LEGAL MEMORANDUM

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To: Robert P. Grimesey, Jr., Ed.D., Superintendent
From: Neal A. Ramee, Board Attorney
Date: March 25, 2015
Re: School Employee Participation in Prayers and Other Religious Activities

This memorandum summarizes the law governing participation by teachers, coaches, and other school officials in prayers or other religious activities at school and at on and off-campus events such as school assemblies, athletic events, awards ceremonies, and the like. In preparing this memorandum, we consulted state and federal statutes, leading opinions of the United States Supreme Court and lower federal courts, and the United States Department of Education's United States Department of Education's 2003 Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools. While the application of First Amendment rules to specific facts can be nuanced and complex, the following general principles emerge from these materials and should be followed by all employees of the Moore County Schools:

FIRST GENERAL RULE – NEUTRALITY

The Supreme Court has said that religious belief is "too precious" to be dictated by the government and that prayer and other religious matters are "committed to the private sphere."[1] Thus, the First Amendment demands strict religious "neutrality" on the part of public school systems and their employees.[2] Whenever they are acting in their official capacities, either on or off campus, school employees should neither favor nor disfavor religion. Particularly when interacting with students, school employees should remain strictly neutral with regard to prayer and other religious issues, recognizing that these are "private" matters best taught at home.

SECOND GENERAL RULE – NO COERCION

The Supreme Court has also explained that school systems and their employees may not "coerce anyone to support or participate in religion or its exercise."[3] In one case, the Supreme Court held that a school violated the First Amendment by allowing a student-led and student-initiated prayer over the school's public address system at a high school football game. The Court reasoned that

[1] *Lee v. Weisman*, 505 U.S. 577 (1992).
[2] *School Dist. of Abington v. Schempp*, 374 U.S. 203, 216 (1963).
[3] *Lee v. Weisman*, 505 U.S. 577 (1992).

students opposed to the prayer would feel "immense social pressure" to bow their heads or otherwise join the exercise. By officially endorsing a student-led prayer, the school had unconstitutionally "coerced" other students to participate.[4]

THIRD GENERAL RULE – NO ENDORSEMENT

The Supreme Court has also held that it is unconstitutional for public employees acting in their official capacities to "endorse" religious activities. The Court reasoned that government endorsement "sends a message to nonadherents that they are outsiders, not full members of the political community."[5] To determine whether there is an endorsement, courts ask whether a reasonable person, familiar with the relevant history, would believe that government employees have promoted religion. For example, one federal court found an unconstitutional endorsement based on an athletic coach's long history of participating in and facilitating prayers before team meals and games. Over the years, the coach had selected students to say prayers, led three prayers himself, and kneeled and bowed his head in solidarity while students initiated prayers.[6]

FOURTH GENERAL RULE – NO WAIVER OF RIGHTS AS PRIVATE INDIVIDUALS

Finally, courts have recognized that when school employees are acting in a purely *personal* capacity in a way that *could not reasonably be attributed to the school*, they have the same religious liberties as any citizen. For example, the United States Department of Education has said that school employees do not violate the Constitution by attending privately-sponsored religious baccalaureate services in their personal, rather than official, capacities.[7]

DO'S AND DON'TS

In light of these principles, school employees **may** do any of the following without violating constitutional rules:

- Privately pray, read scripture, or engage in other non-disruptive religious practice during "down time" in the work day to the same extent they may engage in comparable non-religious activities (not while working with students or in a manner that disrupts workplace harmony or the educational environment).
- Meet with other employees for prayer, Bible study, or other religious activities during lunch or before or after school to the same extent they may engage in comparable non-religious activities (not while working with students or in a manner that disrupts workplace harmony or the educational environment).
- Allow students to pray, read scripture, or otherwise exercise their religions in non-disruptive ways during lunch, recess, or before or after the school day to the same extent they may engage in comparable non-religious activities.

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[4] *Santa Fe Indep. School Dist. v. Doe*, 530 U.S. 290 (2000).
[5] *County of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573 (1989).
[6] *Borden v. School Dist. of the Township of East Brunswick*, 523 F.3d 153 (3d Cir. 2008).
[7] *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools* (February 7, 2003).

