

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BETHEL MINISTRIES, INC.,

\*

*Plaintiffs,*

\*

v.

No. 1:19-cv-01853-SAG

\*

DR. KAREN B. SALMON, *et al.*,

\*

**Oral Argument Requested**

*Defendants.*

\*

\* \* \* \* \*

**DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Defendants, State Superintendent Dr. Karen B. Salmon and the members of the the Broadening Options and Opportunities for Students Today (“BOOST”) Advisory Board Mathew Gallagher, Marva Jo Camp, Linda Eberhart, Dr. Nancy S. Grasmick, Elizabeth Green, Beth Sandbower Harbinson, and Dr. A. Skipp Sanders, all sued in their official capacities, by their undersigned attorneys and pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby move for the entry of summary judgment in their favor on all claims asserted against them in plaintiff’s complaint.

The grounds for this motion are set forth in the Memorandum of Law filed herewith and incorporated by reference herein.

Defendants request a hearing on their motion.

WHEREFORE, defendants request that judgment be entered in their favor on all claims asserted against them in the complaint.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

/s/ Ann M. Sheridan

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June 25, 2021

Attorneys for Defendants

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**DEFENDANTS' MEMORANDUM OF LAW  
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

BRIAN E. FROSH  
Attorney General of Maryland

/s/ Ann M. Sheridan

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Defendants submit this memorandum of law in support of their motion for summary judgment and state as follows:

## **INTRODUCTION**

This case involves Maryland's refusal to subsidize education at a nonpublic school that maintains discriminatory educational admissions policies and thereby grant imprimatur to such policies. Maryland can and does limit distribution of its discretionary educational funds to nonpublic schools that do not discriminate against vulnerable classes of people. Defendants are the Superintendent of the Maryland State Department of Education ("MSDE") and members of a voluntary Board that administers a private school voucher program called Broadening Options and Opportunities for Students Today ("BOOST"). The Maryland General Assembly funds the BOOST program annually through a budget bill that sets forth requirements for participating schools, including that schools not discriminate in admissions on the basis of sexual orientation.

Plaintiff Bethel Ministries, Inc. ("Bethel") operates a private Christian school, Bethel Christian Academy, that applied for and received approval to accept BOOST scholarship funds for some of its students in 2016 and 2017. As a condition of its participation in the BOOST program, Bethel signed an assurance that it would not discriminate in admissions on the basis of sexual orientation.

MSDE discovered in 2018 that Bethel and a handful of other schools had discriminatory policies, and it referred those schools to the Board for a decision on eligibility. Ultimately, the Board determined that Bethel's admissions policy discriminated

on the basis of sexual orientation and disqualified Bethel from participation in BOOST. In compliance with the terms of the enacted funding bill, the State also sought a refund of scholarship funds that had been paid to Bethel for the 2016-17 and 2017-18 school years. In response, Bethel filed this lawsuit asserting six constitutional claims based in the First and Fourteenth Amendments.

Fundamentally, Bethel complains that it, like numerous other schools of varied religious backgrounds, was assessed for compliance with a generally applicable, religiously neutral nondiscrimination requirement. The undisputed facts demonstrate that the BOOST Board acted without a clear and impermissible hostility toward Bethel's religious beliefs in the application of the nondiscrimination provision. Bethel, but not all schools sharing similar religious beliefs, was found to be in violation of the nondiscrimination requirement. Bethel seeks to evade this straightforward application of a neutral law by claiming that it was targeted because its discriminatory conduct resulted from its sincerely held religious beliefs. Bethel's First Amendment claims fail because the State's actions are a regulation of conduct that is not specifically tied to religion or religious beliefs. That type of regulation of conduct under a neutral law has been upheld by the courts for decades in a variety of contexts, including when private educational institutions sought to benefit from public programs such as tax exemptions, despite carrying out segregationist policies.

Bethel's claims asserted under the Fourteenth Amendment also fail. Bethel has no property interest in participation in a school voucher program like BOOST, and the BOOST nondiscrimination requirements are not void for vagueness. The BOOST

nondiscrimination requirements do not interfere with parental rights and do not violate the Equal Protection Clause. Accordingly, defendants are entitled to judgment as a matter of law.

## **STATEMENT OF UNDISPUTED FACTS**

### **Maryland's Nondiscrimination Laws**

Maryland has a 20-year history of protecting its citizens from discrimination based on sexual orientation. In 2001, Maryland expanded its laws governing public accommodations, employment, state government, and housing discrimination to prohibit discrimination against people based on their sexual orientation. 2001 Md. Laws ch. 340. In 2006, Maryland extended these requirements to commercial contracts with the State. 2006 Md. Laws ch. 283. In 2012, Maryland's General Assembly and the people of Maryland "acted to enlarge the definition of marriage to correct what its citizens and elected representatives perceived to be an injustice that they had not earlier known or understood," *United States v. Windsor*, 570 U.S. 744, 764 (2013), by passing the Civil Marriage Protection Act. 2012 Md. Laws ch. 2. And, in 2014, the General Assembly passed the Fairness for All Marylanders Act, 2014 Md. Laws ch. 474, adding gender identity to the list of classes covered by nondiscrimination laws and extending protection to a class of transgender people that this Court has recognized as "at least a quasi-suspect classification." *M.A.B. v. Board of Educ. of Talbot County*, 286 F. Supp. 3d 704, 721-22 (D. Md. 2018) (quoting *Stone v. Trump*, 280 F. Supp. 3d 747, 768 (D. Md. 2017), *appeal dismissed*, No. 17-2398, 2018 WL 2717050 (4th Cir. Feb. 2, 2018)).

When considering extending nondiscrimination laws to include “sexual orientation” and “gender identity,” the General Assembly heard testimony from religious groups and leaders both for and against the statutes in question. Exhibit 3, Excerpts from Maryland General Assembly Bill File for House Bill 307 (2001).<sup>1</sup> A document included in the Bill File for House Bill 307, the sexual orientation legislation, specifically stated that the General Assembly “should not establish policies to allow private schools to discriminate, especially if the school receives State funding.” Ex. 3 at 12. The same document reasoned that contemplated amendments that would allow a religious or conscientious objection would “gut the bill” and allow “[a]nyone who wants to discriminate . . . to use this language as a shield.” *Id.* at 13. In support of the Fairness for All Marylanders Act, the Maryland Parent Teacher Association (“PTA”) testified that more than three out of four transgender persons “were bullied or harassed in school, 1 in 3 were assaulted at school, and 1 in 10 were sexually assaulted at school or in the local community *because of either their outward gender expression or a perception about their gender expression.*” Exhibit 4, Excerpts from Maryland General Assembly Bill File for Senate Bill 212 (2014), at 10 (emphasis in original). The Maryland PTA further testified that 15 percent dropped out of school because of conflicts related to their gender expression. *Id.*

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<sup>1</sup> The numbering for the exhibits to this memorandum begins at 3 so that the exhibit numbering coincides with the ECF numbering.

### **Maryland's BOOST School Voucher Program**

In 2016, the Maryland General Assembly enacted a \$5.5 million school voucher program dubbed “BOOST” to provide financial aid to help children of low-income families attend private schools. 2016 Md. Laws ch. 143 at 130-35; 142. The BOOST program is administered by MSDE and is overseen by a seven-member advisory board of volunteers (“BOOST Board” or BOOST Advisory Board”). *Id.* at 132-33. Eligible student applicants are ranked by need, and the BOOST Advisory Board is charged with reviewing and certifying the applicants as well as setting scholarship amounts. *Id.*

The law also set forth eligibility requirements for nonpublic schools at which the scholarships can be used, including a requirement to (1) comply with Title VI of the Civil Rights Act of 1964; (2) comply with Title 20, subtitle 6 of the State Government Article, and (3) “not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation.” *Id.* at 137. The nondiscrimination requirement further specifies that nonpublic schools are not required “to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings.” 2016 Md. Laws ch. 143 at 137. This statement is subject to a modifying clause in the next sentence, which provides “[h]owever, all participating schools must agree that they will not discriminate . . . .” *Id.* If a participating school does not “agree that they will not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation,” the school is required to “reimburse MSDE all scholarship funds received under the BOOST Program and may not charge the student tuition and fees instead.” *Id.*

Bethel, the plaintiff in this case, operates a private school called Bethel Christian Academy. Compl. ¶¶ 1-2. In 2016, Bethel applied to participate in the BOOST voucher program. In so doing, Bethel signed written assurances to the State that it did not discriminate in student admissions based on sexual orientation. Compl. ¶ 73; Exhibit 5, Declaration of Claire Dant, ¶ 19; Exhibit 6, BOOST Assurance for 2017-18 School Year; Exhibit 7, Excerpts from 30(b)(6) Deposition of Bethel (Deposition of Claire Dant), at 80:12-81:2.

**Discovery that a BOOST-Participating School Has Discriminatory Admission Policy Leads to Handbook Review for All BOOST-Participating Schools**

In October, 2017, the BOOST Board received a complaint from the Maryland PTA that Trinity Lutheran Christian School, a private school participating in the BOOST program, maintained a discriminatory admissions policy that allowed it to deny admission or discontinue enrollment of a student based on the sexual orientation of the student's parents. Exhibit 8, Letter from Maryland PTA, dated October 11, 2017; Exhibit 9, Affidavit of Donna Gunning, ¶ 7. Upon inquiry, MSDE and the Board learned that Trinity's written policy provided that it reserved the right "to refuse admission of an applicant or to discontinue enrollment of a student" whose "conduct, inside or outside the school, is counter to or in opposition to the Biblical lifestyle the school teaches . . . includ[ing] . . . living in, condoning, or practicing homosexual lifestyle or alternative gender identity." Exhibit 10, Excerpt from Trinity Lutheran Christian School Handbook. Furthermore, it expressly "reserve[d] the right, within its sole discretion, to refuse admission of an applicant or to discontinue enrollment of a student of a same sex marriage

or relationship.” Ex. 10. As a result, the BOOST Board declared Trinity ineligible for BOOST and required that Trinity pay back to the State the BOOST scholarship funds it received. Exhibit 11, Letter from Matthew Gallagher to Pastor John Austin, dated October 13, 2017; Exhibit 12, Letter from Donna Gunning to Pastor John Austin, dated February 28, 2019.

Concerned that other BOOST schools might have similar discriminatory policies, the BOOST Board sent letters to all BOOST-participating schools requesting that they examine their written policies for compliance with the nondiscrimination requirement and the assurances that they signed. Exhibit 13, Letter from Matthew Gallagher to BOOST-eligible schools, dated October 13, 2017. The letter went to all BOOST-eligible schools at the time regardless of their religious or non-religious affiliations. Ex. 9 ¶ 6; *id.* at Attachment A. In addition, in December 2017, MSDE requested copies of school admission policies from all BOOST schools, including Bethel, to make sure that the schools’ policies complied with the nondiscrimination provisions in the BOOST law. Exhibit 14, Letter from Matthew Gallagher to BOOST schools, dated December 19, 2019; Compl. ¶¶ 94-95.

MSDE staff conducted the initial review of school admission policies. Exhibit 15, Declaration of James Klarman, ¶¶ 10-11. In reviewing the policies, MSDE staff applied the same standards to all of the schools, regardless of religious or non-religious affiliation. Ex. 15 ¶ 12. Schools were not singled out or treated differently based on their religious beliefs. Ex. 15 ¶ 13. Rather, MSDE looked carefully at the language of each school’s admissions policy to determine whether the policies were discriminatory. Ex. 15 ¶ 14.

### **MSDE and the Board Discover that Bethel’s Written Policy is Discriminatory**

Upon review, MSDE staff discovered that the admissions policies of the vast majority of schools did not have discriminatory language. Ex. 15 ¶ 15. Other schools, however, including Bethel, had admissions policies that appeared to be inconsistent with the BOOST law’s nondiscrimination requirements. Ex. 15 ¶ 16. Notably, Bethel’s admissions policy, set forth in its 2017-2018 Parent/Student Handbook, stated that it did not discriminate based on “race, color, national and ethnic origin,” but was silent as to whether the school discriminated based on sexual orientation. Exhibit 16, Excerpt of Bethel 2017-2018 Parent/Student Handbook at 3. Further, Bethel’s policy stated that in order to remain enrolled at the school, students were required to “align” their “conduct” with Bethel’s “view” that defined marriage “as a covenant between one man and one woman” and that students are expected to identify with their biological gender. Ex. 16 at 3. Specifically, the handbook stated:

#### **ADMISSIONS POLICY**

\* \* \*

#### **Statement of Nondiscrimination**

Bethel Christian Academy admits students of any race, color, and national or ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

*It should be noted, however, that Bethel Christian Academy supports the biblical view of marriage defined as a covenant between one man and one woman, and that God immutably bestows gender upon each person at birth as male or female to reflect His image. (Gen. 1:27, Gen. 2:23-24) Therefore, faculty, staff, and student conduct is expected to align with this view. Faculty, staff, and students are required to identify with, dress in accordance with, and use the facilities associated with their biological gender.*

Ex. 16 at 3 (emphasis added).

Bethel further specified that “[p]arents must understand that continued enrollment of their child(ren) is dependent on their support of the school, its staff, and its policies.”

Ex. 16 at 3. By letter dated March 5, 2018, MSDE and the BOOST Board asked Bethel for an explanation of how Bethel reconciled its assurance that it did not discriminate based on sexual orientation with its admissions policy language. Exhibit 17, Letter from Monica Kearns to Claire Dant, dated March 5, 2018. Bethel responded by letter dated March 13, 2018. Exhibit 18, Letter from Claire Dant to Monica Kearns, dated March 13, 2018. Significantly, Bethel did not deny that a student could be expelled from the school after admission on the basis of sexual orientation. Ex. 18. Bethel further asserted that its policy requiring student conduct to “align with” the view that marriage should be limited to heterosexual couples was irrelevant to whether it discriminated in admissions. Ex. 18. MSDE staff referred the Bethel matter to the BOOST Board for a determination.<sup>2</sup> Ex. 15 ¶ 18.

