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May 16, 2017

Equal Employment Opportunity Commission  
Boston Area Office  
John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203

**RE: Charge of Discrimination Against the Augusta School Department**

To Whom It May Concern:

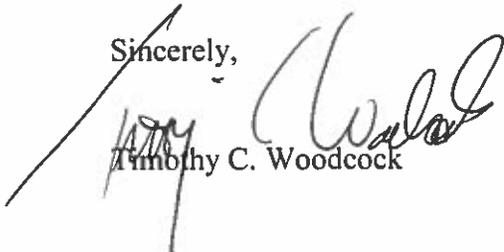
The undersigned counsel and Adria Y. LaRose, Esq., both of the law firm Eaton Peabody, and First Liberty Institute represent Toni Richardson. Please refer all future communications to me.

Enclosed please find the necessary documentation to file a formal charge of religious discrimination and retaliation against the Augusta School Department. We have enclosed the EEOC Intake Questionnaire, a statement, and an additional supplement to the EEOC Questionnaire. We trust the same will be sufficient for the EEOC to launch its immediate investigation into the matter alleged. We also request that the charge be filed with the Maine Human Rights Commission.

Additionally, we have also enclosed the agreement between the parties to toll the deadline to file the EEOC charge until May 17, 2017.

Please let me know if you have any questions.

Sincerely,



Timothy C. Woodcock

Toni Richardson  
[REDACTED]

Equal Employment Opportunity Commission  
Boston Area Office  
John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203

May 16, 2017

**Re: Religious Discrimination Charge**

I am writing to file a charge of religious discrimination and retaliation against my employer, the Augusta School Department in Augusta, Maine. After I made several verbal reports about a co-worker, my employer started an HR investigation. Instead of reassuring me that the school will stop the co-worker who had intimidated me and was creating a hostile environment for me, the director of our program, [REDACTED] called me into a meeting and interrogated me about my religious beliefs. She reprimanded me for “identifying” myself as a Christian to other employees and for making simple faith-based statements at work, such as “That’s a blessing” or “I will keep you in my prayers.” She ordered me to never make any faith-based statement while on school grounds, even in private conversations with other employees. The next day, I received a written memorandum threatening additional discipline or termination if I “reference [my] spiritual or religious beliefs” or “use phrases that integrate public and private belief systems when in the public schools.” In response to my reports, the school took away my private free speech rights, discriminating against me because of my religious beliefs.

**My Employment at Cony High School**

I am a special educational technician at Cony High School, a school within the Augusta School Department in Maine. I work alongside other members of our team, as a Functional Skills Educational Technician, to serve special needs students. I assist and encourage students during school hours who have cognitive and emotional disabilities. Many may not be able to live independently at any point in their lives. Through our program, we work to help them develop and hone their functional living skills. It is a difficult job, but I greatly enjoy working with these students.

Before coming to Cony High School, I was working as an educational technician for Child Development Services in a preschool classroom at Webster School Headstart, and then at Gilbert Elementary School. I previously worked in the field of mental health for approximately 5 years.

**My Religious Faith**

My Christian faith is central to my life and identity. I attend [REDACTED] Church in Augusta, where I serve in our monthly nursing home ministry as well as our monthly community dinners for the less fortunate in our community. Because my faith is an integral part of who I am, my religious beliefs influence how I see the world and sometimes affect the words and phrases I use as a part of casual conversations with friends and colleagues. I pray often for the people I care about and sincerely believe in the power of prayer.

**Beginning Work at Cony High School**

My first day as an Education Tech at Cony High School was August 30, 2016. Our team consisted of two other Educational Technicians, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] and it was led by Special Education Teacher [REDACTED] [REDACTED]

It was also my co-worker [REDACTED] [REDACTED] first day in the special education program at Coney High School. Mr. [REDACTED] had transferred into this position from the English as a Second Language (ESL) program, and it was clear that he was having trouble adjusting to the specialized demands of being an Educational Technician in the Functional Skills classroom.

From day one, Mr. [REDACTED] made the rest of the classroom team feel uncomfortable. He would over-share personal details and his mood would swing quite drastically. One moment everything would be great and he would appear motivated to serve our students, and then the next he would complain and agonize over how difficult the job was. Starting around his third day on the job, he started to wonder out loud whether he might have applied for the wrong job. He would complain about how disorganized the Functional Skills program was, saying, "I can't function this way."

I tried to encourage him to hang in there. I tried to reassure him that the first few weeks of every school year are often the craziest, especially in the Functional Skills classroom. The kids are just getting used to the classroom, the rules, the bell system, and so on. After the first few weeks, the chaos dies down. He just said again, "I wonder if it's too late to get my old job back."

I remember trying to encourage him one time during the first week of school. We were alone in the classroom in the afternoon after all the students had left, and we were winding down for the day. I told him that I thought that the students could use a good male role model because many of them were from fatherless homes. I also knew he was a member of my church because I had worked alongside him at our church's community dinners and at the nursing home ministry. So, as we were leaving for the day, I told him that I would pray for him. He said, "Thanks. That means a lot to me."

When I came to work early the next morning, before any of our other co-workers or students had arrived. He came up to me as we were again alone in the classroom preparing for the day to begin and said, "I want to thank you for the discussion we had yesterday. You really encouraged me and helped me see my place on the team." I told him that I was glad and that I did pray for him yesterday, as I said I would. It was a friendly exchange, and I didn't think much of it at the time.

### **Co-Worker's Erratic Behavior**

Then, over a short period of time, his behavior became more erratic and his mood swings more pronounced. Our boss, Special Education Teacher [REDACTED] [REDACTED] noticed it too. She asked me, "Is [REDACTED] okay?"

Ms. [REDACTED] called a staff meeting. During the meeting, we discussed how we have to help students by calling attention to their hygiene issues. Mr. [REDACTED] mentioned that he didn't know if he would be comfortable doing that. I tried to identify with him, telling him that I used to struggle with that too. I shared something that another teacher had shared with me: "It's important to let the students know about any hygiene problems because we care about our students. The students will probably learn one way or another that they need to work on hygiene issues. And it's better that we let them know in a kind, professional way, rather than them hearing it on the school yard from a kid in a not-so-nice way." Then, Mr. [REDACTED] looked right at me during the staff meeting and said, "Don't talk down to me. You're being condescending." It didn't seem like a joke. It was shocking and uncomfortable for everyone. After the meeting, I asked Ms. [REDACTED] and Ms. [REDACTED] what happened there. They said they had no idea.

