FIRST LIBERTY

December 11, 2019

Mr. Jose L. Carrion, Superintendent
Wappingers Central School District
25 Corporate Park Dr.
P.O. Box 396
Hopewell Junction, NY 12533

Sent via email [redacted]) and U.S. Mail CMRR

Re: Ketcham High School's Ongoing Violation of Equal Access Act

Superintendent Carrion:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent Daniela Barca, by and through her parents, William and Yesenia Barca. Please direct all communication concerning this matter to my attention.

We write concerning the unlawful denial of equal access to Ketcham High School freshman Daniela Barca and other students who wish to form a religious club at the school. The school's repeated denial of Daniela's application to form this religious club is a violation of the Equal Access Act of 1984 ("EAA") and the U.S. Constitution and must stop immediately.

Ketcham Denies Daniela's Request to Start a Christian Club

Club proposal created and potential advisor identified

Daniela Barca, 14, spent the summer prior to her freshman year contemplating the prospect of beginning a Christian club at Roy C. Ketcham High School ("Ketcham"). On July 26, 2019, she emailed Ms. Barbara Hargraves, a special education teacher at Ketcham. After introducing herself and indicating her desire to start a Christian club, Daniela asked, "Would you be willing to be a supervisor?" *See* Exhibit A. Clearly, Daniela understood that student clubs require faculty supervisors and wished to be prepared on the first day of school to form her club.

Ms. Hargraves responded that she was "open to the idea" and sought more information about the prospect, while promising to look into the required paperwork for forming a club. In response, Daniela explained that she desired to "have discussions about living for God in a godless society, and maybe end in prayer," while leaving room for the club to develop along those lines. *Id.* Over the intervening weeks, Ms. Hargraves passed along information useful to Daniela in forming her club at Ketcham, along with practical information, including an article from the website ChristianityToday.com about

how to start a Christian club at school. *Id.; see also* Exhibit B. Ms. Hargraves submitted Daniela's application to the school. *See* Exhibit A.

School officials lose application, delay any response for weeks

About two weeks pass without word back from school officials on the application to form what Daniela decided to call, "OMG! Christian Club." Daniela became anxious. An event she hoped to involve her club with to raise awareness about human trafficking was fast approaching and the school had given no approval for her club. As a result of the school's delay, Daniela missed the opportunity to engage her classmates in this event.

By now, it was September 3 and, with "See You at the Pole" fast approaching on September 25, she hoped the club would "be official as soon as possible," but at least in time to participate in "See You at the Pole." *See* Exhibit A. She emailed Assistant Principal Talaber on September 5, 2019. *See* Exhibit C. Apparently, school officials lost the application, but Ms. Hargraves confirmed to Daniela on September 10 that the form had been located and assured her, "I believe it will just take a bit to get off the ground. It will be fine!" *See* Exhibit A.

Five days later, the club had yet to be approved. A *month* later, still nothing. After missing "See You at the Pole," Daniela was discouraged at the lack of progress and emailed school officials: "I've had a few meetings and I'm not really sure where to go with the club from here." *Id.* In the intervening days, Daniela became aware of another student, a junior at Ketcham, who for *two years* attempted, unsuccessfully, to participate in "See You at the Pole." *See* Exhibit D.

Principal David Seipp repeatedly rebuffs Daniela's request to form Christian club

Meanwhile, school administration continued to stonewall Daniela. Mr. David Seipp, principal at Ketcham, refused to put any responses to Daniela about her club in email. Rather, several times throughout the month of October he insisted on her meeting with him in person. *See* Exhibit D. Daniela met on three separate occasions with Mr. Seipp. At her first meeting, she submitted a written proposal for the club. *See* Exhibit E.[1] But, Mr. Seipp only indicated he would have to talk to someone with more authority about the club.