- Attend meetings of student-initiated, non-curricular religious clubs (such as the Fellowship of Christian Athletes) in a "non-participatory" capacity for "custodial oversight" only.[8]
- Wear crosses, Stars of David, or other religiously-themed jewelry to work, so long as the items are non-disruptive and consistent with applicable dress codes.
- Teach about the role of religion in history, art, culture, or politics as part of the *prescribed curriculum* (this does *not* include sharing personal views or injecting content that is not part of the official curriculum).
- Adopt a respectful posture if students choose to pray entirely of their own accord.
- Join students and parents in prayer, church activities, or other religious exercises *outside of school* and while acting in a *purely personal capacity* (not during work hours, at school-sponsored events or activities, or as a teacher, coach, or other representative of the school).

School employees may **not** do any of the following during work hours, at school-sponsored events or activities, or when acting in their capacities as teachers, coaches, or other representatives of the school:

- Proselytize to students or pressure them to participate in any religious exercise.
- Lead, join, or otherwise participate in prayers or other religious activities with students.
- Sponsor, organize, or encourage religious events or activities involving students, including prayer, Bible study, or church attendance.
- Criticize or denigrate religion to students.
- Post religious materials in classrooms, locker rooms, or other school premises accessed by students.
- Distribute religious materials to students or parents, including the use of religious "taglines" on school system email accounts.
- Punish or stigmatize students for their faith or lack of faith.
- Force religious views on others, including adults, in a way that disrupts workplace harmony or the educational environment.
- Take any actions intended to influence students in their religious convictions or actions.

To summarize, courts have recognized that religion is a private matter in which the government should remain strictly neutral. Courts have also recognized that school children are impressionable and easily influenced by adults in positions of authority. Knowing that students come from a variety of backgrounds and belief systems, public schools and their employees should exercise great care to avoid promoting or denigrating religion, non-religion, or any faith particular tradition. Following the "do's and don'ts" outlined above will help avoid conflicts and litigation and promote compliance with these important legal principles.

[8] This requirement comes from the federal Equal Access Act, 20 U.S.C. 4071.

PRAYER AT SCHOOL – GUIDANCE FOR STAFF INTERVIEWS

1. **INTRODUCTION:** Last year, the school system received a formal complaint from an attorney for an advocacy group about a prayer at a Moore County Schools athletic event. Dr. Grimesey asked the school system attorneys for legal guidance, and they provided a memorandum that was distributed to schools. Since that time, there have been ongoing reports of employees participating in prayers with students at athletic events and possibly other school events as well. I need to gather information about whether and when this is occurring to report back to Dr. Porter so that he, Dr. Grimesey, and the school system's attorneys can ensure that the school system is not violating laws regarding the separation of church and state. It is important that I get accurate information so that the attorneys can give appropriate advice to Dr. Porter and Dr. Grimesey.

2. **PERSONS TO INTERVIEW:**

    a. Principals (interviewed by Dr. Porter)
    b. Assistant Principals (interviewed by principal)
    c. Athletic Director (interviewed by principal)
    d. All athletic coaches (interviewed by principal)
    e. All assistant athletic coaches (interviewed by principal)

3. **GENERAL INTERVIEW POINTERS:**

    a. Emphasize importance of accurate and honest information.
    b. Emphasize that the primary purpose of this review is to get accurate information to the superintendent and board attorney so that they can ensure that staff and the school system are not at legal risk, that the school system is complying with constitutional requirements and that individual employees and the district as a whole are not exposed to liability.
    c. Emphasize that leadership respects the rights of all employees to have and express their own religious beliefs when acting in a purely personal capacity – the legal limitations come into play only when staff are promoting or endorsing religion while interacting with students or otherwise acting in their capacity as school employees. Okay to reassure staff that school system attorneys have explained that schools are not entirely "religion free zones," but there are legal limits that must be respected.
    d. It is fine to hand out a copy of Neal Ramee's 3/25/15 memo to Dr. Grimesey to any person who expresses concerns or confusion about where to draw the legal lines.
    e. *Please get full, complete, and detailed answers to questions. It may be necessary to ask follow up questions. For example, if the question is "Describe the prayer," an answer like "Just a regular prayer" is not helpful. It could be the person does not remember, but please follow up and get as much detail as possible. Similarly, if the question is "which students participated in the prayer," an answer like "some of the football players" is not detailed or complete. Press for as much detail as possible.*
    f. *If multiple incidents or prayers are discussed, please get details about <u>each one</u>.*