Still, I wanted to make amends if I did something to offend him. So, I texted him after work to apologize and figure out what happened. He responded, "All's good." I asked a clarifying question, "Do you mean I forgive you or you were joking?" In response, he sent me a lengthy text explaining how he viewed the situation. But it was unclear and difficult to understand. I was unable to understand exactly what he was saying, but he seemed like he was trying to clarify some of the problems he had with me. I was confused by the text. So, I sent Ms. [REDACTED] the text, and then gave her a call to talk about it. She said, "I think we need to talk about this. We'll do it tomorrow." She seemed concerned about Mr. [REDACTED] behavior toward me.

The next day, Ms. [REDACTED] called a meeting with Mr. [REDACTED] and me, and she asked how we were all doing. Mr. [REDACTED] started going on and on about how stressed he is, and how he can't sleep, and how he thinks that the job is not a good fit for him. He pointed at me and said, "I'm not like her. She's running around doing this, doing that. It's very difficult to work here." Then, during the meeting in front of my boss, he looked directly at me and said, "I need to let you know: You suck the oxygen out of the room when you walk into it." I looked at my boss for help. She didn't do anything. So, I said politely, "This makes me sad. Is there anything I can do to change?" He said, matter-of-factly, "There's nothing you can do to change. It's who you are. And I need to let you know that when you said you'd pray for me. That really upset me." Ms. [REDACTED] is a new supervisor and didn't seem to know what to do, so she just ended the meeting, without reprimanding him or coming to my aid. She simply said something like, "We're a team and we need to get along."

I was disappointed that the comment he made to me was not addressed. It was tough for me to bear the insults. So after the meeting, privately to my supervisor Ms. [REDACTED] I calmly explained that if things kept going this way, I might have to find a new job. Ms. [REDACTED] said, "I'm not sure I can continue like this either." She commented, "I think he's just feeling inadequate and jealous and comparing himself to you."

The next few days, Mr. [REDACTED] would ignore me and bolt home as soon as possible when the day ended. Then he would get upset if my co-workers and I discussed things as we were winding down for the day after the students had left and he had left. He was getting more and more hostile toward me.

### **Co-Worker's Explosion in the Classroom**

On or around September 14, 2016, Mr. [REDACTED] exploded at me in classroom in front of our students.

The afternoon before, after Mr. [REDACTED] had left, Ms. [REDACTED] Ms. [REDACTED] and I were talking. Ms. [REDACTED] said that there were some things she felt needed to be addressed with the class the next day, mostly related to the operation of the classroom. In particular, she wanted to talk about safety and hygiene issues.

The next day, I was delayed in another classroom and, when I came back into our classroom, Ms. [REDACTED] was just wrapping up her comments to the students. She asked whether I had anything I wanted to address. Not knowing what already had been discussed, but wanting to make sure we had discussed the concerns Ms. [REDACTED] mentioned the day before, I said, "Ms. [REDACTED] I noticed that the window over my desk is open. Why is that?" She took the cue to discuss the fact that the classroom did smell because of some students' hygiene issues. When Ms. [REDACTED] was talking, Mr. [REDACTED] began to murmur and mumble things to himself. He was saying: "I don't agree with this. I don't feel comfortable." He kept getting louder. It was strange. Ms. [REDACTED] answered his statements but that did nothing to deescalate his behavior. She abruptly ended the discussion that she had been giving and left the room, stating that she was going to a meeting.

Then, after Ms. [REDACTED] left, he came right over to where I was standing, leaned over me and put his finger in my face, speaking very loudly, "I can't believe you. You are rude. You are wrong!" This was all in front of the students. I tried to keep my calm in order to avoid upsetting the students. It was important for the kids to think that I was okay. Ms. [REDACTED] saw what happened and began texting Ms. [REDACTED] telling her to come back immediately. Then Mr. [REDACTED] threw his arms up in the air and yelled in exasperation, "Maybe I'm the one who stinks! Maybe I should go put on deodorant!" He left and went into the student bathroom in the class.

Ms. [REDACTED] had gone to get assistance from her boss, Assistant Special Education Director [REDACTED] [REDACTED]. A team meeting was set up for the end of the school day to address the incident.

Ms. [REDACTED] called a team meeting including Ms. [REDACTED] [REDACTED] [REDACTED] [REDACTED] and myself. She advised us that if we had a problem, we should deal with it, but not in the

classroom and never in front of the students. Mr. [REDACTED] would chime in over and over, agreeing wholeheartedly with everything that Ms. [REDACTED] said. The specifics of what actually happened never came up. I felt so overwhelmed that I couldn't say anything, and the others didn't come to my defense.

### **Report Starting an HR Investigation**

When I left the meeting, I started crying and thought about quitting. I left the building from the side staff entrance and drove to the front of the building and sat for a bit. I entered the main entrance to the school and went to Ms. [REDACTED] office. She was meeting with my boss and motioned for me to come in. I apologized for staying quiet during the meeting. Ms. [REDACTED] said, "In that meeting, my heart broke for you. I could tell you were visibly upset." She also told me, "I was just having [REDACTED] call you to find out if you were okay." I told her, "No, I'm not okay."

At that time, I reported to Ms. [REDACTED] all the comments Mr. [REDACTED] had made to me and all his erratic behavior over the past weeks. I told her everything, and that I might have to quit if things didn't change. When I was done, she said, "I don't think this is a personality problem anymore. I'll call Special Education Director [REDACTED] [REDACTED] I'm concerned that this might be an HR situation. I think this might be a harassment situation." I told her that I just wanted the chaos to stop. She said, "I want to let you know that I'm concerned for your safety. I don't want you in the same room alone together anymore. We need to get this taken care of." She arranged to have our schedules switched so Mr. [REDACTED] and I no longer had the same schedule that would put us alone in the classroom together.<sup>1</sup> She also contacted the Director of Special Education, [REDACTED] [REDACTED] starting an HR investigation.

The next morning, Mr. [REDACTED] wrote an email to our team apologizing for his behavior the day before and for calling me rude. He wrote that he acted on impulse in reaction to something that he thought I was doing wrong.<sup>2</sup> In the morning, he came up to me, coming uncomfortably close. He asked Ms. [REDACTED] and me, "Did you get my email?" I hadn't checked my email yet. Ms. [REDACTED] asked him, "Do you want to go in my office and talk." He said, "No, I just want to make sure you got my email." He left abruptly. All of this took place with students in the classroom.

### **Retaliation and Religious Discrimination**

On September 16, 2016, I met with Ms. [REDACTED] and Ms. [REDACTED]. For the first portion of the meeting, I explained everything that had happened. I told them that I didn't feel comfortable working with Mr. [REDACTED]. I told them that he was confrontational and aggressive, particularly toward me. I told them about his explosion in the classroom and how he would often get upset with our programming procedures. The way he reacted when things weren't going his way caused me so much stress and discomfort that I was thinking about quitting. Ms. [REDACTED] didn't make many comments except to write down what I was saying and occasionally ask fact questions. Then, at the end of the meeting, she shifted to a sharp tone.