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<sup>2</sup> In addition to Bethel, MSDE staff also referred several other schools with discriminatory language to the BOOST Board for a decision. Exhibit 19, Declaration of Matthew Gallagher, ¶¶ 12-13.

### **Board Disqualifies Bethel from Further Participation in BOOST and Seeks Reimbursement of BOOST Funds**

On May 3, 2018, the BOOST Board deliberated for more than an hour in open session about whether Bethel's admissions policy met the BOOST nondiscrimination requirement. May 3, 2018 BOOST Advisory Board Meeting Video 43:00 to 1:57:00, available at <https://vimeo.com/368387715/85b45d8b3b>. Bethel was invited to present to the Board but did not attend.<sup>3</sup> *Id.* at 1:30-2:15; 43:00 to 1:57:00; Ex. 7 at 95:12-22.

After the May 3, 2018 meeting, the BOOST Board requested additional information from Bethel. Exhibit 20, Letter from Monica Kearns to Claire Dant, dated May 25, 2018. In response, Bethel sent a second letter on May 29, 2018, claiming that “[a]ny student . . . is welcome to join our school community regardless of religious beliefs, experience of same-sex attraction, sexual self-identification, past participation in same-sex behavior, beliefs about marriage, or beliefs about sexual morality.” Exhibit 21, Letter from Claire Dant to Monica Kearns and BOOST Board, dated May 29, 2018. Significantly, however, Bethel failed to explain why its statements in the letter about who was welcome to join the school were not reflected in its admissions policy. Ex. 21. Bethel also failed to explain why its admissions policy contained a nondiscrimination statement that omitted sexual orientation as a class, or why its admissions policy conditioned continued enrollment on the requirement that student conduct “align” with Bethel's view that marriage is defined as

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<sup>3</sup> During the same meeting, the Board considered whether the State should attempt to “clawback” money from schools already found to be in noncompliance with the BOOST nondiscrimination requirement, which at the time did not include Bethel. *Id.* at 03:00 to 4:00.

a covenant between one man and one woman. Ex. 21. While Bethel rejected the contention that it would summarily expel a student based on sexual orientation, it did not deny that “student actions,” which were undefined in the letter, could result in expulsion if the student could not be brought “into compliance with behavioral expectations.” Ex. 21.

On June 21, 2018, the BOOST Board entered into closed session to receive legal advice, returned to open session, and voted unanimously to find Bethel was ineligible for the BOOST program. June 21, 2018 BOOST Advisory Board Meeting Recording Part I at 1:06:35 to 1:07:30, 1:08:15 to 1:08:33, available at <http://archives.marylandpublicschools.org/S/Audio/BOOSTMeeting%2006212018Audio1.mp3>; June 21, 2018 BOOST Advisory Board Meeting Recording Part II at 3:56 to 8:30, available at <http://archives.marylandpublicschools.org/S/Audio/BOOSTMeeting%2006212018Audio2.mp3>.

On August 8, 2018, the BOOST Board sent a letter to Bethel memorializing its decision and explaining that it had examined Bethel’s admission policy on the principles that (1) a bona fide offer of admission necessarily entailed that the offer not be extended with the understanding that the school would “discipline or expel a student because of the student’s sexual orientation, as this would make acceptance at the school illusory”; and (2) “[a] discipline policy that, on its face, singles out conduct or behavior based on the sexual orientation of the student for discipline or expulsion does violate the nondiscrimination clause contained in the BOOST law.” Exhibit 22, Letter dated August 8, 2018. The letter further explained that the Board concluded that Bethel’s requirement that students “align their conduct to the view of marriage as a covenant between one man and one woman (i.e.,

heterosexual)” meant that “[a] non-heterosexual student may reasonably view the policy as one that allows denial of admission or discipline or expulsion on the basis of his or her sexual orientation.” Ex. 22. Therefore, the Board concluded that “this policy, on its face, was in conflict with the nondiscrimination clause contained in the BOOST law.” Ex. 22.

Bethel was not the only private school that was declared ineligible for the BOOST program in 2018 based on discriminatory language in its admissions policy. A total of 10 schools originally were declared ineligible on this basis. Exhibit 23, School Status – BOOST Program Discriminatory Practices Review Summary. Among the schools that were declared ineligible was Celebration Christian Academy, which had language in its admissions policy that was strikingly similar to Bethel, including the statements that student conduct was required to “align” with the school’s view that marriage is “a covenant between one man and one woman.” Exhibit 24, Letter from Matthew Gallagher to Robin Davis, dated March 16, 2018.

### **Board Gives Bethel Another Chance to Correct Its Discriminatory Policy**

To maximize participation in BOOST, MSDE and the BOOST Board bent over backwards to be flexible and accommodating to schools with discriminatory language in their policies. Ex. 19 ¶¶ 17-18. The Board restored eligibility to six of the ten schools that were initially declared ineligible after those six schools removed the discriminatory language from their admissions policies. Ex. 19 ¶ 18; Ex. 23. In February, 2019, MSDE advised Bethel in writing that the Board had restored eligibility to several schools that removed discriminatory language from their admissions policies and invited Bethel to consider doing the same. Exhibit 25, Letter from Donna Gunning to Claire Dant, dated

February 28, 2019; Ex. 7 at 107:7-20. In response, Bethel requested examples of revised policies from other schools that had regained BOOST eligibility, and MSDE provided several such examples. Exhibit 26, Email thread between Donna Gunning and Claire Dant, dated May 24, 2019. Despite this, Bethel refused to change its discriminatory admissions policy, and remained ineligible. Ex. 7 at 107:12-20.

### **Maryland Seeks Reimbursement of BOOST Funds**

Pursuant to the BOOST law, schools declared ineligible based on discriminatory admissions policies were required to “reimburse MSDE all scholarship funds received under the BOOST Program and may not charge the student tuition and fees instead.” 2016 Md. Laws ch. 143 at 137. Accordingly, on December 12, 2018, MSDE sent Bethel an invoice for the total scholarship amounts it received for the 2016-2017 school year and the 2017-2018 school year, \$102,600. Exhibit 27, Letter from Donna Gunning to Claire Dant, dated December 12, 2018. To minimize the financial hardship on Bethel, the letter stated that “[i]f the school can demonstrate that it is financially unable to pay this indebtedness in one lump sum, payment in installments may be arranged.” Ex. 27. Bethel was not the only school that was required to pay back BOOST funds. Other schools that were declared ineligible due to discriminatory policies were similarly required to pay back BOOST funds, including those that later revised their policies and regained eligibility for BOOST. Exhibit 28, BOOST Advisory Board Summary Decisions of February 5, 2019; Ex. 23.

## **Maryland Expands Nondiscrimination Requirement to Expressly Include Gender Identity and Expression; Bethel Remains in Violation of Requirements**

In 2019, after Bethel was declared ineligible for BOOST, the Maryland General Assembly expanded BOOST's nondiscrimination requirements, mandating participating schools to agree to not discriminate not only in student admissions but also in "retention[] or expulsion." 2019 Md. Laws ch. 565 at 151. In addition, the General Assembly required that schools agree not to discriminate against any student on the basis of "gender identity or expression." *Id.* After this change in the law, in January 2020, several months after this lawsuit was filed, Bethel re-applied for BOOST and related programs even though it knew that its policies on gender identity were in clear conflict with the new BOOST law.<sup>4</sup> Exhibit 29, Email and letter from Donna Gunning to Claire Dant, dated April 24, 2020; Ex. 7 at 112, 117-19.

Bethel's Parent/Student Handbook in effect at that time stated:

***Any conduct*** that is in violation of the school's Statement of Faith will be considered ***grounds for disciplinary action***, including the expectation that ***BCA students identify with, dress in accordance with, and use the facilities associated with their biological gender.***

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<sup>4</sup> The revised law also included a requirement that nonpublic schools applying for the Aid To Non-Public Schools program, which is also referred to as the "Textbook and Technology" program, submit their handbooks to MSDE for review to ensure compliance with program requirements. 2019 Md. Laws ch. 565 at 146-7. To qualify for the BOOST program, the school must first qualify for the Textbook and Technology program. 2019 Md. Laws ch. 565 at 149-50. The new nondiscrimination requirements appear in both the Textbook and BOOST sections of the law, but because the law now provides that MSDE will conduct the handbook review as part of the qualification process for the Textbook program, the BOOST Board no longer plays a role in determining compliance with the nondiscrimination requirements. *Id.* at 146-52.

Exhibit 30, Excerpt from Bethel Christian Academy 2019-20 Handbook, at 7 (emphasis in original). Punishment for failing to abide by Bethel’s requirement regarding gender identity and expression extends to off-campus conduct and can include “suspension or expulsion even for a first offense.” Ex. 30 at 7-8. Despite this plainly discriminatory language, Bethel’s principal, Claire Dant, signed assurances as part of Bethel’s 2020 application for the Textbook and Technology program, that falsely stated that Bethel “does not discriminate in student admissions, retention, or expulsion or otherwise discriminate against any student on the basis of race, color, national origin, sexual orientation, or gender identity or expression.” Exhibit 31, Program Assurance signed by Claire Dant, dated January 17, 2020; Ex. 7 at 118:12-119:18. Bethel’s 2020 application was denied because it was not timely and its policies called for punishing students, including expulsion, based on gender identity and expression. Ex. 29; Ex. 7, at 112:1-9, 117:12-21.

## **ARGUMENT**

### **I. LEGAL STANDARD**

Under Federal Rule of Civil Procedure 56, a district court “shall grant summary judgment” if the record, including the pleadings, affidavits, and depositions, “shows that there is no genuine dispute as to any material fact” and the moving party “is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Rule 56 mandates the entry of summary judgment where, after adequate time for discovery, the non-moving party fails to come forth with proof sufficient to establish an essential element of his claim upon which he will bear the burden of proof at trial. *Feldman v. Law Enf’t Assocs. Corp.*, 752 F.3d

339, 348 (4th Cir. 2014); *Cray Commc'ns, Inc. v. Novatel Sys. Inc.*, 33 F.3d 390, 393 (4th Cir. 1994).

In order to survive a properly supported motion for summary judgment, the non-moving party must present evidence from which a reasonable fact finder could return a verdict in his favor. *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 768 (1984). The mere existence of some disputed fact does not require denial of the motion. *Thompson Everett, Inc. v. National Cable Advert, L.P.*, 57 F.3d 1317, 1322 (4th Cir. 1995). Rather, the disputed facts must be material to an issue necessary for resolution of the case and the quality and quantity of the evidence offered to create a question of fact must be adequate to support a verdict. *Id.*; *FDIC v. Cashion*, 720 F.3d 169, 180 (4th Cir. 2013).

## **II. THE FIRST AMENDMENT PERMITS STATES TO PROTECT VULNERABLE GROUPS FROM DISCRIMINATION IN EDUCATION.**

Shortly before Bethel filed this lawsuit, the Supreme Court reaffirmed that while “religious and philosophical objections are protected, it is a general rule that such objections do not allow . . . other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.” *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018); *see also Hurley v. Irish-American Gay, Lesbian and Bisexual Grp. of Bos.*, 515 U.S. 557, 572 (1995) (nondiscrimination provisions “are well within the State’s usual power to enact when a legislature has reason to believe that a given group is the target of discrimination, and they do not, as a general matter, violate the First or Fourteenth Amendments”).

The undisputed facts do not justify departure from this rule. Bethel’s assertions that its religious beliefs exempt it from Maryland’s neutral nondiscrimination provisions are at odds with decades of jurisprudence.<sup>5</sup> Such nondiscrimination requirements are common. In its decision holding that programs like BOOST, which provide scholarships to students to attend private schools of their choice, did not violate the Establishment Clause, the Supreme Court expressly noted that a key element of the program was that “[p]articipating private schools must agree not to discriminate.” *Zelman v. Simmons-Harris*, 536 U.S. 639, 645 (2002); *see also Norwood v. Harrison*, 413 U.S. 455, 470 (1973) (observing that “[i]nvidious private discrimination,” even if characterized as conduct protected by the First Amendment, “has never been accorded affirmative constitutional protections”). Bethel’s claim that it is somehow exempt under the First Amendment from this neutral law of general applicability because of its religious beliefs is a claim without legal foundation.

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<sup>5</sup> The Supreme Court recently declined to revisit the analytical construct provided in *Masterpiece Cakeshop* and its progenitor, *Employment Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872 (1990), because it found that the City of Philadelphia had burdened the religious exercise of Catholic Charities Services (“CCS”) “through policies that do not meet the requirement of being neutral and generally applicable.” *Fulton v. City of Philadelphia*, \_\_\_ S. Ct. \_\_\_, 2021 WL 2459253 (June 17, 2021) at \*4. In *Fulton*, the City had refused to contract with CCS for placement of foster children on the ground that CCS violated the City’s nondiscrimination requirements when it would not certify same-sex married couples as foster parents. But the City’s policy permitted the Commissioner of the Department of Human Services, in his/her sole discretion, to grant exceptions to the requirement that placement agencies not discriminate on the basis of sexual orientation. *Id.* at \*5-6. Applying dicta in *Smith*, the Court held that, in light of a system for discretionary exceptions, the City could not refuse to extend the exception to cases of religious hardship without compelling reason. *Id.* at \*6. No such exception is at play in this case, so the reasoning in *Fulton* does not apply.

Similarly, its claim that its discriminatory admissions policy constitutes speech protected by the Free Speech Clause also is without merit.

**A. The Undisputed Facts Do Not Support Bethel’s Free Exercise Claim.**

Bethel’s First Cause of Action asserts a claim under the Free Exercise Clause of the First Amendment. Compl. ¶¶ 163-196. Significantly, Bethel has conceded that the BOOST nondiscrimination requirement is a neutral law of general applicability that does not target Bethel for its religious beliefs. ECF 17, at 19-20; *see Smith*, 494 U.S. at 879 (reasserting that there is nothing about “the right of free exercise” that “relieve[s] an individual of the obligation to comply with a valid and neutral law of general applicability”). Bethel nevertheless asserts that the BOOST Board applied this neutral provision “in a way evidencing religious targeting.” ECF 17, at 20. To prevail on this theory, Bethel must demonstrate that the BOOST Board evinced “a clear and impermissible hostility toward . . . sincere religious beliefs” in the application of the nondiscrimination provision to Bethel. *See Masterpiece Cakeshop*, 138 S. Ct. at 1729. There is no evidence to support such a claim.