At the next in-person meeting many days later, Mr. Seipp informed Daniela that he was denying the formation of the club, suggesting that a religious club could not meet on an official basis and certainly the school could not promote the club like it does the Pride Club (GSA), Masque & Mime Society, Greenworks Club, FBLA, Teen Club,

[1] The proposal in Exhibit E is modified from the original which has been lost in the months-long application process. The original proposal indicated that Daniela hoped to "spread the hope of Jesus" to Ketcham students, thus making it more evangelistic in nature. After verbal conversations with Mr. Seipp and Mr. Lolkema, their reluctance to approve that club—perfectly lawful under the EAA and the U.S. Constitution—coerced Daniela to revise her club proposal to the one displayed in Exhibit E. *See* Exhibit G.

Renaissance Cards, and RAK-Random Acts of Kindness clubs. *See for e.g*. Exhibit F. She tried once more with Mr. Seipp. However, this time, Mr. Seipp was more critical of the proposal. Rather than continuing the theory that a religious club could not be supported by a public high school, he informed Daniela in person that her club could not be recognized because it would be "seen as exclusive."

Assistant Superintendent Daren Lolkema denies approval of club with "specific religious purpose"

Daniela appealed Mr. Seipp's repeated refusals to recognize her club to Mr. Daren Lolkema, Assistant Superintendent for Compliance and Information Systems for the Wappingers Central School District ("District"). On September 23, 2019, she emailed Mr. Lolkema, explaining that Mr. Seipp had repeatedly refused to grant recognition to the club she wished to start "because the club has religious grounds the school cannot support . . . nor can it be done on school property." *See* Exhibit G. She added a heartfelt explanation for why she wished to form the club:

> I am a Christian. But sometimes it seems like I'm the only one. I want to start this club for other students like me so we can support each other in our beliefs. The school district celebrates diversity and the right to express who you are. All I want is to be allowed to express who I am. Everyone deserves as much. Please get back to me as soon as you can.

Id. She included with that sentiment a link to the text of the Equal Access Act, 20 U.S.C. §§ 4071 – 4073 (2010). *See* Exhibit G. Like Mr. Seipp, Mr. Lolkema refused to respond in writing, but verbally upheld Mr. Seipp's denial of Daniela's club because it was religious. Further, as he informed her as the superintendent charged with "compliance" for the school district, a public school could not support a religious club.

Daniela's parents grew understandably frustrated at the treatment of their daughter. For over *three months*, school officials had lost her application, slow-walked approval of her proposal, rejected the club as too religious for support by a public school, ridiculed her proposal as "too exclusive," and denied the club despite being presented—at least *twice*—with the very federal statute that refutes each of their excuses for denying a religious student club while preferencing and supporting secular student clubs.

Her father, William Barca, emailed Mr. Lolkema on October 3, 2019, again asking for why school officials denied the formation of his daughter's club. Once more, he pointed Mr. Lolkema to the EAA. *See* Exhibit H. It was for naught. Mr. Lolkema responded later that day:

> Hi Mr. Barca
>
> The way this request was presented to me was to have a new student club created at [Ketcham] for students to gather and talk about spreading the hope of Jesus. When high school clubs are formed we pay an adviser (a

> teacher who agrees to support the club) a stipend to help run and organize the student activities within the club. It is under this premise that we cannot support a club with such specific religious purpose (the fact that we are paying an employee as part of this process).
>
> If you were to ask to have an open meeting after school and you wanted to use our school building from a facilities perspective to hold this meeting, and during this meeting you wanted to talk about spreading the hope of Jesus we would simply have you complete our facilities usage paperwork and that would be fine (so long as the meeting is open to the public).
>
> A more specific example of a club we could consider would be one where the group discussed religions impact on culture and society. A theme like this is more generic, but we would have to advise that the club remain completely unbiased to any and all religions that could be discussed, you couldn't limit it to the Christian Faith.
>
> I would be happy to speak to you and your daughter further if you wish. I do admire her advocacy on this idea and her resolve to pursue this further.