Ms. [REDACTED] started grilling me about *my* religion.

First, she asked, "Have you ever identified yourself as a Christian to anybody on Cony grounds?" I told her that I knew some people from outside of Cony and that I have identified myself to some of them as a Christian. She continued, in a stern tone, "Have you ever made statements that you would pray for people? Or that you have prayed for people?" I told her that I know some people from different contexts than school and that we attend different places together and do different activities together and, since we are familiar with each other inside and outside of school, I had, in fact, said that I would pray for people. Then, she asked, "Have you ever made a faith-based statement?" I was unsure what she meant, and

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<sup>1</sup> Mr. [REDACTED] later transferred to the English as a Second Language Program.

<sup>2</sup> Full text of the email: "I sincerely want to apologize to all of you but especially Toni for calling her rude yesterday. I reacted on impulse and without thinking in reaction to something I perceived as very harmful to our students. I know this does not undo my actions but want you to know I honestly regret it and will keep my opinions to myself in the future. I have a meeting with [REDACTED] first thing this morning and will see you later in class. Thank you for putting up with me and I hope we can move past this as I truly love these kids and working with them."

astonished that she asked, so I asked her for clarification. She explained that she meant any statement having anything to do with religious belief, even statements like “That’s a blessing.” I told her that I had sometimes said that.

Finally, she said, “Are you aware of the First Amendment?” She continued, “I want to let you know that you’re in violation of that. Even if you know someone from your church, you can’t make statements telling people that you would pray for them on school grounds.” She informed me that she had reported this to Mr. [REDACTED] the school superintendent of the Augusta School Department. The meeting ended with the distinct impression that, with the school superintendent involved, this was a serious situation.

From that point on, I have self-censored my speech in private conversations, stripping it of anything that sounds religious. I used to say a lot of things to my colleagues during casual, private conversations. For instance, I might say, “Praise the Lord” when something good is happening or “God love her” when I’m frustrated with the behavior of my children. But now, things are different. A few co-workers have told me that I’m not as talkative or bubbly anymore, asking me if something was going on. At times, I have even consciously avoided wearing jewelry with crosses on it for fear of violating the directives of the coaching memorandum and facing further discipline or dismissal.

I couldn’t believe that in response to my HR report about Mr. [REDACTED] hostile behavior toward me, I was interrogated about my religious identity and ordered to censor any phrase that could have any trace of religious content in it, even in private conversations between co-workers on my own time, and that I was ordered to hide any aspect of my Christian identity from my speech.

The Augusta School Department expressed such extreme hostility toward religion that my mention of prayer appears to have been investigated more strongly than my complaints about Mr. [REDACTED] hostility toward me in front of our special needs students. He loses it in the classroom after roughly 12 school days of being erratic and they are more concerned that I told someone who went to my church that I’d pray for him. It is clearly religious discrimination for the school to take away my First Amendment right to hold private conversations about my faith with my colleagues—especially those with whom I attend church.

As far as I know, they never reprimanded Mr. [REDACTED] for his behavior.

### **Coaching Memorandum**

On or around the next school day, I received an official, written “coaching memorandum” from Ms. [REDACTED] reprimanding me and threatening further disciplinary action if it was not obeyed.<sup>3</sup> See Exhibit A. The memorandum, dated September 19, 2016, recited the following charge against me:

An investigation of your concerns indicated that you may have imposed some strong religious/spiritual belief system towards Mr. [REDACTED] Stating “I will pray for you”, and “you were in my prayers” is not acceptable – even if that other person attends the same church as you.

In the case of, *Everson v. Board of Education*, the Supreme Court applied the “establishment clause” of the First Amendment to the states. In the context of the “separation of church and state,” this case prohibits public school-sponsored religious expression. Therefore, in the future, it is imperative you do not use phrases that integrate public and private belief systems when in the public schools.

Going forward, I expect when you disagree with a staff member, you will address it in a discrete and professional manner with no reference to your spiritual or religious beliefs.

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<sup>3</sup> The “coaching memorandum” bears the name of “Cony School” and the seal of “Cony High School.” Cony High School is one of the Cony schools operated and controlled by the Augusta School Department.

The memorandum concluded by reciting that the memorandum is “not considered disciplinary in nature” and “will not be included in your personnel file.” However, the next sentence continued, “If you have any additional interactions that are deemed unprofessional by administration, you will be subject to disciplinary action and/or possibly dismissal.” Thus, the memorandum serves as a predicate for “dismissal” in the event that I say something the administration believes “impose[s] some strong religious/spiritual belief systems” on other employees. Additionally, the memorandum serves as a predicate for “disciplinary action” if I engage in any type of action deemed “unprofessional” in the future, regardless of whether it is similar to what happened here.

Moreover, Ms. [REDACTED] verbal order and the written memorandum both changed the terms and conditions of my employment by violating my First Amendment rights and ordering me to censor my private religious speech under threat of dismissal.

I now fear that I will be dismissed or subject to further discipline merely for making a simple gesture such as offering to pray for someone. I fear that the administration is hostile to even the most well-intentioned, casual mentions of religious faith, and I am worried that I will be discriminated against again in the future for similar expressions of my religious beliefs.

#### **The Coaching Memorandum Was Unlawful Under the First Amendment of the U.S. Constitution and Title VII of the Civil Rights Act of 1964**

My comments to Mr. [REDACTED] were simple expressions of encouragement that I hoped that he would overcome the challenges he was facing and that he had my spiritual and moral support. Because I am a devoted Christian, I chose to place my sentiments in the context of my faith, and convey them in a private conversation with another adult from my church. Even though I merely meant to wish Mr. [REDACTED] well and voiced my hope that the challenges he faced would dissipate, the Augusta School Department admonished me for not expressing these sentiments in purely secular terms. The school reprimanded me because my words, spoken privately to a colleague, involved religious content. It did not matter that I sincerely believed in the religious foundation for my words or their efficacy as religious concepts. In short, reprimanding me for my simple expression that I would pray for a colleague was unlawful viewpoint discrimination.

It is unlawful for Augusta Public Schools to censor the private religious speech of its employees. The Supreme Court of the United States made clear that viewpoint discrimination is strictly prohibited. *See Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 811 (1985); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983). Augusta Public Schools violates the law when it suppresses or excludes private speech simply because the speech expresses a religious viewpoint. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981). The Supreme Court of the United States has characterized viewpoint discrimination as “an egregious form of content discrimination.” *Rosenberger*, 515 U.S. at 829; *see also id.* at 828, 829; *Cornelius*, 473 U.S. at 806; *Perry Educ. Ass’n*, 460 U.S. at 46. Where the religious speech of its employees are concerned, the Augusta Public Schools, like all Government actors, are required to remain neutral. *See Rosenberger*, 515 U.S. at 839. When set against these constitutionally-derived standards, the coaching memorandum manifested the overt hostility of the Augusta public schools to my expression of a viewpoint based in my religion and faith.