The facts involved in the Colorado Civil Rights Commission’s adjudicatory treatment of Mr. Phillips, the cake-baker in *Masterpiece Cakeshop*, stand in stark contrast to the undisputed facts in this case. 138 S. Ct. 1729-30. As an initial matter, *Masterpiece Cakeshop* involved the Colorado Civil Rights Commission’s sanction of a baker for refusing to bake a custom wedding cake for a same sex couple, against his sincerely held religious beliefs, at a time such weddings were not legally recognized by the State of

Colorado. *Id.* at 1723-24. By contrast, this case involves Maryland’s refusal to subsidize education at a school that maintains discriminatory educational admissions policies and thereby grant imprimatur to such policies.

In *Masterpiece Cakeshop*, multiple state actors made statements disparaging Mr. Phillips’ beliefs. *Id.* at 1729-30. Although some of the statements the Court found to be “susceptible of different interpretations,” *id.* at 1729 (businessman “cannot act on his religious beliefs ‘if he decides to do business in the state’”; businessman “‘needs to look at being able to compromise’” in order to do business in the state), other statements were actively hostile, comparing “Phillips’ invocation of his sincerely held religious beliefs to defenses of slavery and the Holocaust,” *id.* In this case, by contrast, Bethel has identified no statements made by any defendant that was derogatory toward the religious origin of its beliefs.

Bethel identifies three alleged statements by Matthew Gallagher, Chair of the BOOST Board, that Bethel contends demonstrate Mr. Gallagher “did not display appropriate neutrality as a decision-maker.” Compl. ¶ 106. None of those statements demonstrate any hostility towards Bethel’s religious beliefs; all three statements discuss only conduct that Mr. Gallagher perceived as discriminatory and do not comment on Bethel’s beliefs at all. In the first statement, Mr. Gallagher expresses his opinion that Bethel signed an assurance “illegally.” *Id.* at ¶ 107. The statement did not express any opinion as to the content of any belief that may or may not be held by Bethel, religious or otherwise, but did express an opinion about Bethel’s conduct.

The second statement identified by Bethel was Mr. Gallagher's opinion that "he did not 'think the burden should be on the Board'" to prove whether or not an admissions policy was discriminatory. *Id.* at ¶ 108. Again, this statement said nothing about Bethel's beliefs and was an expression of Mr. Gallagher's opinion about the standard the Board should use to determine whether Bethel's policy complied with the nondiscrimination requirement.

Last, Bethel identifies a specific discussion of Bethel's admissions policy. Mr. Gallagher read part of Bethel's admissions policy and expressed his opinion that it was discriminatory against students based on their sexual orientation. After reading Bethel's statement of religious belief, Mr. Gallagher stated, "and here's where it becomes problematic," where the policy articulates that "students conduct is expected to align with this view." *Id.* at ¶ 110. Mr. Gallagher then explained that the policy "language affords them the opportunity to discriminate" against "a person who identifies as a different orientation from their birth." *Id.* Even accepting those allegations as true, Mr. Gallagher never characterized the religious basis of the policy as problematic. What was problematic was the discriminatory effect of the policy.

Bethel's contention that Mr. Gallagher's treatment of "the sexual orientation nondiscrimination requirement as encompassing gender identity," *id.* at ¶ 112, is evidence of hostility toward religion is incorrect. Courts have recognized that it is a "difficult question" to discern whether the harassment (and analogously, any discrimination) suffered by a complainant is "because of his homosexuality, his effeminacy, or both." *Prowel v. Wise Bus. Forms, Inc.*, 579 F.3d 285, 291 (3d Cir. 2009). State agencies are at

the forefront of enforcement of nondiscrimination requirements, which are largely a creature of state law. *See Hurley*, 515 U.S. at 571-72. Those agencies, like the Board, will be most often faced with the “difficult questions” presented by new areas of anti-discrimination legislation including whether or to what extent different forms of discrimination based on sex, sexual orientation, and gender identity overlap or do not overlap. Indeed, the Supreme Court recently held that sex discrimination as used in Title VII of the Civil Rights Act of 1964 includes discrimination based on sexual orientation and gender identity. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1754 (2020).

Moreover, evidence of hostile treatment in *Masterpiece Cakeshop* was not limited to disparaging comments. Instead, the Court also found the Colorado Civil Rights Commission actually engaged in disparate treatment when it found “on at least three other occasions” that “the refusal of bakers to create cakes with images that conveyed disapproval of same-sex marriage, along with religious text” was permissible. *Masterpiece Cakeshop*, 138 S. Ct. at 1730.

Here, however, there is no evidence of any instance where another school was treated more favorably because of the secular nature or content of their beliefs. Although the initial discriminatory policy brought to the Board’s attention involved a Christian school, MSDE reviewed the written policies of *all* schools, regardless of religious affiliation. Ex. 15 ¶ 10; Exhibit 32, Excerpts of Deposition of Monica Kearns at 40:15-41:12. During her deposition, Monica Kearns, the MSDE administrator under whose purview the BOOST program fell during the relevant time period, explained:

[T]he big moment for me and my team was we, and I felt very strongly about this because there was a—there was a discussion about [the Trinity] handbook and [Trinity] school, but we can't consider this in isolation. If this is being used to determine whether a school is eligible to participate, again, we have to treat all the schools the same. . . . [W]e need to look at all school handbooks. . . . [T]he big thing was handbook review across the board, everybody.

Ex. 32 at 40:15-41:12. And, upon engaging in that review, MSDE applied the same standard to all of the schools' policies, regardless of the religious or non-religious affiliation of the school. Ex. 15 ¶¶ 12-13.

In fact, Bethel's own complaint refutes the notion that it was treated differently than other schools based on its religious beliefs. Bethel identifies three other schools it asserts "have similar beliefs and policies on marriage and sexual conduct," Broadfording Christian Academy, Grace Academy, and Woodstream Christian Academy. Compl. ¶ 133. Bethel then complains that two of those schools, which allegedly hold similar beliefs but whose *admissions policies* did not expressly exclude or threaten sanction to prospective students based on their sexual orientation, *see* ECF 1-11, 2-3, 5, were permitted to continue in the program. Compl. ¶ 131. Woodstream Christian Academy was, according to the complaint, deemed ineligible. Compl. ¶ 132. Woodstream Christian Academy's policy stated that "homosexuality" in addition to other "deviant behavior of a sexual nature" would "be grounds for expulsion." ECF 1-11, 6. The different treatment of these four schools is justified on the face of the pleadings—those schools with discriminatory policies were excluded, those schools whose policies were expressed neutrally with respect to the covered classes were permitted to participate, regardless of their similar beliefs. The type

of Free Exercise claim at issue in *Masterpiece Cakeshop* has no application to the facts in this case.

The Supreme Court’s holding that a state government may not “disqualify[]” religious organizations “from a public benefit solely because of their religious character,” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017), also has no application to Bethel’s claims. Here, there is no evidence that the BOOST Board took any action based on Bethel’s “religious character.” In *Comer*, the Court specified that “[t]he express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow the Church—solely because it is a church—to compete with secular organizations for a grant.” *Id.* at 2022. The undisputed facts do not demonstrate that Bethel was categorically excluded from the BOOST award approval process because it is a religiously affiliated school or even because it adheres to particular religious beliefs. Indeed, the undisputed facts demonstrate just the opposite.

The undisputed facts are completely devoid of the type of clear and impermissible hostility or express religious targeting that could constitute a violation of the Free Exercise Clause. Therefore, defendants are entitled to summary judgment on the First Cause of Action in the Complaint.

**B. The Undisputed Facts Do Not Demonstrate a Violation of the Establishment Clause.**

Defendants are entitled to summary judgment on Bethel’s Sixth Cause of Action because the undisputed facts do not demonstrate a violation of the Establishment Clause. Nearly 20 years ago, the Supreme Court rejected an Establishment Clause challenge to the

type of private school voucher program embodied in BOOST. *Zelman*, 536 U.S. at 662-663. The BOOST program, similar to the one upheld in *Zelman*, provides scholarship funds “to participating families on neutral terms, with no reference to religion.” *Id.* at 653. The financial aid to qualifying students “‘is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis.’” *Id.* at 653-54 (quoting *Agostini v. Felton*, 521 U.S. 203, 231 (1997)).

Notwithstanding this settled precedent, Bethel asserts that the defendants’ enforcement of the BOOST law’s nondiscrimination requirement violates the “excessive entanglement” prong of the three-part Establishment Clause test set forth in *Lemon v. Kurtzman*, 403 U. S. 602 (1971). ECF 17 at 28. To the contrary, the facts demonstrate that MSDE and the BOOST Board made no inquiry as to the sincerity of Bethel’s, or any other school’s, religious beliefs. Ex. 15 ¶ 14. They did not challenge whether Genesis 1:27 or Genesis 2:23-24 meant what Bethel said it meant or otherwise take issue with Bethel’s interpretation of biblical scriptures. Ex. 15 ¶ 14; *see United States v. Lee*, 455 U.S. 252, 257 (1982) (observing that “[c]ourts are not arbiters of scriptural interpretation” (citation omitted)). They evaluated no curriculum or teacher performance. Instead, they conducted an across-the-board review of all BOOST schools’ policies to determine whether they were discriminatory. Ex. 15 ¶¶ 10-15. That the discriminatory policies may have been expressed in religious terms does not mean that review of those policies created an excessive entanglement between church and state.

Additionally, Bethel's isolation of the "excessive entanglement prong" from the *Lemon* test is incorrect. "If the *Lemon* Court thought that its test would provide a framework for all future Establishment Clause decisions, its expectation has not been met." *American Legion v. American Humanist Ass'n*, 139 S. Ct. 2067, 2080 (2019) (Alito, J.). Instead, the Court applies specific precedent where available; here, *Bob Jones University* establishes that when a policy involving a government subsidy to private schools who wish to discriminate is at stake, it will be upheld if it "is founded on a neutral, secular basis." 461 U.S. at 604 (internal citation and quotation marks omitted). Moreover, the Supreme Court never mentioned the nondiscrimination requirement at issue in the program examined in *Zelman* when it was considering whether scholarships given to students for use at sectarian schools could withstand the Establishment Clause. 536 U.S. at 645. Bethel's claim for violation of the Establishment Clause fails as a matter of law. The defendants are entitled to summary judgment on Bethel's Sixth Cause of Action.

**C. The Undisputed Facts Do Not Demonstrate a Violation of the Free Speech Clause Under Any Theory.**

Bethel's First Amendment claims based on the Free Speech Clause and asserted in the Second Cause of Action fair no better. The BOOST nondiscrimination requirements do not regulate speech, they regulate conduct. Bethel's failure to demonstrate that the nondiscrimination requirements reach beyond conduct precludes any relief under the Free Speech Clause.

**1. Requiring Bethel’s Written Admissions Policy to Conform with the Nondiscrimination Requirement Is a Regulation of Conduct.**

“[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.” *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 11551 (2017) (quoting *Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 62 (2006) [hereinafter “FAIR”]). When a government policy “aims at the *act* of rejecting would-be group members without reference to the reasons motivating that behavior,” it is a “reasonable and viewpoint neutral” limit that does not impinge on free-speech or expressive-association rights. *Christian Legal Soc’y Chapter of the Univ. of Cal. Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 696-67 (2010).

The undisputed facts demonstrate that MSDE and the BOOST Board sought to avoid public funding of schools that discriminate in admissions. MSDE and the BOOST Board did not proscribe speech, but rather conduct: discrimination in admissions. Discrimination in admissions is treating applicants who possess a disfavored orientation (homosexual) less favorably than similarly situated applicants who possess the favored orientation (heterosexual). *See Bostock*, 140 S. Ct. at 1740 (observing that discrimination today means roughly what it meant in 1964—disparate treatment). Discrimination can occur ad hoc or, as here, through discriminatory policies.

The fact that policies are expressed in words does not transform them into protected speech. A policy is “[a] standard course of action that has been officially established by

an organization . . . .” Policy, Black’s Law Dictionary (11th Ed. 2019). Examining written policies to investigate an organization’s “standard course of action,” *id.*, is a routine enforcement step, and flows directly from the same principle that because legislatures may “prohibit employers from discriminating in hiring on the basis of race,” they also may “require an employer to take down a sign reading ‘White Applicants Only’ . . . .” *FAIR*, 547 U.S. at 62. That a statute requires removal or alteration of words evincing a policy “hardly means that the law should be analyzed as one regulating . . . speech rather than conduct.” *Id.* An admissions policy that states students must conform their conduct to a standard incompatible with the student’s status as a member of a protected class in order to gain admission *is* discrimination in admissions.

Defendants’ focus on written policies was appropriate here given the genesis of the complaint brought to the State’s attention. In response to a report that a participating school had a written admissions policy that violated the BOOST law nondiscrimination requirement, MSDE and the BOOST Board engaged in good faith efforts to determine whether any other participating school maintained discriminatory policies. Upon review, the Board determined that Bethel’s written admissions policy discriminated on the basis of sexual orientation. That determination was reasonable because the policy, on its face, disfavored homosexual applicants. Despite signing assurances that it would not discriminate on the basis of sexual orientation, the nondiscrimination provision in Bethel’s admissions policy excluded sexual orientation. Ex. 16 at 3. And directly following the nondiscrimination requirements, the admissions policy admonished: “It should be noted, however, that Bethel Christian Academy supports the biblical view of marriage defined

as a covenant between one man and one woman, and that God immutably bestows gender upon each person at birth as male or female to reflect His image.” Ex. 16 at 3. Although Bethel is a Kindergarten through 8th grade school, whose students cannot marry legally in Maryland, the admissions policy went on to state that “student conduct is expected to align with this view.” Ex. 16 at 3. A reasonable interpretation of this provision is that it disfavored homosexual applicants and, in any event, the Board’s determination, even if incorrect, does not give rise to a First Amendment violation.<sup>6</sup>

The Board’s enforcement of the BOOST nondiscrimination requirement “neither limits what [BOOST] schools may say nor requires them to say anything.” *FAIR*, 547 U.S. at 60. Bethel and any other school seeking to qualify for BOOST program eligibility remain free to “express whatever views they may have,” *id.*, about groups covered by the nondiscrimination provision; the program’s only requirement is that Bethel alter its conduct to cease excluding those groups from attending its school.