As Daniela's proposal makes clear, her group would have been engaged in prayer for "school safety, increased kindness and compassion for each other, hope for those hurting" and offering "faith-based support" during their bi-weekly, "*student-initiated*" meetings. Instead, the discrimination toward Daniela's religious speech has prevented OMG from pursuing their community-wide goals of "food drives, clothing drives, Operation Christmas Child" and other charitable endeavors. *See* Exhibit E.

Federal Law and U.S. Supreme Court Precedent Require Ketcham to Approve Daniela's Christian Club

Ketcham school officials blatantly ignored the plain text of the Equal Access Act of 1984 by rejecting Daniela's Christian club because of its religious speech. The Act has been unequivocal on this point for 35 years:

> It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum *on the basis of the religious*, political, philosophical, or other *content of the speech at such meetings*.

20 U.S.C.S. § 4071(a) (emphasis added). Thus, the Equal Access Act prohibits public schools from denying equal access to religious clubs.

Both Mr. Seipp and Mr. Lolkema repeatedly disapproved of Daniela's club proposal specifically because it was religious. Indeed, Mr. Lolkema minced no words in

his email to Mr. Barca. He understood that the speech by the students in Daniela's club would be overtly religious because they would "gather and talk about spreading the hope of Jesus." *See* Exhibit H. But religious student clubs, including clubs that espouse "quintessentially religious" student speech, cannot be denied equal treatment or excluded from a limited public forum on the basis of its religious content or viewpoint. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 111-12 (2001); *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) ("Discrimination against speech because of its message is presumed to be unconstitutional.").

Thus, it was unlawful for Mr. Lolkema to suggest that a club meeting "to gather and talk about spreading the hope of Jesus" cannot be recognized as an official club unless it modifies its viewpoint to something more "generic," "unbiased to any and all religions," and not "limited to the Christian Faith" while expressing a state-imposed preference for a discussion of "religions [sic] impact on culture and society." Exhibit H. *See also Town of Greece v. Galloway*, 572 U.S. 565, 581 (2014) ("Government may not mandate a civic religion that stifles any but the most generic reference to the sacred any more than it may prescribe a religious orthodoxy."); *Masterpiece Cakeshop, LTD. v. Colorado Civil Rights Comm'n,* 138 S. Ct. 1719, 1731 (2018) ("The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion.") (quoting *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 534 (1993)).

Moreover, Mr. Lolkema's suggestion that the club meet informally after school under a facility use policy is an unlawful sidestep of the equal access requirement. As the U.S. Supreme Court explained, religious clubs must be afforded the same recognition, access and rights as other noncurricular clubs. *See Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226, 236 (1990) ("Thus, even if a public secondary school allows only one 'noncurriculum related student group' to meet, the Act's obligations are triggered and the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time.").

"Access" under the EAA refers not only to meeting spaces on school premises, but also to recognition and all privileges granted to other clubs at the school. *Prince v. Jacoby*, 303 F.3d 1074, 1086 (9th Cir. 2002) (requiring equal access to meeting spaces, fund-raising activities, loudspeakers, and bulletin boards); 20 U.S.C. § 4072(3). Similarly, U.S. Department of Education Guidelines state that religious clubs "must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination because of the religious content of their expression."[2]

By singling out religious clubs and providing them inferior access to school resources than that provided to other noncurricular groups, the District shows a hostility to religion that violates the First Amendment. *See Mergens*, 496 U.S. at 252 ("[A] school that permits a student-initiated and student-led religious club to meet after school, just

[2] Available at https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html (last visited Dec. 4, 2019).

as it permits any other student group to do, does not convey a message of state approval or endorsement of the particular religion."); *id.* at 250 (1990) ("[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."); *see also McDaniel v. Paty,* 435 U.S. 618, 641 (1978) (Brennan, J., concurring) ("The Establishment Clause 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."); 20 U.S.C. § 7072(2) (explaining that assigning a teacher advisor for custodial purposes is not unconstitutional sponsorship of religion). The Eleventh Circuit put it most succinctly: "The Free Exercise Clause does not permit the State to confine religious speech to whispers or banish it to broom closets. If it did, the exercise of one's religion would not be free at all." *Chandler v. Siegelman*, 230 F.3d 1313, 1316 (11th Cir. 2000).