The circumstances surrounding the coaching memorandum and its wording reveal the Augusta public school’s hostility to its employees’ use of words containing religious sentiment. First, it is apparent that this conversation involved one adult employee speaking to another adult employee.

Second, this was a private conversation. There is nothing unlawful about one employee speaking privately to another employee about religion. Indeed, the First Amendment protects such conversations from government censorship and Title VII holds liable employers like the Augusta School Department for discriminating against employees having such conversations.

Third, the coaching memorandum's assertion that my statements to Mr. [REDACTED] who I knew to be a fellow parishioner at my church, might have amounted to the "imposition" of my "strong religious/spiritual belief system towards Mr. [REDACTED]" is a gross overstatement that even the memorandum itself cannot sustain.

In its coaching memorandum, the Augusta School Department has explicitly targeted my religious speech; it has labeled my views as "not acceptable;" it has prohibited me from, in the future, making "reference to [my] spiritual or religious beliefs." The coaching memorandum made plain that school officials were not merely concerned about the subject matter of my statements, but, rather, my religious viewpoint. "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger*, 515 U.S. at 829. The First Amendment "does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 248 (1990) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)).

In addition to being bound by the First Amendment requirements described above, the Augusta Public Schools are also subject to Title VII of the Civil Rights Act of 1964. Title VII requires Augusta Public Schools to respect and accommodate the religious beliefs of its employees. *See generally* 42 U.S.C. § 2000e, *et seq.* Verbally reprimanding and ordering a school employee to refrain, during a private conversation, from telling a colleague who attends my same church that I am praying for him is an unlawful employment practice. *See* 42 U.S.C. § 2000e-2(a). This is particularly so where the coaching memorandum states that it will serve as the predicate for the imposition of "disciplinary action and/or possibly dismissal," if, in the future, I engage in unidentified "additional interactions," presumably of a religious nature, which are "deemed unprofessional by the administration." Thus, I am concerned that lawfully expressing sentiments to a fellow employee with religious content will be held against me at some point in the future. Under Title VII, this is unlawful.

As the Supreme Court has explained, "Title VII does not demand mere neutrality with regard to religious practices-that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not 'to fail or refuse to hire or discharge any individual . . . because of such individual's' 'religious observance and practice.'" *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015) (ellipsis original).

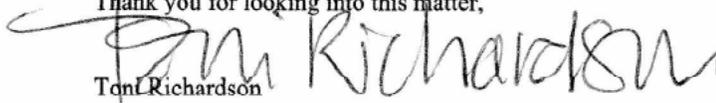
As a Christian, my religious practice is to pray for others-especially those with whom I fellowship at my church. The Augusta School Department could easily provide me with a religious accommodation that would allow me to tell a fellow employee with whom I attend church, during a private conversation away from students, that I am praying for him. Such an accommodation poses no undue hardship upon the Augusta School Department. Failing to even consider such an alternative, or rejecting it altogether, violates Title VII. *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2033-34 (2015).

#### **Conclusion**

In summary, the Augusta School Department has discriminated against me because of my lawful, private religious speech. It has failed to apologize or acknowledge that my offer to pray for a colleague was lawful. It has failed to consider implementing any sort of appropriate religious accommodation. The school retaliated against me for reporting the behavior of a colleague and for exercising my First Amendment rights.

Thank you for looking into this matter,

Tom Richardson



# **EXHIBIT A**



**Cony School**  
60 Pierce Dr.  
Augusta, Maine 04330  
Telephone (207) 626-2460  
Fax (207) 626-2541

Principal  
Assistant Principals  
SPED Director  
Asst. SPED Director

## Memorandum

To: Toni Richardson  
From: [REDACTED], Assistant Special Education Director  
Date: 9/19/16  
Re: Staff Relationships

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This is a coaching memorandum pursuant to your professional responsibilities in the areas of Staff relationships.

On September 15, 2016 I met with you and your teaching team; [REDACTED], Special Education Teacher, [REDACTED], Educational Technician, and [REDACTED], Educational Technician, due to concerns that were expressed by your supervising teacher, Mrs. [REDACTED] and your interactions with Mr. [REDACTED]. During that meeting, I expressed my expectation that you were all a "Team" which needed to work respectfully to the mutual goal of student success.

On September 16, 2016 you met with [REDACTED], Special Education Director and me. You stated that you "did not feel comfortable working with Mr. [REDACTED]", noting that statements he has made in the classroom were "challenging / almost aggressive in the way they were delivered". You cited an instance where "he stood over you, pointed and used an aggressive tone". In regards to Mr. [REDACTED]'s dissatisfaction with programming procedures and the manner in which he expressed his displeasure, you noted that these are areas of stress and discomfort for you.

An investigation of your concerns indicated that you may have imposed some strong religious/spiritual belief system towards Mr. [REDACTED]. Stating, "I will pray for you", and "you were in my prayers" is not acceptable - even if that other person attends the same church as you.

In the case of, Everson v. Board of Education, the Supreme Court applied the "establishment clause" of the First Amendment to the states. In the context of the "separation of church and state," this case prohibits public school-sponsored religious expression. Therefore, in the future, it is imperative you do not use phrases that integrate public and private belief systems when in the public schools.

Going forward, I expect when you disagree with a staff member, you will address it in a discrete and professional manner with no reference to your spiritual or religious beliefs.

This coaching memorandum is not considered disciplinary in nature and will not be included in your personnel file. If you have any additional interactions that are deemed unprofessional by administration, you will be subject to disciplinary action and/or possibly dismissal.

If you have any questions regarding this coaching memo, please do not hesitate to contact me.



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Thank you for using the EEOC Assessment System. The information you gave us indicates that your situation may be covered by the laws we enforce. If you want to file a charge, you can start the process by filling out the Intake Questionnaire, signing it, and either bringing it or mailing it to the EEOC office listed below right away. If you live within 50 miles of the EEOC office listed below, we recommend that you bring the completed questionnaire with you to this office to discuss your situation.

EEOC Boston Area Office  
John F. Kennedy Fed Bldg  
Government Ctr, Room 475  
Boston, MA 02203

If you would like to bring the questionnaire to us in person instead of mailing it to us, please click <http://www.eeoc.gov/field/index.cfm> to find out the office hours of the EEOC office closest to you. If you would like to fax the questionnaire to us, please click <http://www.eeoc.gov/field/index.cfm> to find out the fax number of the office nearest to you.

You should be aware that filing a charge can take up to two hours. If you find that you are having difficulty completing the questionnaire on your own, you may call the number below for assistance.

Please be sure to:

- Answer all questions as completely as possible.
- Include the location where you work(ed) or applied.
- Complete all pages and sign the last page.
- Attach additional pages if you need more space to complete your responses.