## **2. The BOOST Nondiscrimination Requirement Is a Permissible Condition on State Funding.**

Bethel voluntarily applied to be designated eligible to receive state funding in the form of student BOOST scholarship funds. If an applicant for a government grant program

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<sup>6</sup> If that interpretation was not reasonable, Bethel had a right under Maryland law to seek judicial review of the BOOST Board’s decision under Maryland Rules, Title 7, subtitle 4, Administrative Mandamus, which provides for “judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.” Md. Rule 7-401(a). Bethel chose not to pursue this remedy, and its attempt to elevate their administrative law claim to one of constitutional dimensions, thereby bypassing applicable appeal deadlines, should be rejected.

objects that a condition of the funding “may affect the recipient’s exercise of its First Amendment rights,” generally “its recourse is to decline the funds.” *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013) (*AOSI*). And, “government is not required to subsidize activities that it does not wish to promote.” *Matal v. Tam*, 137 S. Ct. 1744, 1761 (2017). “[T]he Government may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake.” *National Endowment for the Arts v. Finley*, 524 U.S. 569, 587-88 (1998). It is settled that even if a State has a “special interest in elevating the quality of education in both public and private schools,” it need not grant aid to schools that discriminate, because although “the Constitution may compel toleration of private discrimination in some circumstances,” it does not “require[] state support for such discrimination.” *Norwood v. Harrison*, 413 U.S. 455, 463 (1973).

The condition upon funding that Bethel challenges in this case is that it refrain from a discriminatory admissions practice, not that it adopt any particular belief or message. Consequently, the BOOST nondiscrimination provision, and the application thereof, does not fall within the narrow exception to the government’s discretion when making funding decisions that the Court articulated in *AOSI*. In *AOSI*, the challenged provision “mandate[d] that the recipients of . . . funds explicitly agree with the Government’s policy to oppose prostitution and sex trafficking.” *AOSI*, 570 U.S. at 213. In other words, the challenged provision told “‘people what they must say.’” *Id.* (quoting *FAIR*, 547 U.S. at 61). The Supreme Court’s cases draw a distinction between “conditions that define” the government funding program and “those that reach outside it,” finding impermissible only

those conditions that reach outside the program to pose an undue burden on recipients' First Amendment expressive activity. *AOSI*, 570 U.S. at 217. But the nondiscrimination provision at issue here regulates only schools' conduct, and does not require them to say anything if their admissions policy, including in its written form, conforms to the requirement. Neither MSDE nor the BOOST Board have any interest in whether Bethel or any other school teaches, writes about, speaks, or takes out billboards expressing any religious or other belief.

Bethel's only allegation that its expressive activity was curtailed is its conclusory statement that "the BOOST nondiscrimination requirements condition Bethel's ability to participate in the BOOST program and receive BOOST funding on Bethel changing the language in its handbook about its religious beliefs." Compl. ¶¶ 219-222. But that statement must be reconciled with the letter sent by the BOOST Board and incorporated into Bethel's complaint, which clearly identified only the *admissions policy* language, not any other language in its handbook, including its Statement of Faith, which contains identical language. *Compare* ECF 1-9 with ECF 1-4 at 7, 8. The BOOST Program nondiscrimination requirements are "conditions that define" the program as one that provides funds to students to attend nonpublic schools that do not discriminate on the basis of sexual orientation, and now gender identity. These conditions leave Bethel free to express its religious beliefs in its preferred form, including on *the next page of their handbook*, as long as that speech does not amount to an actual denial of admissions, whether by outright rejection, expulsion post-admission, or deterring applications by conveying in the admissions policy that the enumerated classes are unwelcome to apply.

### **3. Ensuring State Funds Do Not Support Discrimination in Education Is a Compelling State Interest.**

As explained above, the BOOST nondiscrimination requirements are viewpoint- and content-neutral because they only regulate conduct. Moreover, because of their focus on conduct, the requirements do not implicate the bar on unconstitutional conditions in government funding most recently set forth in *AOSI*. Therefore, there is no basis to apply any form of scrutiny more stringent than rational basis to the BOOST Board's actions. The BOOST Board's actions nevertheless are based in long-recognized compelling state interests to prevent discrimination in education.

The exclusion of persons based on particular traits such as sexual orientation “impose[s] stigma and injury of the kind prohibited by our basic charter.” *Obergefell v. Hodges*, 576 U.S. 644, 671 (2015). “Stigma has ‘a corrosive influence on health’ and can impair a person’s social relationships and self-esteem.” Amicus Curiae Brief for States of Illinois *et al.* (including Maryland), *Bostock v. Clayton County*, Nos. 17-1618, 17-1623, 18-107 (U.S. July 3, 2019) at 8 (citation omitted); *see also Jaffee v. Redmond*, 518 U.S. 1, 11 (1996) (“The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance.”).

The State’s goal of “eliminating discrimination and assuring its citizens equal access to publicly available goods and services,” when “unrelated to the suppression of expression, plainly serves compelling state interests of the highest order.” *Roberts v. United States Jaycees*, 468 U.S. 609, 624 (1984). These interests are heightened in the educational context; “[u]nder *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686,

98 L.Ed. 873 (1954), discriminatory treatment exerts a pervasive influence on the entire educational process.” *Norwood*, 413 U.S. at 469. The impact of exclusion from an educational institution “is greater when it has the sanction of the law,” because state-sanctioned exclusion from educational opportunities can impose a “sense of inferiority” that “affects the motivation of a child to learn.” *Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954), *supplemented sub nom. Brown v. Board of Educ.*, 349 U.S. 294 (1955). Discrimination in admissions to nonpublic educational institutions “is not barred by the Constitution, nor does it invoke any sanction of laws, but neither can it call on the Constitution for material aid from the State.” *Norwood*, 413 U.S. at 469. The “unique evils” of discrimination transcend “the point of view such conduct may transmit,” *Roberts*, 468 U.S. at 628, and the State has a compelling interest in minimizing stigmatic harms to classes it has identified have need of enhanced protection, *see Windsor*, 570 U.S. at 768; *cf. Fulton*, at \*9 (recognizing that equal treatment of foster parents and foster children is a “weighty” interest because “[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth,” but that City’s creation of exceptions undermined its contention that denial of exception for religious reasons furthered a compelling interest (quoting *Masterpiece Cakeshop*, 138 S. Ct. at 1727)).

### **III. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON BETHEL’S THIRD CAUSE OF ACTION BECAUSE ITS VOID-FOR-VAGUENESS THEORY FAILS AS A MATTER OF LAW.**

Bethel’s Third Cause of Action asserts that the State violated its rights under the Fourteenth Amendment when the BOOST Board disqualified Bethel based on “vague,

subjective, and malleable standards that differed from the program budget language.” Compl. ¶ 241. That claim fails as a matter of law for a number of reasons.

First, Bethel does not have “legitimate claim of entitlement” to BOOST scholarships for purposes of the Fourteenth Amendment. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). BOOST scholarships are awarded to “students who are eligible for the free or reduced-price lunch program,” and who are ranked on the basis of financial need. 2016 Md. Laws ch. 143 at 130-35 (emphasis added). Those students then decide which nonpublic school to attend, and those schools in turn must meet testing, nondiscrimination, and reporting requirements to become BOOST eligible. *Id.* Here, Bethel’s mere “unilateral expectation” that it is entitled to receive these students’ scholarships is insufficient under the Fourteenth Amendment. *Roth*, 408 U.S. at 577. And, “no property interest is implicated by the nonrenewal of a contract or license where there is no entitlement to the renewal.” *Richardson v. Town of Eastover*, 922 F.2d 1152, 1157 (4th Cir. 1991). BOOST contains no automatic renewal provisions; thus, there is no guarantee or entitlement to it.

Second, any Fourteenth Amendment claim Bethel asserts is “effectively ‘subsumed’” into Bethel’s more specific claims under the First Amendment. *Hunt Valley Baptist Church, Inc. v. Baltimore County*, No. CV ELH-17-804, 2017 WL 4801542, at \*39 (D. Md. Oct. 24, 2017). (quoting *Doswell v. Smith*, 139 F.3d 888, at \*6 (4th Cir. 1998) (table)). The First Amendment, not the Fourteenth, contains rights about freedom of religion and speech, which are the primary subject of Bethel’s allegations.

Finally, the void-for-vagueness doctrine does not fit the facts of this case. The Supreme Court “has steadfastly applied the void for vagueness doctrine *only* to statutes or regulations that purport to *define the lawfulness of conduct or speech.*” *Nyeholt v. Secretary*, 298 F.3d 1350, 1356 (Fed. Cir. 2002) (emphasis added) (rejecting void-for-vagueness challenge to statute defining eligibility for veterans’ benefits); *see also Singhal v. Lee*, No. 1:12CV708, 2016 WL 1305294, at \*1 (E.D. Va. Mar. 28, 2016) (rejecting void-for-vagueness challenge to U.S. patent statute); *Woodruff v. United States*, 954 F.2d 634 (11th Cir. 1992) (rejecting challenge to interpretive rule for agency in making benefit decisions). Put another way, the void-for-vagueness doctrine “relate[s] to prohibitions.” *Nyeholt*, 298 F.3d at 1356. But BOOST is not a prohibition. As explained in argument section II.C.1 above, the law does not regulate speech, and the law does not prohibit conduct because no school is required “to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings.” 2016 Md. Laws ch. 143 at 130-35.

Moreover, Bethel’s contention that the sexual-orientation and gender-identity nondiscrimination provisions in the BOOST law are vague is not supported by an examination of the BOOST law text. ECF No. 1, ¶¶ 232, 245. A statute is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Martin v. Lloyd*, 700 F.3d 132, 135 (4th Cir. 2012) (citations and internal quotation marks omitted). But the Court should seek “an interpretation which supports the constitutionality of legislation.” *United States v. Nat’l Dairy Prods. Corp.*, 372 U.S. 29, 32 (1963). Words in a challenged statute “must be read in their context and

with a view to their place in the overall statutory scheme.” *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 273 (4th Cir. 2019) (citation and internal quotation marks omitted).

The BOOST law provides “fair notice” about its nondiscrimination provisions. Although Bethel complains that the BOOST law does not define sexual orientation or gender identity, the State Government Article already defines these terms. *See* Md. Code, State Gov’t, § 20-101(e) (LexisNexis 2014) (defining “gender identity”); (g) (defining “sexual orientation”).

Bethel also feigns that the BOOST law does not define “discrimination,” but that term has an established legal meaning. *See, e.g.*, “Discrimination,” *Black’s Law Dictionary* (11th ed. 2019) (“The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of” status as a member of that class); *see also United States v. Daley*, 378 F. Supp. 3d 539, 550, 550 n. 6, 7 (W.D. Va. 2019) (stating that statute is not void for vagueness when terms used have “settled legal meanings,” citing to *Black’s Law Dictionary*). Further, the BOOST nondiscrimination provisions incorporate by reference Title VI of the Civil Rights Act of 1964, as amended. *See* 42 U.S.C. § 2000d (defining discrimination to mean that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”). Even if Bethel quibbles with these definitions, the case law recognizes that words in a statute cannot possibly be as precise as “mathematical symbols.” *Boyce Motor Lines v. United States*, 342 U.S. 337, 340 (1952). This is because

“most statutes must deal with untold and unforeseen variations in factual situations,” *id.*, and therefore only a “reasonable degree of certainty can be demanded” from the language of a statute, *id.*, especially a non-criminal statute like BOOST. *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-98 (1982).

And looking beyond the statutory text, the facts establish that Bethel sufficiently understood the meaning of the BOOST nondiscrimination requirements. Bethel was “aware that in order to participate in the BOOST program that they had to agree that [it] would not discriminate against students in admissions based on . . . sexual orientation.” Ex. 7 at 80:12-17. Bethel was also aware when it re-applied to the BOOST program that the BOOST law prohibited gender-identity discrimination. Ex. 7 at 111:14-22.

Additionally, Bethel cannot persuasively argue that the BOOST law did not provide “fair notice” about its nondiscrimination provisions because it signed two written assurances—once before the Board removed it from BOOST and once after—stating that it does not discriminate on the basis of sexual orientation or gender identity. Specifically, in 2017, and as a precondition to participate in BOOST, Bethel signed a written assurance declaring that it “does not discriminate in student admissions on the basis of . . . *sexual orientation*. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will not discriminate in student admissions on the basis of race . . . *sexual orientation*.” Ex. 6 at 2 (emphasis added); Ex. 7 at 84:3-20. Then in 2020, Bethel again signed an assurance stating that it “does not discriminate in student admissions, retention, or expulsion or otherwise discriminate against any student

on the basis of . . . *sexual orientation, or gender identity or expression.*” Ex. 31 at 2 (emphasis added). Bethel did not equivocate or qualify its assurances that it does not discriminate; it never contended it did not understand the meaning of the terms in the written assurance or the BOOST law.

Bethel also cannot cogently argue that the terms sexual orientation and gender identity are incomprehensible because it incorporated its beliefs about these very same concepts into its student handbooks. Regarding sexual orientation, Bethel admonished prospective students in the nondiscrimination provisions of its admissions policy that Bethel “supports the biblical view of marriage defined as a covenant between one man and one woman.” Ex. 16, at 3. And for gender identity or expression, Bethel declares in its admissions policy that “God immutably bestows gender upon each person at birth as male or female to reflect His image.” *Id.* Further, the admissions policy requires “[f]aculty, staff, and students . . . to identify with, dress in accordance with, and use the facilities associated with their biological gender.” Ex. 16 at 3. In another example of Bethel’s understanding of sexual orientation and gender identity, the “Statement of Faith” section of the handbook states, “We believe that God created mankind in His image, male and female (Gen. 1:27, Gen. 5:2) and, according to His word, marriage is a sacred union between one man and one woman . . . condemning a homosexual lifestyle.” Ex. 16 at 4.

