AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE

(202) 466-3234
(202) 466-3353 (fax)
www.au.org

1310 L Street NW
Suite 200
Washington, DC 20005

February 9, 2022

By U.S. Mail
Sherrone D. Hornbuckle, General Counsel
Cabell County Schools
2850 5th Ave.
Huntington, WV 25702

Re: *Religious assembly at Huntington High School*

Dear Ms. Hornbuckle:

We have received numerous complaints about a religious assembly held on February 2, 2022, at Huntington High School. The assembly was an openly proselytizing revival meeting featuring Nik Walker Ministries held during a homeroom period—known as COMPASS—during the school day. We understand that the district has claimed that the meeting was organized by the Fellowship of Christian Athletes and was ostensibly voluntary. Despite these assertions, faculty and staff participated in the religious activities at the assembly and at least two teachers forced their entire homeroom classes to attend and would not allow objecting students to leave. Public schools exist to serve all schoolchildren regardless of faith or belief and must be welcoming to all. Presenting a proselytizing religious assembly during the school day—much less forcing students to attend that assembly— conveys disrespect for students' and families' beliefs and sends the message that students who do not practice the officially favored faith are unwelcome outsiders who do not belong. Even if the assembly could be classified as an FCA event—which is doubtful given the facts of the matter—it still violated the Establishment Clause of the First Amendment of the U.S. Constitution. Please ensure that no future religious assemblies of this nature happen during the school day.

The Establishment Clause prohibits governmental bodies and officials from taking any action that communicates "endorsement of religion." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 305 (2000). Because students are impressionable and because their attendance at school is involuntary, courts are "particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987); *see also Lee v. Weisman*, 505 U.S. 577, 592 (1992) (in the public-school context, there are "heightened concerns with protecting freedom of conscience from subtle coercive pressure").

When a public school sponsors an event such as an assembly, the school is legally responsible for the message presented; hence the courts have repeatedly held that school activities and events must not be used as opportunities for school employees, students, or outsiders to proselytize or to distribute religious messages to students. *See Santa Fe*, 530 U.S. at 302-03 (striking down student-led prayers at athletic events where prayers were authorized by school policy); *Lee*, 505 U.S. at 587-90 (holding unconstitutional school's selection and invitation of rabbi to deliver prayer at graduation); *McCollum v. Bd. of Educ.*, 333 U.S. 203, 209-12 (1948) (striking down religious classes taught in public school by private-school teachers); *Roark v. South Iron R-1 Sch. Dist.*, 573 F.3d 556, 560-61 (8th Cir. 2009) (prohibiting Bible distributions in public schools); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983-85 (9th Cir. 2003) (holding that school could not constitutionally allow student to give proselytizing religious speech at graduation); *Nartowicz v. Clayton Cnty. Sch. Dist.*, 736 F.2d 646, 649-50 (11th Cir. 1984) (prohibiting school from allowing churches to announce church-sponsored activities over school public-address system).

We understand that the school has claimed that this event was held at the behest of a student member of the FCA. However, after polling our complainants—who are parents in the district—most do not recall student clubs regularly meeting during COMPASS, and none can ever recall a student group being allowed to commission an assembly. It is a constitutional violation for the government to provide special services or treatment for religious groups that it does not provide to other groups. *See, e.g.*, *Bd. of Educ. v. Grumet*, 512 U.S. 687, 702, 705 (1994) (invalidating creation of school district that matched boundary of religious enclave, partly because religious group received "the benefit of a special franchise"); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 14-17 (1989) (invalidating tax exemption granted to religious periodicals but not to comparable secular periodicals); *Foremaster v. City of St. George*, 882 F.2d 1485, 1489 (10th Cir. 1989) (invalidating electricity subsidy to Church of Latter Day Saints, in part because the city "gave no other church such a subsidy" and thus "conveyed a message of City support for the LDS faith"); "); *Wirtz v. City of South Bend*, 838 F. Supp. 2d 835, 841-42 (N.D. Ind. 2011) (city enjoined from selling property to parochial school, even though sale would have been at appraised value, because bidding criteria favored parochial school). So even if this was an FCA meeting, it still violated the Establishment Clause because a religious club was given a privilege that is not afforded to other student-run clubs.

What is more, teacher and faculty participation in religious worship activities with students during the school day, whether during an official school activity or a student-run club meeting, is flagrantly unconstitutional. *School Dist. v. Schempp*, 374 U.S. 203, 222-26 (1963) (school officials violated Establishment Clause by leading students in recitation of Bible verses and the Lord's Prayer at beginning of school day); *Engel v. Vitale*, 370 U.S. 421, 430-33 (1962) (school officials forbidden to lead students in classroom prayer at beginning of school day); *Doe v. Duncanville*

Indep. Sch. Dist., 70 F.3d 402, 406 (5th Cir. 1995) (basketball coach prohibited from praying with students at games and practices); *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 264-65, 276-77, 281-82, 290 (3d Cir. 2011) (school board prohibited from opening meeting with prayers, in part because students were often present); *Borden v. School Dist.*, 523 F.3d 153, 175-180 (3d Cir. 2008) (football coach violated Establishment Clause by participating in student-led prayers); *Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1493 (8th Cir. 1988) (public-school band teacher forbidden to lead students in prayer before practices or rehearsals). Public school employees must not participate in religious activities with students during school activities. That was done here, in plain violation of constitutional prohibitions.

And, finally, coercion of students into attending a religious meeting is also a flagrant violation of those students' rights. The Establishment Clause prohibits government from "coerc[ing] anyone to support or participate in religion or its exercise." *Lee*, 505 U.S. at 587. Students were taken to a religious worship service against their will and forced to stay there and participate. There can be no clearer example of unconstitutional coercion to participate in the exercise of religion.

Please ensure that (a) no future proselytizing assemblies are held during the school day, (b) that students are never again coerced into religious activities, (c) that student religious clubs are not given special treatment over other student-run clubs, and (d) that teachers do not participate in religious activities with students during school activities, including at student club meetings. We would appreciate a response to this letter within thirty days that advises us how you plan to proceed. If you have any questions, you may contact Ian Smith at (202) 466-3234 or ismith@au.org.

Sincerely,

Ian Smith, Staff Attorney