You can find out more information about the laws we enforce and our charge-filing procedures on our website at [www.eeoc.gov](http://www.eeoc.gov).

If you want to file a charge about job discrimination, there are time limits to file the charge. In many States that limit is 300 days from the date you knew about the harm or negative job action, but in other States it is 180 days. To protect your rights, it is important that you fill out the questionnaire, sign it, and bring it or send it to us right away.

**Filling out and bringing us or sending us this questionnaire does not mean that you have filed a charge.** This questionnaire will help us look at your situation and figure out if you are covered by the laws we enforce. If you live within 50 miles of the office listed above, we recommend that you bring the completed questionnaire to us to discuss your situation. If you mail the completed questionnaire to us, someone from the EEOC should contact you by mail or by phone within 30 days. If you don't hear from us in 30 days, please call us at **1-800-669-4000**.

Sincerely,

U.S. Equal Employment Opportunity Commission



# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INTAKE QUESTIONNAIRE

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. **Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a." Please Print.**

### 1. Personal Information

Last Name: Richardson First Name: Toni MI: L

Street or Mailing Address: [REDACTED] Apt Or Unit #: \_\_\_\_\_

City: [REDACTED] County: [REDACTED] State: [REDACTED] ZIP: [REDACTED]

Phone Numbers: Home: ( [REDACTED] ) [REDACTED] Work: ( [REDACTED] ) [REDACTED]

Cell: ( \_\_\_\_\_ ) \_\_\_\_\_ Email Address: [REDACTED]

Date of Birth: \_\_\_\_\_ Sex: Male  Female  Do You Have a Disability?  Yes  No

**Please answer each of the next three questions.** i. Are you Hispanic or Latino?  Yes  No

ii. What is your Race? Please choose all that apply.  American Indian or Alaska Native  Asian  White  
 Black or African American  Native Hawaiian or Other Pacific Islander

iii. What is your National Origin (country of origin or ancestry)? \_\_\_\_\_

### Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: Timothy Woodcock, Eaton Peabody Relationship: Attorney

Address: 80 Exchange Street City: Bangor State: ME Zip Code: 04401

Home Phone: ( \_\_\_\_\_ ) \_\_\_\_\_ Other Phone: ( [REDACTED] ) [REDACTED]

### 2. I believe that I was discriminated against by the following organization(s): (Check those that apply)

Employer  Union  Employment Agency  Other (Please Specify) \_\_\_\_\_

**Organization Contact Information** (If the organization is an employer, provide the address where you actually worked. If you work from home, check here  and provide the address of the office to which you reported.) **If more than one employer is involved, attach additional sheets.**

**Organization Name:** Augusta Schools Department (Cony High School)

Address: 40 Pierce Drive, Suite #3 County: Kennebec County

City: Augusta State: ME Zip: 04330 Phone: ( 207 ) 626-2468

Type of Business: School District Job Location if different from Org. Address: Cony High, 60 Pierce Dr., Augusta

Human Resources Director or Owner Name: [REDACTED], HR Admin Assistant Phone: [REDACTED]

**Number of Employees in the Organization at All Locations:** Please Check (✓) One

Fewer Than 15  15 - 100  101 - 200  201 - 500  More than 500

### 3. Your Employment Data (Complete as many items as you can) Are you a Federal Employee? Yes No

Date Hired: 08/30/2016 Job Title At Hire: Functional Skills Educational Technician

Pay Rate When Hired: Approx. [REDACTED] Last or Current Pay Rate: Approx. [REDACTED]

Job Title at Time of Alleged Discrimination: Functional Skills Ed Tech Date Quit/Discharged: N/A

Name and Title of Immediate Supervisor: [REDACTED] [REDACTED] Functional Skills Teacher

If Job Applicant, Date You Applied for Job \_\_\_\_\_ Job Title Applied For \_\_\_\_\_

**4. What is the reason (basis) for your claim of employment discrimination?**

FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

- Race  Sex  Age  Disability  National Origin  Religion  Retaliation  Pregnancy  Color (typically a difference in skin shade within the same race)  Genetic Information; choose which type(s) of genetic information is involved:
- i. genetic testing  ii. family medical history  iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: Christian (Baptist)

If you checked genetic information, how did the employer obtain the genetic information? \_\_\_\_\_

Other reason (basis) for discrimination (Explain). \_\_\_\_\_

**5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.**

(Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)

A) Date: See Attached Action: \_\_\_\_\_

Name and Title of Person(s) Responsible: \_\_\_\_\_

B) Date: See Attached Action: \_\_\_\_\_

Name and Title of Person(s) Responsible: \_\_\_\_\_

**6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.**

See Attached

**7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?**

See Attached

**8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.**

**Of the persons in the same or similar situation as you, who was treated better than you?**

A. Full Name See Attached	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

**Of the persons in the same or similar situation as you, who was treated *worse* than you?**

A. <u>Full Name</u> See Attached	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
-------------------------------------	--	------------------

Description of Treatment

B. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
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Description of Treatment**Of the persons in the same or similar situation as you, who was treated the *same* as you?**

A. <u>Full Name</u> See Attached	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
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Description of Treatment

B. <u>Full Name</u>	<u>Race, sex, age, national origin, religion or disability</u>	<u>Job Title</u>
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Description of Treatment

**Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.**

**9. Please check all that apply:**

- Yes, I have a disability
- I do not have a disability now but I did have one
- No disability but the organization treats me as if I am disabled

**10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything?** (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).

**11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability?**

Yes  No

If "Yes," what medication, medical equipment or other assistance do you use?

**12. Did you ask your employer for any changes or assistance to do your job because of your disability?**

Yes  No

If "YES", when did you ask? \_\_\_\_\_ How did you ask (verbally or in writing)? \_\_\_\_\_

Who did you ask? (Provide full name and job title of person)

Describe the changes or assistance that you asked for:

How did your employer respond to your request?

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)

A. Full Name	Job Title	Address & Phone Number
See Attached		

What do you believe this person will tell us?

B. Full Name	Job Title	Address & Phone Number

What do you believe this person will tell us?

14. Have you filed a charge previously in this matter with EEOC or another agency? Yes  No

15. If you have filed a complaint with another agency, provide name of agency and date of filing:

16. Have you sought help about this situation from a union, an attorney, or any other source? Yes  No

Provide name of organization, name of person you spoke with and date of contact. Results, if any?

I met with attorney Jeremy Dys of First Liberty Institute. As of September 27, 2016, I am represented by First Liberty Institute.

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. If you do not file a charge of discrimination within the time limits, you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.

Box 1  I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.

Box 2  I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name. I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.