In short, Bethel demonstrated that it knew what the terms “sexual orientation” and “gender identity” meant in the BOOST law because it emphasized its own beliefs about these concepts in its student handbooks. Consequently, Bethel had “fair notice” about the BOOST nondiscrimination requirements, and the defendants are entitled to summary

judgment over Bethel's claim that BOOST is unconstitutionally vague under the Fourteenth Amendment.

**IV. THERE IS NO PARENTAL RIGHT TO GOVERNMENT FUNDING OF PRIVATE EDUCATIONAL CHOICES.**

The defendants are entitled to summary judgment regarding Bethel's Fourth Cause of Action alleging a violation of the parental right to direct a child's education. The Supreme Court has "held in several contexts that a legislature's decision *not* to subsidize the exercise of a fundamental right *does not* infringe the right, and thus is not subject to strict scrutiny." *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 549 (1983) (emphasis added). The Seventh Circuit considered nonpublic school funding and the parental right to educate a child. *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1008-09 (7th Cir. 2019). That court of appeals decided that a public-school district's decision not to fund some transportation costs for nonpublic religious schools did not implicate a parental right to educate. *Id.* The Fourth Circuit has also rejected the contention that a county policy prohibiting homeschooling parents and all other private educational entities "from using [] community centers as private educational centers" unconstitutionally restricted parents' "decisions concerning the care, custody, and control of their children." *Goulart v. Meadows*, 345 F.3d 239, 260-61 (4th Cir. 2003).

Bethel in this case has not produced any evidence that the defendants attempted to "forc[e]" Bethel's students "into public schooling." *St. Joan*, 919 F.3d at 1008 (citation and internal quotation marks omitted). To the contrary, after reviewing approximately 176 handbooks of schools that participated in BOOST participating during the 2016-2017

school year, the defendants determined that only ten religious nonpublic schools did not comply with the BOOST nondiscrimination requirements, and the defendants later re-admitted six of these schools after they revised their student handbooks. Ex. 19 ¶ 18; Ex. 33 at 8-9.

Because parents do not have a constitutional right to receive government subsidies for their children's nonpublic school education, the Court should grant summary judgment to the defendants regarding Bethel's Fourth Cause of Action.

**V. THE STATE DEFENDANTS HAD A RATIONAL BASIS FOR BETHEL'S EXCLUSION FROM THE BOOST PROGRAM.**

Finally, the defendants are entitled to summary judgment on Bethel's Fifth Cause of Action. In that count, Bethel asserts a class-of-one equal protection claim alleging that it was treated differently than other similarly situated nonpublic sectarian schools with "similar beliefs and policies on marriage and sexual conduct." Compl. ¶ 274. Because the undisputed facts demonstrate that schools with like admissions policies were treated alike, defendants are entitled to judgment as a matter of law on this claim.

The undisputed facts demonstrate that the State had a rational basis for treating Bethel differently from other schools with similar beliefs or policies. Upon receiving a report that Trinity Lutheran Christian School maintained a written policy that discriminated on the basis of sexual orientation in violation of the BOOST law and the assurances the school had signed, MSDE conducted a review of written policies of all BOOST-participating schools to determine whether any other schools had discriminatory policies. Ex. 15 ¶¶ 9-10; Ex. 19 ¶¶ 10-11. In conducting this review, MSDE applied the same

standards to all of the schools' policies, regardless of religious or non-religious affiliation of the school. Ex. 15 ¶ 12. After conducting the review, MSDE staff identified a group of schools that had policy language that was potentially discriminatory and presented those schools to the Board for decision. Ex. 19 ¶ 12. After carefully reviewing the schools' policies, the Board determined that a number of schools, including Bethel, had discriminatory policies. Ex. 19 ¶¶ 13-14. The Board gave those schools, including Bethel, the opportunity to revise their policies to bring them into compliance. Ex. 19 ¶¶ 18-19. Those schools that took advantage of that opportunity had their eligibility restored. Ex. 19 ¶ 18. Bethel declined to change its policies and, therefore, did not have its eligibility restored. Ex. 19 ¶ 19.

These facts demonstrate a rational basis for the Board's treatment of Bethel. Even if the Board was wrong about what the BOOST law means or its assessment of facts applicable to Bethel's eligibility, "the agency's otherwise rational decision would still pass constitutional muster." *XP Vehicles, Inc. v. Department of Energy*, 118 F. Supp. 3d 38, 76 (D.D.C. 2015).

## CONCLUSION

The defendants are entitled to summary judgment because the undisputed material facts do not support Bethel's claims under any of the theories it asserts in its complaint.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

/s/ Ann M. Sheridan

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June 25, 2021

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BETHEL MINISTRIES, INC.,

\*

*Plaintiff,*

\*

v.

\*

No. 1:19-cv-01853-SAG

DR. KAREN B. SALMON, *et al.*,

\*

*Defendants.*

\*

\* \* \* \* \*

**EXHIBIT LIST**

**EXHIBIT NO.**

3. Excerpts from Maryland General Assembly Bill File for House Bill 307 (2001) (ECF 16-2, 16-4)<sup>1</sup>
4. Excerpts from Maryland General Assembly Bill File for Senate Bill 212 (2014) (ECF 16-3, 16-5)
5. Declaration of Claire Dant (ECF 19-3 filed 10/31/2019)
6. Bethel's Signed BOOST Program Assurance for 2017-18 School Year
7. Excerpts from Bethel 30(b)(6) Deposition
8. Letter from Maryland PTA, dated October 11, 2017
9. Donna Gunning Affidavit (ECF 22-1 filed 11/14/2019)
10. Excerpt from Trinity Lutheran Christian School Handbook
11. Letter from Matthew Gallagher to Pastor John Austin, dated October 13, 2017

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<sup>1</sup> The first exhibit starts with number 3 to coincide with the ECF numbering.

**EXHIBIT NO.**

12. Letter from Donna Gunning to Pastor John Austin, dated February 28, 2019
13. Letter from Matthew Gallagher to BOOST-eligible schools, dated October 13, 2017
14. Letter from Matthew Gallagher to BOOST schools, dated December 19, 2017
15. Declaration of James Klarman
16. Excerpt from Bethel 2017-18 Parent/Student Handbook
17. Letter from Monica Kearns to Claire Dant, dated March 5, 2018
18. Letter from Claire Dant to Monica Kearns, dated March 13, 2018
19. Declaration of Matthew Gallagher
20. Letter from Monica Kearns to Claire Dant, dated May 25, 2018
21. Letter from Claire Dant to Monica Kearns and BOOST Board, dated May 29, 2018
22. Letter from Matthew Gallagher to Claire Dant, dated August 8, 2018
23. School Status – BOOST Program Discriminatory Practices Review Summary
24. Letter from Matthew Gallagher to Robin Davis, dated March 16, 2018
25. Letter from Donna Gunning to Claire Dant, dated February 28, 2019
26. Email thread between Donna Gunning and Claire Dant, dated May 24, 2019

**EXHIBIT NO.**

27. Letter from Donna Gunning to Claire Dant,  
dated December 12, 2018
28. BOOST Advisory Board Summary Decisions of February 5, 2019
29. Email and letter from Donna Gunning to Claire Dant,  
dated April 24, 2020
30. Excerpt from Bethel 2019-20 Parent/Student Handbook
31. Program Assurance signed by Claire Dant, dated January 17, 2020
32. Excerpts from Deposition of Monica Kearns
33. Defendants' Answers to Plaintiff's First Set of Interrogatories  
(No. 5, 8, 9)

# Exhibit 3

Testimony of  
Rev. Richard T. Lawrence  
on H.B. 307 and S.B. 205

Ladies and Gentlemen:

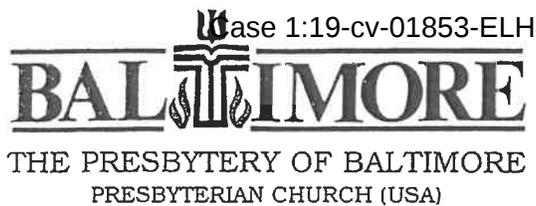
My name is Richard T. Lawrence, and I am pastor of St. Vincent de Paul Church in Baltimore. I am testifying this afternoon, not as a spokesperson for the Archdiocese of Baltimore, nor for the Maryland Catholic Conference, nor even as an expert theologian, but simply to put before you the cares and concerns voiced to me by some members of my congregation for the welfare of their adult children who are homosexual.

These mothers and fathers of gays and lesbians understand full well that it is the constant teaching of the Catholic Church that any uses of the sexual faculty outside of marriage, and even certain uses of that faculty within marriage, are morally disordered. They also understand that their daughters and sons are, in the words of the American bishops, "Always our children," and they are concerned for their welfare. They know that, in the words of Catechism of the Catholic Church, "The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided." (Para. 2358).

These parents are fearful, as are all parents, for their children's future. But they have greater reason for fear than most parents. They are afraid, for instance, not only that their children will not succeed on their jobs (a fear all parents share), but also that if their sons' or daughters' sexual orientation becomes public knowledge, they could lose their jobs, or be subject to cruel harassment by their co-workers.

For reasons such as this, more than one parent of a gay or lesbian son or daughter has asked me for help. These are not militants or activists, they are parents. They are not asking for legal recognition of homosexual unions, nor legal protection for any sort of sexual behavior, nor affirmative action for employment of homosexuals, nor anything of that sort. All they are asking is that they have the assurance that the laws of this State will help protect their daughters and sons from being harassed on the job, run out of their neighborhood, or embarrassed in public places, simply because of their sexual orientation.

I hope that the Legislature, speaking for the people of Maryland, will find a way to give them that assurance. Thank you.



**INFORMATION  
COPY**

Re: HB 307

February 28, 2001

Senator Walter Baker  
310 James Senate Office Bldg.  
Annapolis, MD 21401-1991

Dear Senator Baker,

I write on behalf of the Presbytery of Baltimore, Presbyterian Church (U.S.A.) to urge your vote in the Judicial Proceedings Committee to allow the Anti-Discrimination Act (SB 205) to go to the full Senate for a vote. That a matter of such importance to a significant number of Marylanders would not be voted on by the full legislature is sad, and I urge your effort to allow that vote to happen.

Gay and lesbian persons are a persecuted minority in our society. In Maryland they face little discrimination at the hands of government, but that same government looks on and allows significant discrimination against gay and lesbian persons by other private parties—discrimination in employment, housing, and public accommodations that would be illegal if directed—even by private parties—against African-Americans, Hispanics, or Jews. This is a situation that should be addressed and corrected.

Nationally, the Presbyterian Church (U.S.A.) has consistently endorsed equal protection under the law for gay and lesbian persons, since it first addressed this issue in 1978. Presbyterians here in Maryland, acting through the Presbytery of Baltimore which represents Central and Western Maryland, have endorsed this call, and have specifically called upon counties and the state to take action.

I appreciate your attention to this letter, and will appreciate your efforts to allow a full vote in the Senate.

Sincerely,

Charles P. Forbes  
Stated Clerk

Margaret J. Ferguson  
MODERATOR

Charles P. Forbes  
STATED CLERK

Philip J. Sorensen  
INTERIM EXECUTIVE  
PRESBYTER

William R. Millen  
ASSOCIATE EXECUTIVE  
PRESBYTER



THE DIOCESE OF MARYLAND

**Testimony Prepared for the House Judiciary Committee  
HB 307 – Anti-Discrimination Act of 2001**

**March 9, 2001**

**Position: FAV**

On behalf of Bishop John L. Rabb and the 120 congregations comprising the Episcopal Diocese of Maryland, I urge your favorable response to HB 307.

In our baptismal covenant, we promise to strive for justice. It is recognized by the State of Maryland that to discriminate in housing or employment is an injustice if the cause is race, creed, sex, age, color, national origin, marital status or disability.

We have understood that because a person is perceived as “other” does not mean that their behavior is to be feared. That sexual orientation remains a cause for discrimination is shameful.

Surely we can distinguish between “orientation” and “lifestyle”. There are heterosexual persons whose lifestyle is certainly not to be emulated. There are homosexual persons whose lifestyle is a model of propriety. To refer to “homosexual lifestyle” betrays shameful ignorance and backwardness on the part of the speaker.

Justice demands fair treatment of all God’s children. We are talking about life’s basics: employment, shelter.

The 65<sup>th</sup> General Convention of the Episcopal Church, USA, declared that “homosexual persons are children of God who have a full and equal claim with all others upon the love, acceptance, and pastoral concern of the church.” Would you deny employment or shelter to a child of God?

In the name of the Episcopal Diocese of Maryland, I urge your support of HB 307.

Respectfully submitted,



Maggy Cullman  
Bishop’s Deputy for Public Policy  
The Episcopal Diocese of Maryland



**Lutheran Office on Public Policy in Maryland**

41 State Circle, 4-R  
Annapolis, Maryland 21401  
office, 410-268-4122  
fax, 410-268-3554  
e-mail, loppmdhud@erols.com

Lee Hudson, Director

Testimony Prepared for the  
Judiciary Committee  
On  
House Bill 307  
March 9, 2001  
Position: Favorable

Mr. Chairman and members of the Committee, thank you for this opportunity to testify on behalf of the rights of citizens in the State of Maryland. I am Lee Hudson, director of the Lutheran Office on Public Policy in Maryland, representing more than two hundred Evangelical Lutheran Church in America congregations in its Delaware-Maryland and Metropolitan DC synods.

Our faith community has committed itself to the basic human rights of all people as a universal governing principle for society. Among these are freedom from discrimination in employment and housing.

We do not believe that sexual orientation is a valid reason for the practice of housing or job discrimination. Neither do we believe that a religious right of discrimination extends to housing, public accommodation, or employment.

