziegler".

Madeline Ziegler
Staff Attorney

Enclosure

cc: Angela Palmer, via email, apalmer@covingtoncountyschools.org



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God's perfect light.

RED
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GREEN
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BLUE
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PURPLE
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of life..