4. **GENERAL QUESTIONS:**

   a. **Have you ever participated in or seen any prayers at any MCS athletic practices, games, or other events?**

      i. When did this occur? (Please be as specific as possible.)
      ii. How many times did this occur?
      iii. For how long did this occur (what time span)?
      iv. Where did this occur? (Please be as specific as possible).
      v. Who was there? (Please be as specific as possible).
      vi. Which students participated in the prayer? (Please be as specific as possible).
      vii. Which employees participated in the prayer? (Please be as specific as possible).
      viii. Who led the prayer?
      ix. What was said before and after the prayer? (Please be as specific as possible).
      x. What was the content of the prayer – i.e., what exactly was said?
      xi. Describe the prayer with as much detail as possible. (Was it a Christian prayer? Did people bow their heads or kneel? Did one person recite the prayer? Did students say "amen"? Etc.)
      xii. Who decided what the content of the prayer would be?
      xiii. Who planned or organized the prayer?
      xiv. Who else was involved in planning or organizing the prayer?
      xv. Were students required to participate?
      xvi. Did any students or parents express concerns or choose not to participate?
      xvii. Were there any oral communications with parents or students about the prayer? (Describe with as much detail as possible)
      xviii. Were there any written communications with parents or students about the prayer? (e.g., emails, flyers, notes sent home with students)? If so, please provide copies.

   b. **Have you ever participated in or seen a prayer at any MCS graduation or promotion ceremony?**

      i. When did this occur? (Please be as specific as possible.)
      ii. How many times did this occur?
      iii. For how long did this occur (what time span)?
      iv. Where did this occur? (Please be as specific as possible).
      v. Who was there? (Please be as specific as possible).
      vi. Which students participated in the prayer? (Please be as specific as possible).
      vii. Which employees participated in the prayer? (Please be as specific as possible).
      viii. Who led the prayer?
      ix. What was said before and after the prayer? (Please be as specific as possible).
      x. What was the content of the prayer – i.e., what exactly was said?
      xi. Describe the prayer with as much detail as possible. (Was it a Christian prayer? Did people bow their heads or kneel? Did one person recite the prayer? Did students say "amen"? Etc.)
      xii. Who decided what the content of the prayer would be?
      xiii. Who planned or organized the prayer?
      xiv. Who else was involved in planning or organizing the prayer?

xv. Were students required to participate?
xvi. Did any students or parents express concerns or choose not to participate?
xvii. Were there any oral communications with parents or students about the prayer?
xviii. Were there any written communications with parents or students about the prayer? (e.g., emails, flyers, notes sent home with students)? If so, please provide copies.

c. Are you aware of MCS employees praying with students in any other contexts during school hours or at any school-sponsored events?

i. When did this occur? (Please be as specific as possible.)
ii. How many times did this occur?
iii. For how long did this occur (time span)?
iv. Where did this occur? (Please be as specific as possible).
v. Who was there? (Please be as specific as possible).
vi. Which students participated in the prayer? (Please be as specific as possible).
vii. Which employees participated in the prayer? (Please be as specific as possible).
viii. Who led the prayer?
ix. What was said before and after the prayer? (Please be as specific as possible).
x. What was the content of the prayer – i.e., what exactly was said?
xi. Describe the prayer with as much detail as possible. (Was it a Christian prayer? Did people bow their heads or kneel? Did one person recite the prayer? Did students say "amen"? Etc.)
xii. Who decided what the content of the prayer would be?
xiii. Who planned or organized the prayer?
xiv. Who else was involved in planning or organizing the prayer?
xv. Were students required to participate?
xvi. Did any students or parents express concerns or choose not to participate?
xvii. Were there any oral communications with parents or students about the prayer?
xviii. Were there any written communications with parents or students about the prayer? (e.g., emails, flyers, notes sent home with students)? If so, please provide copies.