We therefore support House Bill 307 and urge your Committee's favorable report.

Thank you for your attentive hearing..

Respectfully,

Lee Hudson

## Freedom Of Religion Coalition – Opposed HB #'s 47; 875; 920 & 1161

### **Statement of Intent**

This written testimony is designed for the intent purpose of stating the Freedom of Religion Coalition (and our observers) OPPOSITION to the legislation detailed below and to be an answer, on the part of The Freedom of Religion Coalition (of Maryland, a conservative, Christian group of individuals committed to promoting Freedom of Religion and Freedom of Speech in our State) to the growing problem of pro-homosexual lobbying and the growing introduction of pro-homosexual legislation in this state. It is also designed to be an answer regarding “hate crimes” legislation in general.

### **Our Position**

First, let me clearly state that we (FORC & our observers) do not hate any person. By commandment of Jesus Christ, Whom we believe is the Savior and Lord of mankind, as well as the Divine Creator, we strive to equally love all persons without regard to their beliefs and preferences. FORC believes and holds the conviction that **all** American citizens have certain unalterable rights guaranteed by the Constitution, which itself rests upon the sovereign guarantee of rights granted by the Divine Creator. This testimony is designed to be an observation and partial answer to what FORC considers a serious problem in legislation in recent years, that of the state of Maryland seeking to take a pro-homosexual stance in state legislation & also in the stance of the executive and judiciary branches in these matters.

### **Matter at Hand**

FORC is in opposition to any form of pro-homosexual legislation (or any legislation that is pro to deviant sexual behavior as well). We oppose this type of legislation in particular because much of it is clearly aimed to defraud the public about issues regarding homosexual or other deviant sexual expression(s) or preference(s). We also oppose the inclusion of any terms in civil rights laws that include sexual preference or terms that speak to or about the sexual preference of an individual. We submit that the term GENDER is adequate in all forms of civil rights legislation, due to the immutable characteristic of an individual’s GENDER. By including terms that include sexual preference or expression, the legislation listed below opens the door to the possibility and eventual probability of the promotion of all forms of deviant sexual behavior as protected action(s) under even existing civil rights laws.

FORC is also opposed to “hate crimes” bills or legislation, as it tends to weaken or ignore current laws (and our Bill of Rights) that provide for adequate punishment for any crime that could be termed a “hate crime” in the State of Maryland.

## Freedom Of Religion Coalition – Opposed HB #'s 47; 875; 920 & 1161

### Problem with Definition of “Sexual Orientation”

Upon the initial reading of these bills, we find that the term “sexual orientation” is defined in this way: “THE IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR female HOMOSEXUALITY, HETEROSEXUALITY, OR BISEXUALITY.

In regards to the above definition let me state several issues:

1. The first is that this legislation and in particular the *wording of the legislation promotes a pro-homosexual (and possibly pro-deviant) attitude in State law.*

In each year that a bill has been introduced (either in the MD House or MD Senate) with the same or similar wording as that of the 1999 HB 92; HB 315; HB 969; or the bills from the 2000 session, the goal of the legislators (and ultimately those who favor a pro-homosexual attitude in the laws of Maryland) has been to **redefine** the civil rights of individuals to include “sexual orientation”. 1999 in particular added wording seeking to protect the “identity” of an individual especially when “...not traditionally associated with an individual’s biological sex or sex at birth.”

What this does, in effect, is to establish a legal precedence that declares homosexuality, bisexuality and various other forms of sexual **expression / preference** to be on the same level as **immutable characteristics** such as race, handicap or gender. (You may notice that I left out religion, for though it is protected under the first amendment, it is not an immutable characteristic of an individual).

Legislators need to be reminded that the laws regarding discrimination, in particular those laws that provide and establish basic civil rights, should not include pro or con any wording that may indicate protected or special status to or for one’s sexual expression or preference. If the laws are allowed to include such wording, future legal cases and ultimately the State’s attitude towards these matters will ultimately shift to a pro-homosexual position.

In regard to the matter of whether sexual preference may be included in civil rights law, let me include a quote from FORC testimony regarding 1998 HB 68. Civil rights legislation and in particular the addition of protected “classes” needs to be put to a test of immutability as determined by the Supreme Court. “Sexual Orientation” does not qualify under these requirements.

Homosexuals would have us believe they do not enjoy the same rights as

## Freedom Of Religion Coalition – Opposed HB #'s 47; 875; 920 & 1161

other citizens. They claim they need minority status and special civil rights protection. The fact is that they already have and are entitled to the same civil rights as all Americans. **They are not entitled to special rights.** The United States Supreme Court ruled in the Bowers vs. Hardwick case that sodomy is not a constitutionally protected behavior. The Supreme Court has historically used a threefold test to determine if a group qualifies for special protection as a minority.

### Test Number One

There must be a history of discrimination through being deprived of cultural opportunities, being unable to get adequate education and being unable to obtain a reasonable economic income. Certainly homosexuals do not qualify. Their average income is nearly double that of the average American. Their educational level is considerably higher than the average. As a group they hold managerial and professional positions at a much higher rate than the average citizenry. These are not a deprived people.

### Test Number Two

There must be obvious and unchangeable characteristics of this group that distinguish them. The fact is there is no "homosexual gene." A 1992 study by the University of Minnesota Hospital and Clinics on 34,706 students found 25.9% of children are unsure of their sexual orientation at age 12. This figure declines to 5% by age 17. The NORC study also found that sexual orientation is a fluid condition. 75% of those who experience some homosexual orientation do not continue throughout their lifetime in homosexual relationships.

### Test Number Three

This class of people must be able to show that they are politically powerless. Homosexual activists donated \$3.4 million dollars to President Clinton's campaign and they supplied thousands of workers for numerous campaigns. They are by no means powerless."

2. The second issue that I would like to speak to is the rather peculiar grouping and usage of the terms used to define "sexual orientation" in general. **The grouping and usage of the terms promotes homosexual(ity) and also waters down clearly defined gender characteristics (again placing preferences above immutable characteristics).**

In the description of the term "sexual orientation" in each bill, the first listed form of sexual orientation is "male or female homosexuality". It is clear that particular emphasis is placed upon homosexuality AND that the definition includes provision for what could only be described as "effeminate" / "butch" characteristics or even cross-dressing or other deviant sexual

## Freedom Of Religion Coalition – Opposed HB #'s 47; 875; 920 & 1161

**expressions.** When you read the definition carefully what you find is a clear predisposition towards homosexual and / or abnormal sexual expression in the definition of "sexual orientation". Even though heterosexuality is included in the list, it is dwarfed by the other definitions of sexual orientation. This leads us to the necessity to clearly state that this legislation is constructed to be pro-homosexual, pro-bisexual and ultimately favorable to current and future deviant expressions of individual sexuality.

3. The third issue involves the matter of including "sexual orientation" in any bill. **The inclusion of this term undermines the inalienable rights and immutable characteristics granted and designed (respectively) by a Divine Creator in favor of State granted or recognized "rights". (There is a definitive difference between inalienable and granted rights)**

One of the primary strengths of our nations Declaration of Independence is that it recognizes the **God-given rights of every human being.** Though our nation has had a rather checkered past in upholding this standard, the standard Rule of Law in our Republic (in the form of the Declaration of Independence; Constitution & Bill of Rights) itself ultimately guarantees certain freedoms to all citizens.

When states or other legislative bodies try to further define or add laws on top of (or in place of) the Constitution, the effect is not clarification, but rather constant re-interpretation (or even nullification) of the essential rule-of-law our Constitution provides. In particular, civil rights laws that include provisions for the protected status of classes peoples for other than immutable characteristics, cause degradation in the power of the Constitution as the ultimate rule (standard) of law in this nation.

Sexual orientation is purely a term derived to HIDE pro homosexual or pro deviant sexual expression(s) under some form of equal or protected status in regard to the law.

4. The final issue I would like to address is that **the homosexual act and those who actively participate and/ or promote the act or lifestyle are in direct violation of the standards of the Creator and Holy Scripture.** I am sure some will say, "here comes the bigoted, right-wing, hate-filled rhetoric..." I will not belabor the point, but simply state the Scriptures that were so much the standard for our Republic and the Ultimate Standard for most of our founding Fathers should not be relegate to mere "religious rhetoric" or ignored in matters of legislation. **(Holy Scriptures: Leviticus 18:22; Leviticus 20:13; Judges 19:22; Romans 1:24- 27; 1 Corinthians 6:9; 1 Timothy 1:9-10)**

## Freedom Of Religion Coalition – Opposed HB #'s 47; 875; 920 & 1161

The Supreme Court and other courts (Judicial Branch), Legislative body of Congress and Executive Branches of our Government are all on record numerous times as accepting the Standards and Values of Judeo-Christian Morality as defined in the Holy Scriptures. Can modern state legislators do any less? The Bible states that homosexuality and any form of wrongful sexual expression / desire is a sin and thus wrong. It is an offense against the Creator, the family, society in general and ultimately the individual. Legislators would do well to uphold the Standard of the Holy Scriptures and Judeo-Christian values in their legislation. This legislation as worded violates those standards and is thereby unacceptable to a people who have established a form government and desire to be governed by the Standard of Holy Scripture.

### **About FORC**

FORC particularly is concerned about legislation that erodes or seeks to destroy Freedom of Religious expression in our State. We do not use violence, so-called hate speech (God's Word is not "hate speech"!!!!) or other disrespectful forms of expression. We do, however, openly debate and state the foundational principles of God's Word in regard to individual and institutional religious freedom. FORC also presents a clearly Christian and evangelical point of view without hypocrisy and without the normal rhetoric of the politically correct. We also mention the names of legislators and openly speak against public actions that violate the principles of God's Word.

FORC *does* advocate the usage of free speech and the public forum of debate and discussion to analyze and critique the position of any legislation that alters, destroys or prohibits the religious freedom or freedom of speech of any American. In this case in particular, we will debate the pro-homosexual position and pro-homosexual legislation that has been introduced.

### **Conclusion**

I want to thank you for your time and consideration in this matter. May the love of my Lord Jesus shine upon you in all you do. If you have questions regarding this written testimony, please direct them to [director@forcmd.org](mailto:director@forcmd.org) or regular mail at: FORC 7923 Allentown Road, Fort Washington, MD 20744 or call me at (240)375-6444

Respectfully Submitted by,

Rev. Matthew J. Sine – Director of FORC

**HB 307 Testimony - Antidiscrimination Act of 2001**

Honorable Chairman and Delegates,

My name is David Whitney and I am the Pastor of Cornerstone Evangelical Free Church in Pasadena. I am here to encourage you to vote against this bill. I attended several of the Governor's Commission as they were held around the state. What surprised me was the rules the Commission was using. They were willing, or I should say encouraging anonymous testimony be given regarding discrimination on the basis of sexual orientation in Maryland. I heard letters from anonymous read by someone else entered into the findings of the Commission. It occurred to me that this meant no one could investigate the charges of discrimination being claimed by anonymous. I'm curious, I don't know the answer to this question, did the Commission investigate any of the claims to discrimination made by those who gave testimony before the commission. Obviously those testifying have a personal bias. They want to see this piece of legislation passed. I think the most important question regarding this bill, is how can we determine if there is actual discrimination taking place?

Are gays, lesbians and bisexuals economically disenfranchised? The unbiased statistics show that they are not. According to 1996 figures from the U.S. Census they have median annual household incomes of \$45,776. Nationally, the median income for a household family at that time was \$35,492.<sup>1</sup>

Are gays, lesbians and bisexuals politically disenfranchised? The unbiased statistics show that they are not. The top eleven homosexual activist groups spent approximately \$36 million in 1999 fighting for homosexual "rights," according to the Washington Blade.<sup>2</sup> That does not include the over \$1 million budget of the homosexual legal arm of the American Civil Liberties Union. Homosexual groups across the country reported a total budget of nearly \$100 million in 1999, according to a Gill Foundation study. The Human Rights Campaign, the country's largest homosexual advocacy organization, has a \$21 million annual budget<sup>3</sup> and boasts on its website that their political action committee also spent more than \$2.5 million in the 2000 election.

In addition, homosexuals enjoy support from every major news organization, whose coverage long ago crossed the line into outright advocacy of homosexual causes. More than six hundred journalists attended a conference of the National Lesbian and Gay Journalists Association in September 2000.<sup>4</sup>

The facts are that gays, lesbians and bisexuals are not disenfranchised, not discriminated against in the ways that other groups have been. This legislation is not necessary. I urge you to give it a well deserved burial. Thank you.

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<sup>1</sup> Ronald Alsop, "Are Gay People More Affluent Than Others?" The Wall Street Journal, December 30, 1999. "South Florida Rolls Out Welcome Mat for Gay Tourists," The Orlando Sentinel, May 10, 1998, p. L2.

<sup>2</sup> Lou Chibbaro, Jr, "Budgets Up, Donors Down," The Washington Blade, June 11, 1999.

<sup>3</sup> Will O'Bryan, "Human Rights Campaign Heads into Third Decade," The Washington Blade, October 20, 2000.

<sup>4</sup> Peter LaBarbera, "Homosexual Reporters/Homosexual Activists." Family Research Council, CultureFacts. September 14, 2000.

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**POTENTIAL AMENDMENTS AND THEIR ARGUMENTS AGAINST**

IN GENERAL: The basic argument against amendments is that local laws are more expansive than this legislation and there has not been a problem with application or enforcement of the local laws.