Other New York school districts that committed such violations of the EAA ended up in federal court—and each student group prevailed. *See Hsu by & Through Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839 (2d Cir. 1996) (stating that an exclusive leadership requirement is protected religious speech under the EAA and granting a preliminary injunction to students to form a Bible Club); *Frontline Club v. Board of Education of the Hicksville Union Free School District*, Civ. No. 11-2126, Doc. 6 (E.D.N.Y. Dec. 16, 2011) (stipulation of dismissal reflecting defendants' resolution to comply with the EAA and agreement to grant official recognition to the Christian club and "equal access to all club rights, benefits, and privileges given to other non-curriculum student clubs"); *J.P. v. Board of Education of Half Hollow Hills Central School District*, Civ. No. 10-670, Doc. 36 (E.D.N.Y. May 31, 2011) (stipulation of dismissal reflecting defendants' agreement to institute certain procedures for club approval; to reinstate plaintiff's Christian club and "grant it all of the benefits and privileges given to other non-curriculum clubs at" the school; and to pay plaintiffs' costs and attorneys' fees); *A.Q. v. Board of Education of Lindenhurst Union Free School District*, Civ. No. 09-436, Doc. 13 (E.D.N.Y. Aug. 27, 2009) (stipulation of dismissal reflecting defendants' agreement to give Bible club official recognition as a student club "along with the accompanying benefits and privileges" and "to continue this equal treatment of the Club in the future"; to adopt a school board resolution to comply with the EAA; and to pay plaintiff's attorneys' fees). Additionally, in recent years, First Liberty Institute secured the rights of two New York students against similar violations of the EAA by their school officials, compelling both Districts to reverse the illegal policies.[3]

According to Ketcham's website, school officials recognize more than twenty official student clubs. *See* Exhibit F. School officials appear pleased to support the political speech of the Pride Club and the philosophical speech of the RAK – Random Acts of Kindness Club, but refuse to support Daniela's proposed club explicitly because of the club's proposed religious speech.

[3] *See for e.g.,* John Raney, https://firstliberty.org/cases/johnraney/ (last visited Dec. 3, 2019) and Liz Loverde, https://www.libertyinstitute.org/daretobelieve (last visited Dec. 3, 2019).

Worse, Daniela's experience with multiple District officials and reports from students indicate that it is the District's custom and practice to deny any such official recognition on the unfounded (and distinctly illegal) basis that public schools may not officially recognize clubs with a religious purpose.

Thus, the District violated a clearly established legal and civil right of Daniela Barca. What is more, this 35-year old principle—presented in writing *at least twice* to District officials—is so clearly established as to be beyond any excuse of ignorance. We can only conclude that District officials engaged in purposeful, intentional religious discrimination against Daniela.

Conclusion

This matter is not one for reasonable dispute: Wappingers Central School District officials have repeatedly broken long-standing, clearly established federal law. Moreover, there is reason to believe this violation is systematic, leading to years of disregard for the Equal Access Act. Once a public school such as Ketcham High School creates a limited open forum for student clubs, it cannot deny equal access to student groups on the basis of the religious content or viewpoint of the students' speech. Yet, it has explicitly done so.

Therefore, the law requires the District to resolve this grave error immediately. We ask you to formally consider and approve Daniela's proposal immediately and permit her club to begin meeting no later than January 2, 2020. In any event, please confirm your response to this letter in writing no later than December 18, 2019—exactly 145 days after Daniela first raised the idea of the club to school officials.

Thank you for your attention to this matter. You may reach me at [redacted] or by calling 972-941-4444.

Sincerely,

Keisha Russell, Counsel
FIRST LIBERTY INSTITUTE

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