*Erin Richardson*

Signature

5-15-17

Today's Date

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Intake Questionnaire (9/20/08).
2. **AUTHORITY.** 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626. 42 U.S.C. 12117(a), 42 USC §2000ff-6.
3. **PRINCIPAL PURPOSE.** The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
4. **ROUTINE USES.** EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION.**  
Providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

Print Form

## Questionnaire Supplemental Information

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### **5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you.**

**Date:** Week of 9/5/2016

**Action:**

During the week of September 5, 2016, I reported to [REDACTED] [REDACTED] my immediate supervisor, a series of comments, text messages, and erratic behavior from my co-worker, [REDACTED] [REDACTED]. After reviewing the information, Ms. [REDACTED] said, "I think we need to talk about this. We'll do it tomorrow." She seemed genuinely concerned about Mr. [REDACTED] behavior toward me and wanted to try to resolve the problem. The next day, Ms. [REDACTED] held the meeting with Mr. [REDACTED] and me. During that meeting, Mr. [REDACTED] made statements to me like, "I need to let you know: You suck the oxygen out of the room when you walk into it" and "There's nothing you can do to change. It's who you are." Ms. [REDACTED] ended the meeting, and soon after, her supervisor, the head of the department, and even the superintendent became involved.

**Name and Title of Person(s) Responsible:** [REDACTED] [REDACTED] Special Education Teacher

**Date:** On or around 9/14-15/2016

**Action:**

On or around September 14, 2016, Mr. [REDACTED] exploded at me in classroom in front of our students.

The afternoon before, after Mr. [REDACTED] had left, Ms. [REDACTED] Ms. [REDACTED] and I were talking. Ms. [REDACTED] said that there were some things she felt needed to be addressed with the class the next day, mostly related to the operation of the classroom. In particular, she wanted to talk about safety and hygiene issues.

The next day, I was delayed in another classroom and, when I came back into our classroom, Ms. [REDACTED] was just wrapping up her comments to the students. She asked whether I had anything I wanted to address. Not knowing what already had been discussed, but wanting to make sure we had discussed the concerns Ms. [REDACTED] mentioned the day before, I said, "Ms. [REDACTED] I noticed that the window over my desk is open. Why is that?" She took the cue to discuss the fact that the classroom did smell because of some students' hygiene issues. When Ms. [REDACTED] was talking, Mr. [REDACTED] began to murmur and mumble things to himself. He was saying: "I don't agree with this. I don't feel comfortable." He kept getting louder. It was strange. Ms. [REDACTED] answered his statements but that did nothing to deescalate his behavior. She abruptly ended the discussion that she had been giving and left the room, stating that she was going to a meeting.

Then, after Ms. [REDACTED] left, he came right over to where I was standing, leaned over me and put his finger in my face, speaking very loudly, "I can't believe you. You are rude. You are wrong!" This was all in front of the students. I tried to keep my calm in order to avoid upsetting the students. It was important for the kids to think that I was okay. Ms. [REDACTED] saw what happened and began texting Ms. [REDACTED] telling her

to come back immediately. Then Mr. [REDACTED] threw his arms up in the air and yelled in exasperation, "Maybe I'm the one who stinks! Maybe I should go put on deodorant!" He left and went into the student bathroom in the class.

Ms. [REDACTED] had gone to get assistance from her boss, Assistant Special Education Director [REDACTED] [REDACTED]. A team meeting was set up for the end of the school day to address the incident.

Ms. [REDACTED] called a team meeting including Ms. [REDACTED] [REDACTED] [REDACTED] [REDACTED] and myself. She advised us that if we had a problem, we should deal with it, but not in the classroom and never in front of the students. Mr. [REDACTED] would chime in over and over, agreeing wholeheartedly with everything that Ms. [REDACTED] said. The specifics of what actually happened never came up. I felt so overwhelmed that I couldn't say anything, and the others didn't come to my defense.

When I left the meeting, I started crying and thought about quitting. I left the building from the side staff entrance and drove to the front of the building and sat for a bit. I entered the main entrance to the school and went to Ms. [REDACTED] office. She was meeting with my boss and motioned for me to come in. I apologized for staying quiet during the meeting. Ms. [REDACTED] said, "In that meeting, my heart broke for you. I could tell you were visibly upset." She also told me, "I was just having [REDACTED] call you to find out if you were okay." I told her, "No, I'm not okay."

At that time, I reported to Ms. [REDACTED] all the comments Mr. [REDACTED] had made to me and all his erratic behavior over the past weeks. I told her everything, and that I might have to quit if things didn't change. When I was done, she said, "I don't think this is a personality problem anymore. I'll call Special Education Director [REDACTED] [REDACTED]. I'm concerned that this might be an HR situation. I think this might be a harassment situation." I told her that I just wanted the chaos to stop. She said, "I want to let you know that I'm concerned for your safety. I don't want you in the same room alone together anymore. We need to get this taken care of." She arranged to have our schedules switched so Mr. [REDACTED] and I no longer had the same schedule that would put us alone in the classroom together.<sup>1</sup> She also contacted the Director of Special Education, [REDACTED] [REDACTED] starting an HR investigation.

**Name and Title of Person(s) Responsible:** [REDACTED] [REDACTED] Assistant Special Education Director; [REDACTED] [REDACTED] Special Education Teacher

**Date:** On or around 9/16/2016

**Action:**

In response to the report that triggered the HR investigation, Director of Special Education [REDACTED] [REDACTED] came to speak with me. I was shocked when Ms. [REDACTED] started grilling me about *my* religion.

First, she asked, "Have you ever identified yourself as a Christian to anybody on Cony grounds?" I told her that I knew some people from outside of Cony and that I have identified myself to some of them as a Christian. She continued, in a stern tone, "Have you ever made statements that you would pray for people? Or that you have prayed for people?" I told her that I know some people from different contexts than school and that we attend different places together and do different activities together and, since we are

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<sup>1</sup> Mr. [REDACTED] later transferred to the English as a Second Language Program.

familiar with each other inside and outside of school, I had, in fact, said that I would pray for people. Then, she asked, “Have you ever made a faith-based statement?” I was unsure what she meant, and astonished that she asked, so I asked her for clarification. She explained that she meant any statement having anything to do with religious belief, even statements like “That’s a blessing.” I told her that I had sometimes said that.

Finally, she said, “Are you aware of the First Amendment?” She continued, “I want to let you know that you’re in violation of that. Even if you know someone from your church, you can’t make statements telling people that you would pray for them on school grounds.” She informed me that she had reported this to Mr. [REDACTED] [REDACTED] the school superintendent of the Augusta School Department. The meeting ended with the distinct impression that, with the school superintendent involved, this was a serious situation.