**Applies to public accommodations and housing: “THE PROHIBITIONS RELATING TO SEXUAL ORIENTATION IN THIS SUBTITLE DO NOT APPLY TO A RELIGIOUS ASSOCIATION, OR SOCIETY, OR ANY NONPROFIT INSTITUTION OR ORGANIZATION OPERATED, SUPERVISED OR CONTROLLED BY A RELIGIOUS ORGANIZATION, ASSOCIATION OR SOCIETY.”**

Argument: The four local jurisdictions that have laws banning discrimination in sexual orientation do not exempt religious institutions from the public accommodations and housing statutes and this has not been a problem. This amendment could have far-reaching implications and would allow a religious association that operates a homeless shelter or a domestic violence shelter to deny service to an individual based on sexual orientation. If the religious association is concerned with improper conduct, the law does not prohibit it from denying service to an individual for failing to conform to the usual and regular requirements, standards and regulations for the establishment. NOTE: One argument raised by the opponents is that a religious group could not cancel an otherwise legal contract for the rental of a church hall in which a gay group that had not previously identified itself holds a dance or rally. The argument against this scenario is that religious groups that are engaged in commercial businesses should not be excluded from the legislation and be allowed to discriminate. If they are competing with other businesses (i.e., other rental halls), they should be required to abide by the same standards.

**“NOTHING IN THIS ARTICLE SHALL PROHIBIT A RELIGIOUS OR PRIVATE SCHOOL FROM ACTING ON THE BASIS OF SEXUAL ORIENTATION IN A MANNER THAT WOULD OTHERWISE BE PROHIBITED BY THIS ARTICLE.”**

Argument: The legislation already contains an exemption for religious educational institutions in employment. The legislature should not establish policies to allow private schools to discriminate, especially if the school receives State funding. Also, this type of amendment is only meant to undermine the purpose of the legislation. It also lends credibility to the inflammatory and false position that homosexuals are a danger to children.

**“NOTHING IN THIS ARTICLE SHALL PROHIBIT AN INDIVIDUAL WHO IS SUBSTANTIALLY MOTIVATED BY RELIGIOUS BELIEF OR CONSCIENTIOUS OBJECTION, OR A RELIGIOUS ORGANIZATION, ASSOCIATION, OR SOCIETY, OR ANY NONPROFIT INSTITUTION OR ORGANIZATION OPERATED, SUPERVISED, OR CONTROLLED BY OR IN CONJUNCTION WITH A RELIGIOUS ORGANIZATION, ASSOCIATION, OR SOCIETY FROM ACTING ON THE BASIS OF SEXUAL ORIENTATION IN A MANNER THAT WOULD OTHERWISE BE PROHIBITED BY THIS ARTICLE.”**

**OR**

**“NOTHING IN THIS SECTION SHALL BE CONSTRUED OR INTERPRETED TO REQUIRE ANY INDIVIDUAL WHO HAS A CONSCIENTIOUS OBJECTION BASED ON A BONA FIDE RELIGIOUS BELIEF TO COMPLY WITH THIS SECTION.”**

Argument: This amendment will gut the bill. Anyone who wants to discriminate would be able to use this language as a shield. It is impossible to decide who would qualify as being “substantially motivated” by religious belief or having a “conscientious objection.” Again, religious organizations are exempted from the employment provisions of this Act.

**“AN INDIVIDUAL IS IMMUNE FROM LIABILITY IN AN ADMINISTRATIVE PROCEEDING OR CIVIL ACTION UNDER THIS ARTICLE IF THE INDIVIDUAL BELIEVES OR HAS REASON TO BELIEVE THAT THE COMPLAINANT HAS VIOLATED ARTICLE 27, SECTIONS 553 AND 554 OF THE CODE.”**

Argument: Sections 553 and 554 relate to the sodomy and unnatural sexual acts (“oral sex”) prohibitions in the Code. While this amendment is intended to apply to homosexuals, it could also extend to heterosexuals in any protected class. The amendment is an attempt to gut the bill and to allow individuals who want to discriminate to use this language as a legitimate defense. An order issued on January 20, 1999 stated that sections 553 and 554 do not apply to consensual, non-commercial private sexual conduct (either homosexual or heterosexual) and the State is enjoined from enforcing these statutes. Prohibitions still apply to sexual activity in the context of prostitution, sexual acts committed by force or otherwise without the consent of one of the parties and sexual activities performed in public.

**Changes the title of the bill to “Special Legal Rights for Transgendered, Bisexual, Gay, and Lesbian People in Maryland”**

Argument: This bill is not about “special legal rights.” It is about the prohibition against discrimination and doing what is fair and reasonable. Also, the language is incorrect.

Case 1:19-cv-01853-ELH Document 16-4 Filed 09/03/19 Page 4 of 5  
Transgendered protection is not included in the bill.

**“SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to confer any civil rights based on sexual orientation.”**

Argument: This amendment is unnecessary.

**“NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, HOMOSEXUAL, BISEXUAL, OR TRANSGENDER LIFESTYLES MAY NOT BE TAUGHT IN THE PUBLIC SCHOOLS.”**

Argument: The State has always taken the position that school curriculum is a local issue and the State should not deviate from that position. The Senate JPR Committee did adopt an amendment that states that the Act does not mandate any public or private educational institution to promote any form of sexuality or sexual orientation or to include such matters in its curriculum.

**“NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, AN OPENLY GAY, LESBIAN, BISEXUAL, OR TRANSGENDERED INDIVIDUAL MAY NOT BE EMPLOYED BY A PUBLIC SCHOOL.”**

Argument: Public schools are funded with State money and the State could not be a participant in discrimination. The experience in the four local jurisdictions do not indicate that there has been a problem in the school systems. The same arguments for not accepting the amendment for private schools apply here as well.

**“THE PROVISIONS OF THIS ARTICLE PROHIBITING DISCRIMINATION BASED ON SEXUAL ORIENTATION DO NOT APPLY IN FREDERICK AND WASHINGTON COUNTIES.”**

Argument: All Marylanders deserve this protection. Protection from discrimination should not be an accident of geography. Individuals should not be limited to where they work or live based on their sexual orientation and fear of possible discrimination.

**“THE PROVISIONS OF THIS ARTICLE PROHIBITING DISCRIMINATION BASED ON SEXUAL ORIENTATION DO NOT APPLY TO A BUSINESS THAT HAS 50 OR FEWER EMPLOYEES.”**

Argument: Current law only applies to businesses with 15 or more employees. The

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General Assembly should not bifurcate the protections that are available. This will be confusing for employees and employers. Individuals should not be denied protection just for choosing an employer with 16 employees as opposed to an employer with 51 employees.

**“THE PROVISIONS OF THIS ARTICLE PROHIBITING DISCRIMINATION BASED ON SEXUAL ORIENTATION DO NOT APPLY TO A PERSON WHO HAS REASON TO BELIEVE THAT THE PERSON’S BUSINESS WOULD BE ADVERSELY AFFECTED BY COMPLIANCE WITH THE LAW.”**

Argument: How will a business determine that it will be adversely affected? This amendment is just another way to allow an individual to discriminate and be given a defense. Also, the current law does allow an employer to establish proper dress and grooming standards for employees. So, if the employer is concerned over someone’s appearance, this bill does not change that.

# Exhibit 4



THE DIOCESE OF MARYLAND

SB 212 FAIRNESS for ALL MARYLANDERS ACT OF 2014

Judicial Proceedings  
February 4, 2014  
Support

Chairman Frosh and members of the committee, I am the Rev. Kathy Shahinian, Public Policy Advocate for the Episcopal Diocese of Maryland.

The Diocese represents 110 community churches that are devoted to social justice programs – such as prohibiting discrimination based on gender identity.

As far back as 2000 the Episcopal Church has introduced, passed and adopted resolutions that will build a society of justice for all.

Most recently the 2009 and 2012 Episcopal General Conventions adopted resolutions speaking to the issue of fairness for all people.

The first resolution, 2009-C048 stated the” Episcopal Church supports the extension of existing federal laws that prohibit employment discrimination – to include discrimination based on sexual orientation or gender identity, along with those prohibitions based on race, gender, religion, national origin, age and disability.”

The second resolution, 2012-D019 stated” the Episcopal Church supports adding gender identity and expression” to the list of protected categories under Federal law.

Our Presiding Bishop the Most Reverend Katharine Jefferts Schori, as of January 30, 2104 issued a written statement on the issue of fairness and equality for all. She has been clear about respecting and having dignity for all members of the human family.

Gender identity should not be the basis for exclusion, discrimination and harassment in any walk of life.

In closing, the US Constitution guarantees equal protection and due process for all.

We join with the sponsors of this bill and many other advocacy groups in urging that you pass this legislation.

[This statement was given in accordance with General Convention Resolutions 2009-C048 *Support for Employment Non-discrimination Act* and 2012-D019 *Amend Canon I.17.5.*]

Presiding Bishop on LGBT rights. <http://www.episcopalchurch.org/notice/presiding-bishop-lgbt-rights>

**SB-212 – Opposition**  
**Testimony by Robert Nelson to the**  
**Senate Judicial Proceedings Committee**  
**February 4, 2014**

My name is Robert Nelson, Minister of Pastoral Care at Immanuel's Church in Silver Spring, a diverse congregation of over 3000 people from 65 different countries. Our red bumper stickers read, "You'll be Loved at Immanuel's Church."

In 2012 there was an intense discussion about religious liberties related to the Civil Marriage Protection Act. This act included an exemption that protected religious institutions that believe marriage is only between one man and one woman from having to conduct same-sex marriages. However, SB212 appears to have no protections for religious institutions whose beliefs conflict with the precepts of gender identity.

At Immanuel's Church we believe in the sanctity of marriage, the sanctity of human life and the sanctity of human sexuality. The sanctity of human sexuality is defined by God in the Bible in Genesis 1:27 "So God created mankind in his own image, in the image of God he created them; male and female he created them." To be true to the scriptures, we would not be able to recognize a person's gender other than what is in alignment with their genetic sex.

The Civil Marriage Protection Act exempts churches from marrying two persons of the same sex. However, SB212 allows a person to redefine their gender and the state would necessarily recognize the change. If SB212 were adopted, is it possible that two persons born as males with one having gender identity as a female might approach a church and request to be married? What religious liberty protection would we have in refusing to perform the ceremony? Would we be able to refuse to hire teachers and staff whose gender is not in alignment with their genetic sex? Would we be able to deny access to summer camp, restrooms and showers for children with a gender identity different than what God had assigned? Would expensive lawsuits ensue if this legislation were passed?

I urge you to reject this legislation that infringes on religious liberties guaranteed by the US Constitution. Please vote "NO" on SB212.

bnelson@immanuel.org

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February 4, 2014

Testimony in Opposition to Senate Bill 212

**Rabbi Mendel Bluming**  
**11621 Seven Locks Road**  
**Potomac, MD 20854**

Senate Judiciary Committee  
State of Maryland  
Annapolis, MD

Dear Chairman Frosh and Members of the Committee:

**I would like to share with you multiple objections on different levels that Torah-observant, orthodox Jews have with proposed legislation, SB 212.**

The bill would redefine gender in a counter-Biblical manner. For those of all faiths rooted in the Torah, this is problematic on both a global, national and local perspective.

Sexual morality is one of seven categories of behavior that the Torah applies to all people not just Jews, in order that decent and just societies may flourish. And while God has blessed each of us, individually, with different challenges and strengths, it is our job to do the best we can to overcome the challenges we have been given. These may include: anger management, physical limitations or disease, predisposition to laziness or proclivity to improper sexual identification and behavior. In addition these challenges can be either managed or amplified and accepted, depending upon upbringing and the general cultural values of the society.

Torah observant Jews have great compassion with people who have all kinds of challenges, but ultimately, acting on those challenges, we are convinced, is a choice made by the individual. And there are horrible examples which we can all point to where individuals have been coerced by relatives or society with horrible consequences. *(Please see Thomas Lobel case.)*

In terms of Torah based sources, there are many that clearly state the Jewish perspective both in the Torah (written law), Talmud (oral law) and elucidated our greatest scholars. **The Torah simply forbids men and women to dress as the other or even worse, to mutilate our bodies given to us by God.**

So the first question will be, in our somewhat insulated observant Jewish world, **what will this mean for Jewish schools and synagogues?** Will we have to hire transgender individuals as teachers in non-religious classes? What about other staff? How do we explain this to our children where we are trying to at least have some islands of holiness in an otherwise challenging world?

Please, let's work together to protect our children.



Rabbi Mendel Bluming



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

## **Statement to the Senate Judicial Proceeding Committee**

**Re: Senate Bill 212  
RE: Gender Identity - Antidiscrimination  
Submitted February 4, 2014**

### **OPPOSE**

This statement of opposition to Senate Bill 212 is conveyed on behalf of the Maryland-serving Catholic bishops and their Baltimore, Washington, and Wilmington dioceses.

Consistent with our long-standing advocacy on behalf of society's most vulnerable and marginalized persons, the Church recognizes the intent of this legislation to uphold the dignity and value of every individual. In keeping with that principle, the Church firmly opposes undue harassment or discrimination against any person.

That principle does not, however, warrant creating a new class of protected individuals in the state's antidiscrimination statute, especially when the extension of the law would presumably apply to only a small number of individuals. The impossibility of clearly defining "gender identity" as a newly protected category in law, and the practical application of this legislation is also highly problematic.

The bill also omits any exemption for religious institutions, and is therefore inconsistent with other sections of antidiscrimination law that do contain such exemptions.

Our greatest concern regarding this legislation, however, rests in our opposition to the bill's attempt to enshrine in law a distinction between one's "gender identity" and one's "assigned sex at birth." Such a distinction manifests a fundamental violation of our society's basic understanding of the human person, and the complementarity of the sexes bestowed by nature that lies at the foundation of all human society. As Pope Benedict XVI noted, in the view of humanity promoted by this legislation, "Man and woman as created realities, as the nature of the human being, no longer exist. Man calls his nature into question. From now on he is merely spirit and will."

Regardless of its intention, SB 212 would undermine in law a recognition of the inextricable link between a person's human nature and his or her identity as a man or woman. We urge you to oppose this legislation.

**NATIONAL COALITION OF AMERICAN NUNS**  
FOUNDED TO STUDY AND SPEAK OUT ON ISSUES OF JUSTICE  
IN CHURCH AND SOCIETY

4012 29<sup>th</sup> St. Mt. Rainier, MD 20712 301-864-3604

**Testimony**

**Sister Jeannine Gramick, SL**

**In Support of SB 212: Fairness for All Marylanders Act of 2014 (FAMA)**

**February 4, 2014**

I have been a Roman Catholic nun for more than 50 years. I reside in Prince Georges County. I taught in Baltimore in grade and high schools and at Notre Dame of Maryland University. I have worked for the poor and marginalized, and have served in a pastoral ministry of advocating for justice for LGBT persons for many decades. I serve as a National Coordinator for the board of the National Coalition of American Nuns.