From that point on, I have self-censored my speech in private conversations, stripping it of anything that sounds religious. I used to say a lot of things to my colleagues during casual, private conversations. For instance, I might say, “Praise the Lord” when something good is happening or “God love her” when I’m frustrated with the behavior of my children. But now, things are different. A few co-workers have told me that I’m not as talkative or bubbly anymore, asking me if something was going on. At times, I have even consciously avoided wearing jewelry with crosses on it for fear of violating the directives of the coaching memorandum and facing further discipline or dismissal.

I couldn’t believe that in response to my HR report about Mr. [REDACTED] hostile behavior toward me, I was interrogated about my religious identity and ordered to censor any phrase that could have any trace of religious content in it, even in private conversations between co-workers on my own time, and that I was ordered to hide any aspect of my Christian identity from my speech.

The Augusta School Department expressed such extreme hostility toward religion that my mention of prayer appears to have been investigated more strongly than my complaints about Mr. [REDACTED] hostility toward me in front of our special needs students. He loses it in the classroom after roughly 12 school days of being erratic and they are more concerned that I told someone who went to my church that I’d pray for him. It is clearly religious discrimination for the school to take away my First Amendment right to hold private conversations about my faith with my colleagues—especially those with whom I attend church.

As far as I know, they never reprimanded Mr. [REDACTED] for his behavior.

**Name and Title of Person(s) Responsible:** [REDACTED] [REDACTED] Director of Special Education; [REDACTED] [REDACTED] Superintendent

**Date:** On or around 9/19/2016

**Action:**

On or around the next school day, I received an official, written “coaching memorandum” from Ms. [REDACTED] reprimanding me and threatening further disciplinary action if it was not obeyed.<sup>2</sup> See Exhibit A. The memorandum, dated September 19, 2016, recited the following charge against me:

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<sup>2</sup> The “coaching memorandum” bears the name of “Cony School” and the seal of “Cony High School.” Cony High School is one of the Cony schools operated and controlled by the Augusta School Department.

An investigation of your concerns indicated that you may have imposed some strong religious/spiritual belief system towards Mr. [REDACTED]. Stating “I will pray for you”, and “you were in my prayers” is not acceptable – even if that other person attends the same church as you.

In the case of, *Everson v. Board of Education*, the Supreme Court applied the “establishment clause” of the First Amendment to the states. In the context of the “separation of church and state,” this case prohibits public school-sponsored religious expression. Therefore, in the future, it is imperative you do not use phrases that integrate public and private belief systems when in the public schools.

Going forward, I expect when you disagree with a staff member, you will address it in a discrete and professional manner with no reference to your spiritual or religious beliefs.

The memorandum concluded by reciting that the memorandum is “not considered disciplinary in nature” and “will not be included in your personnel file.” However, the next sentence continued, “If you have any additional interactions that are deemed unprofessional by administration, you will be subject to disciplinary action and/or possibly dismissal.” Thus, the memorandum serves as a predicate for “dismissal” in the event that I say something the administration believes “impose[s] some strong religious/spiritual belief systems” on other employees. Additionally, the memorandum serves as a predicate for “disciplinary action” if I engage in any type of action deemed “unprofessional” in the future, regardless of whether it is similar to what happened here.

Moreover, Ms. [REDACTED] verbal order and the written memorandum both changed the terms and conditions of my employment by violating my First Amendment rights and ordering me to censor my private religious speech under threat of dismissal.

I now fear that I will be dismissed or subject to further discipline merely for making a simple gesture such as offering to pray for someone. I fear that the administration is hostile to even the most well-intentioned, casual mentions of religious faith, and I am worried that I will be discriminated against again in the future for similar expressions of my religious beliefs.

**Name and Title of Person(s) Responsible:** [REDACTED] [REDACTED] Director of Special Education; [REDACTED] [REDACTED] Superintendent; [REDACTED] [REDACTED] Assistant Special Education Director

Please see the attached statement for additional information.

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## 6. Why do you believe these actions were discriminatory?

The school acted unlawfully for several reasons, as explained in the attached letter.

It is unlawful for Augusta Public Schools to censor the private religious speech of its employees. The Supreme Court of the United States made clear that viewpoint discrimination is strictly prohibited. *See Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 811 (1985); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983). Augusta Public Schools violates the law when it suppresses or excludes private speech simply because the speech expresses a religious viewpoint. *See Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981). The Supreme Court of the United States has characterized viewpoint discrimination as “an egregious form of content discrimination.” *Rosenberger*, 515 U.S. at 829; *see also id.* at 828, 829; *Cornelius*, 473 U.S. at 806; *Perry Educ. Ass'n*, 460 U.S. at 46. Where the religious speech of its employees are concerned, the Augusta Public Schools, like all Government actors, are required to remain neutral. *See Rosenberger*, 515 U.S. at 839. When set against these constitutionally-derived standards, the coaching memorandum manifested the overt hostility of the Augusta public schools to my expression of a viewpoint based in my religion and faith.

The circumstances surrounding the coaching memorandum and its wording reveal the Augusta public school's hostility to its employees' use of words containing religious sentiment. First, it is apparent that this conversation involved one adult employee speaking to another adult employee.

Second, this was a private conversation. There is nothing unlawful about one employee speaking privately to another employee about religion. Indeed, the First Amendment protects such conversations from government censorship and Title VII holds liable employers like the Augusta School Department for discriminating against employees having such conversations.

Third, the coaching memorandum's assertion that my statements to Mr. [REDACTED] who I knew to be a fellow parishioner at my church, might have amounted to the “imposition” of my “strong religious/spiritual belief system towards Mr. [REDACTED]” is a gross overstatement that even the memorandum itself cannot sustain.

In its coaching memorandum, the Augusta School Department has explicitly targeted my religious speech; it has labeled my views as “not acceptable;” it has prohibited me from, in the future, making “reference to [my] spiritual or religious beliefs.” The coaching memorandum made plain that school officials were not merely concerned about the subject matter of my statements, but, rather, my religious viewpoint. “When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Rosenberger*, 515 U.S. at 829. The First Amendment “does not license

government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.” *Bd. of Educ. v. Mergens*, 496 U.S. 226, 248 (1990) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)).

In addition to being bound by the First Amendment requirements described above, the Augusta Public Schools are also subject to Title VII of the Civil Rights Act of 1964. Title VII requires Augusta Public Schools to respect and accommodate the religious beliefs of its employees. *See generally* 42 U.S.C. § 2000e, *et seq.* Verbally reprimanding and ordering a school employee to refrain, during a private conversation, from telling a colleague who attends my same church that I am praying for him is an unlawful employment practice. *See* 42 U.S.C. § 2000e-2(a). This is particularly so where the coaching memorandum states that it will serve as the predicate for the imposition of “disciplinary action and/or possibly dismissal,” if, in the future, I engage in unidentified “additional interactions,” presumably of a religious nature, which are “deemed unprofessional by the administration.” Thus, I am concerned that lawfully expressing sentiments to a fellow employee with religious content will be held against me at some point in the future. Under Title VII, this is unlawful.

As the Supreme Court has explained, “Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not ‘to fail or refuse to hire or discharge any individual . . . because of such individual's’ ‘religious observance and practice.’” *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015) (ellipsis original).

As a Christian, my religious practice is to pray for others—especially those with whom I fellowship at my church. The Augusta School Department could easily provide me with a religious accommodation that would allow me to tell a fellow employee with whom I attend church, during a private conversation away from students, that I am praying for him. Such an accommodation poses no undue hardship upon the Augusta School Department. Failing to even consider such an alternative, or rejecting it altogether, violates Title VII. *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2033-34 (2015).

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**7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?**

Right after I made a report that triggered an HR investigation into my co-worker, my employer violated my First Amendment rights, censored my religious speech, and threatened me with dismissal or other disciplinary actions for making any additional “faith-based statements,” even in my own private speech to other employees. The only explanation Director of Special Education [REDACTED] [REDACTED] and Assistant Special Education Director [REDACTED] [REDACTED] gave was the false statement that the First Amendment prohibits me from speaking privately to my co-worker about religion while at school.

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**8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.**

**Of the persons in the same or similar situation as you, who was treated *better* than you?**

**Full Name:** [REDACTED] [REDACTED]

**Job Title:** Functional Skills Education Technician

**Description of Treatment:** Although he made personal statements toward his co-workers that upset us and caused us discomfort, he was not reprimanded or ordered to silence his speech, to my knowledge.

**Of the persons in the same or similar situation as you, who was treated *worse* than you?**

**Full Name:** N/A

**Religion:**

**Job Title:**

**Description of Treatment:**

**Of the persons in the same or similar situation as you, who was treated the *same* as you?**

**Full Name:** None known at this time

**Religion:**

**Job Title:**

**Description of Treatment:**

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**13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say.**

**Full Name:** [REDACTED] [REDACTED]

**Job Title:** Special Education Teacher

**Address & Phone Number:** Shared Work Phone Number [REDACTED]

**What do you believe this person will tell us:**

She witnessed Mr. [REDACTED] erratic behavior in the classroom. She also was present at our team meetings.

**Full Name:** [REDACTED] [REDACTED]

**Job Title:** Functional Skills Educational Technician

**Address & Phone Number:** Shared Work Phone Number [REDACTED]

**What do you believe this person will tell us:**

She witnessed Mr. [REDACTED] erratic behavior in the classroom. She also was present at our team meetings.

## **TOLLING AGREEMENT**

This Tolling Agreement is made as of March 14, 2017 (the "Effective Date"), by and between Toni Richardson ("Richardson"), an individual and resident of Augusta, Maine, and City of Augusta School Department ("ASD"), referred to collectively as "the Parties."

WHEREAS, Richardson has alleged that ASD violated certain of her employment and religious rights, including an improper placement of a "coaching memorandum" in Richardson's employment file based on Richardson's religious beliefs;

WHEREAS, ASD has contended that it has not violated any of Richardson's rights;

WHEREAS, Richardson has a right to file a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") within one-hundred and eighty (180) days from the conduct on the part of ASD alleged to be discriminatory;

WHEREAS, Richardson also has the right to file a Notice of Tort Claim within 180 days of the conduct on the part of ASD that is alleged to have been wrongful.

WHEREAS, Richardson and ASD are currently working in good faith to reach a settlement of the dispute;

WHEREAS, Richardson and ASD mutually agree that additional time is needed in order to continue good-faith negotiations to reach a settlement of the dispute and in order to avoid unnecessary litigation expenses; and

WHEREAS, in order to protect against the possible expiration of the relevant statute of limitations, Richardson and ASD have agreed to enter into this Tolling Agreement to preserve any and all claims of either party against the other and to toll and suspend the applicable filing deadline as set out herein.

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NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, Richardson and ASD agree as follows:

1. Richardson and ASD, through counsel, will continue to negotiate in good faith in an attempt to reach a settlement, and Richardson and ASD warrant that each understands that the present Tolling Agreement does not constitute any agreement to any terms of potential settlement.
2. Richardson and ASD agree to toll the statute of limitations for filing a charge with the EEOC and any Notice of Claim obligations under the Maine Tort Claims Act, until May 17, 2017. The Parties may agree to further toll the deadlines, in writing, at any time prior to the expiration of the initial term (or any subsequent renewal term).

**Tolling Agreement**

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3. ASD agrees that, if Richardson files a charge with the EEOC on or serves a Notice of Tort Claim, or both, on or before the tolled deadline of May 17, 2017, ASD will not challenge the timeliness of the filing.

4. Richardson agrees that, unless this Tolling Agreement is extended as provided in Paragraph 2, above, if Richardson were to file a charge with the EEOC or a Notice of Tort Claim or both after the deadline of May 17, 2017, the charge will be untimely under the statute of limitations and will be barred, absent additional circumstances that may warrant a finding of equitable tolling or estoppel.

5. This Tolling Agreement shall be binding on the parties to this Tolling Agreement and their respective assignees, successors, beneficiaries, or heirs at law. This Agreement applies only between ASD and Richardson, and, with the exception of any loss of consortium claims arising from Richardson's claims, shall not inure to the benefit of any other person, entity or claim.

6. This Tolling Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings, oral or written, with respect to such matters, including as reached or communicated between the Parties directly, through counsel, or otherwise. The Parties may amend, waive, or modify the provisions of this Agreement, including this provision, only by mutual agreement in writing duly executed by the Parties hereto.

7. The terms of this Tolling Agreement are contractual and not mere recitals, and no representations have been made which are not contained herein. In the event of a dispute concerning the interpretation of any provision of this Tolling Agreement or any related document, the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply.

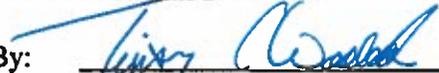
8. The Parties individually represent, warrant, and agree that: (a) each Party is fully aware of and clearly understand all of the terms and provisions contained in this Agreement; (b) each Party has voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Tolling Agreement; (c) each Party is not relying on any representation, either written or oral, express or implied, made to them by any person other than as set forth in this Tolling Agreement; and (d) the consideration received by them to enter into this Tolling Agreement and the arrangement contemplated by this Tolling Agreement have been actual and adequate.

9. Each of the individuals signing this Tolling Agreement represents and warrants that he has full power and authority to bind the party identified above his name.

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IN WITNESS WHEREOF, this Tolling Agreement has been executed by the duly authorized representatives of the Parties.

**For Toni Richardson**

By:   
Name: Tim Woodcock  
*Counsel for Toni Richardson*  
Date: March 14, 2017

**Augusta School Department**

By:   
Name: Daniel Stockford  
*Counsel for Augusta School Department*  
Date: March 14, 2017