I speak here today as a person of faith and on behalf of the National Coalition of American Nuns, who support the human rights of all people.

My Church, the Catholic Church, has a large body of social justice teaching. It is based on the conviction that all persons, including transgender persons, are created by God with an intrinsic human dignity, regardless of one's actions, appearance, or any circumstances in one's life. Because we all share in a common humanity, all persons must be accorded equal respect and dignity.

Catholic social teaching does not single out transgender people, but it does emphasize commitment to the poor and marginalized. In his apostolic exhortation, *The Gospel of Joy*, Pope Francis said that we must have "concern for the vulnerable" and those who are "increasingly isolated." Pope Francis noted the need to create "new forms of cultural synthesis" (par. 209-216). That is, we need to incorporate these vulnerable individuals into the fabric of our social laws and customs.

All persons, including transgender persons, need to feel welcome in our social institutions. There is no room for discrimination in securing a job or a place to live, merely because of one's gender identity. And there is no room for being harassed, or treated unfairly, in other public places, merely because of one's gender identity. In fact, an overwhelming percentage of U.S. Catholics (93%, in fact) believe that transgender people should have the same general rights and legal protections as others.\*

I am here today as a Catholic nun, as a person of deep faith, to ask the state of Maryland to support SB 212, the Fairness for All Marylanders Act of 2014. Thank you.

Sister Jeannine Gramick, SL  
301-864-3604  
[gramick@verizon.net](mailto:gramick@verizon.net)

\* <http://publicreligion.org/research/2011/11/american-attitudes-towards-transgender-people/>

SB 212: Fairness for All Marylanders Testimony—Jennifer Cullinane, Cockeysville, Maryland

I am a mother of two and I am here to fulfill a promise I made to my children. My children are thirteen years old and eight years old. One of my two children turned out to be transgender and one is not. We taught them that all people—regardless of race, or socio-economic status, or gender or sexual orientation—are equal and deserve to be treated with respect. I promised them that if they studied they could get an education, work in whatever profession they chose, and live anywhere they like. When I was making these promises I didn't think to provide the disclaimer: "You don't qualify for this equal treatment in our state if you turn out to be transgender."

If you came to our house and spent time with our family, you'd find out that my children have a lot of similarities. They are both big-hearted, they both love animals, they are both artistic, and they both want to grow up and do something that helps other people. If the Fairness for All Marylanders bill does not come before the Senate and pass, that means my two children, who are similar in so many ways and whom I love equally, are not equal at all. In the great state where my family has chosen to live, my two children will have very different treatment under the law. I'd have to look my son in the eye and take back the vision of his future that I promised him. I'd have to say: "your sister can spend her summers working at the beach but you could be fired from your summer job because of who you are,"; "your sister can get an apartment sophomore year of college with her friends but you could be kicked out of yours,"; "your sister will never have to worry about being refused service in a restaurant but you should expect it...and, by the way, the law won't be on your side."

Think about looking your children or grandchildren in the eyes and making that distinction. Think about looking at one and saying "you deserve equal rights" and looking at the other and saying "our Maryland legislators don't think you deserve equal rights; our State qualifies you as 'less than'." I'm asking you to do your part to make sure both of my children get the equal treatment they deserve.

Thank you, Senators.



NEW WAYS  
MINISTRY

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Testimony of  
Francis DeBernardo, Executive Director, New Ways Ministry  
Annapolis, Maryland

FOR: Fairness for All Marylanders Act 2014, SB212

February 4, 2014

Good afternoon. My name is Francis DeBernardo, and I serve as Executive Director of New Ways Ministry, a national Catholic ministry that attempts to build bridges of justice and reconciliation between the lesbian, gay, bisexual, and transgender community and the Catholic Church. Our offices are in Mount Rainier, Maryland, and we represent the majority of Catholics in the U.S. who support equality for transgender people. Therefore, I am here today to support the Fairness for All Marylanders Act, SB212.

It is important to recognize that Catholics support equality for transgender people *because* of their Catholic faith, not in spite of it. Our Catholic faith compels us to promote the human dignity of all people, regardless of gender, sexual orientation, or gender identity. Our faith tells us that we must support transgender people not only because of their inherent human dignity, but because they are a vulnerable population. They experience a shocking amount of discrimination, and violence. This bill would send a powerful message that we in this state do not support such discrimination and denial of basic human rights for all.

Sometimes the transgender experience is compared to the gay and lesbian experience, and there is good reason to do so. In Catholic thought, however, while there is much official teaching on gay and lesbian issues, there is none on transgender topics. So while you may be aware of criticism of lesbian and gay issues coming from church officials, please remember that no such body of statements exists for transgender people. It is not the same issue.

While in past decades, the Vatican and the pope have issued harsh statements on issues dealing with sexual and gender minorities, Pope Francis has ushered in a new openness and dialogue with these populations. His statements reveal that gender and sexuality should not be the defining characteristics of a human person, and that all people need to be respected.

Though he has said nothing explicitly on gender identity issues, we do have a precedent for him that we must pay attention to. At the end of December 2013, a transgender woman in Rome was beaten and killed. Her family would not claim her body for burial. Yet Pope Francis' Jesuit Catholic parish in Rome did provide funeral services for this woman who was so terribly discriminated. This example speaks volumes about the Catholic support for non-discrimination coming from the highest level of the church.

Can the state of Maryland do any less? Can't we build a community where transgender people will be respected and valued as equals in their lives so that they do not experience the terrible fate that this woman did? Though Catholics support transgender equality from a faith perspective, it is a perspective which is rooted in an idea that is basic to the American way of life: that ALL people are created equal.

I urge you to vote for the Fairness for All Marylanders Act.

Thank you.



**Testimony in Support of SB 212: The Fairness for All Marylanders Act of 2014**

***Judicial Proceedings Committee***

***February 4, 2014***

The Jewish Community Relations Council of Greater Washington serves as the public affairs and community relations arm of the Jewish Federation of Greater Washington, representing over 100 constituent agencies, organizations and synagogues throughout Maryland, Virginia and the District of Columbia. The JCRC works closely with the Legislature and coalition partners, advocating on a variety of social, cultural, religious and economic issues.

The JCRC has a strong history of supporting equality for all individuals. The Fairness for All Marylanders Act of 2014 (FAMA) prohibits the discrimination against transgender Marylanders in the areas of employment, housing, credit and public accommodations by adding "gender identity" to existing anti-discrimination laws. This bill is about securing basic civil rights, including the right to a job, a place to live, and respectful treatment in public spaces.

In Maryland, several counties including Montgomery County have local ordinances that prohibit discrimination against transgender people, but still over half of the state's counties are without these protections for their citizens. In 2011 a survey found that amongst transgender individuals, 18% had lost a job, 17% had been denied a home or apartment, and unfortunately 54% had experienced harassment in public places.

When discrimination prevents a person from employment, many other problems may develop which can lead to sustained unemployment or homelessness, and the victims more vulnerable to violence. Transgender individuals may be denied access to services like shelters or rape crisis centers, refused treatment, or denied recognition of their gender identity by health care professionals.

We applaud Senator Madaleno, and all the co-sponsors of this legislation. We fully support this much needed change and respectfully request the support of the Judicial Proceedings Committee.



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**Written Testimony Submitted for the Record to the  
Maryland Senate  
Judicial Proceedings Committee  
For the Hearing on SB 212  
Fairness for All Marylanders Act**

**February 4, 2014**

**SUPPORT**

Maryland PTA represents nearly 200,000 volunteer members in over 970 public schools, with the mission of advocating on behalf of children and youth in the schools, in the community, and before governmental bodies and other organizations that make decisions impacting children. Maryland PTA is comprised of families, students, teachers, administrators, and business and community leaders devoted to the educational success of children in Maryland. As the state's oldest and largest child advocacy organization, PTA is a powerful voice for all children, a relevant resource for families, schools and communities and a strong advocate for public education. In our Legislative Agenda we support public policy, legislation, and regulations which address ensuring a safe learning environment for all children and youth, as well as issues that support equal rights and dignity for all persons.

Maryland PTA submits this testimony in support of SB212 for two main reasons. The first main reason has to do with the benefit enacting this legislation will have on school performance of children born with a gender identity different from the gender with which they were labelled at birth (because of their physical characteristics). What has been found to be particularly true in the United States (and many other parts of the world), is that persons whose gender identities differ from their physiological sex are often treated as "disordered" and subject to an immense amount of social stigma, isolation, and discrimination. This is particularly true for children who are coming to a non-conforming gender identity of themselves, often during late elementary and middle school years. As Committee members may be aware, recent retrospective research gathered by the National Center for Transgender Equality (i.e. interviews of self-identified non-gender conforming people about their personal experiences and histories)<sup>1</sup> has revealed that more than two in five transgender persons attempt suicide early in life, slightly more than 3 out of 4 were bullied or harassed in school, 1 in 3 were assaulted at school, and 1 in 10 were sexually assaulted at school or in the local community *because of either their outward gender expression or a perception about their gender expression*. Among respondents, 15% reported they dropped out of school because of conflicts around their gender identity expression and, another 6% reported being expelled from school because of such conflicts. Further, 57% reported

<sup>1</sup> Grant, Jaime, et al, *Injustice at Every Turn* (2011, National Center for Transgender Equality, Washington, DC). Available for viewing at: [http://transequality.org/PDFs/Executive\\_Summary.pdf](http://transequality.org/PDFs/Executive_Summary.pdf).

experiencing significant family isolation or rejection during childhood because of their non-conforming gender identity, and 26% reported becoming homeless because of family conflicts. Depending on the issue being examined, disproportionate numbers of interviewees reported subsequent high rates of substance abuse, involvement in the criminal justice system, mental illness, and/or engaging in high risk sexual activity for money, housing, food, and/or clothing as a result of school and/or family conflict.

Enacting legal protections on the basis of gender identity would go a long way toward rectifying these situations. It would set a tone for how our society should respond to transgender persons and their families, and, in particular, how our public school system should handle them. Currently, transgender issues are addressed in MD State Department of Education (MSDE) policies and resources related to anti-bullying and intimidation. However, gender identity is not addressed in the MSDE's overall non-discrimination policy. Historically, MSDE and the Maryland Board of Education sets non-discrimination policy based upon what appears in the state Human Relations Code, which SB212 amends.

Secondly, Maryland PTA supports SB212 based upon PTA's overall historic commitment for human rights and dignity for all persons, and commitment to ensuring that every child (with the support of his or her family) has the opportunity to grow to her or his full potential. PTA's current Position Statement on Citizenship and Equality<sup>2</sup>, calls for "prohibiting discrimination on the basis of race, gender, socioeconomic status, ethnicity, national origin, language, religion, age, physical and academic ability, and sexual orientation," and that civil rights based upon these items "be defended whenever threatened". While the statement does not yet address gender identity, per se, National PTA resources are beginning a dialogue within PTA on these issues, and there is growing support in our movement for addressing this issue more directly. This dialogue grows out of data emerging on the health and welfare of transgender children, previously cited, as well as growing awareness in our movement of families with transgender children (who often are very challenged in knowing how to respond to their situations) and transgender persons in the teaching profession (who are often subject to discrimination in employment).

In submitting this statement in support of SB212, Maryland PTA recognizes that this is an issue that makes many people uncomfortable. We are still coming to better understandings of transgender persons and their families, and there is much we have to learn. There is diversity of opinion within our movement about the degree to which PTA should be speaking on this issue. However, as we have considered this, we are impelled to support legislation like SB212 because of the benefit it would lend to enhancing school performance of transgender children, the support it would lend to families with transgender children (who often struggle mightily with an issue they have never considered), and because it enhances overall human dignity.

For the reasons stated above, Maryland PTA encourages your support of SB 212, and recommends a favorable report.

Testimony submitted on behalf of MD PTA  
By **Ray Leone, President**, February 4, 2014

<sup>2</sup> National PTA Position Statement, *Citizenship and Equality*, available at: <http://www.pta.org/1751.htm>.

# Exhibit 5

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

BETHEL MINISTRIES, INC.,	)	
	)	
	)	
<i>Plaintiff,</i>	)	
	)	Case No. 1:19-cv-01853-ELH
DR. KAREN B. SALMON, et al.	)	
	)	
	)	
<i>Defendants.</i>	)	
_____	)	

**DECLARATION OF CLAIRE DANT**  
**IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

I, CLAIRE DANT, under penalty of perjury, make the following declaration pursuant to 28 U.S. § 1746:

1. I am the Principal of Bethel Christian Academy, and I have held this position since 2016.
2. Bethel Christian Academy was founded in 1984 as a private Christian school for students in preschool through 8th grade. It is a ministry of Bethel Ministries, Inc. Bethel complies with its religious beliefs as an exercise of its faith in the operation of Bethel Christian Academy.
3. Bethel’s mission is to create an authentic Christian learning community to train students to know, love, and serve the Lord Jesus Christ, and to equip them spiritually and academically to be lights to the world.
4. Bethel exists unashamedly for the purpose of reaching families with the gospel of Jesus Christ and training and equipping young people to serve Him.
5. By fostering a school community and promoting academic excellence rooted in a biblical world view, we believe that we can best equip our students to demonstrate their

commitment to Christ by exhibiting love toward others, strong biblical convictions, and a desire to impact the world for Him.

6. Over 85% of Bethel students are non-white and represent approximately 40 different countries.

7. Admission to Bethel is competitive and based on a skills assessment or formal entrance exam, an evaluation of previous grades and behavior, and a pre-enrollment interview with the parents and student.

8. Bethel does not ask about, or consider, sexual orientation in its student admissions decisions.

9. Bethel does not ask about, or consider, gender identity or expression in its student admissions decisions.

10. Bethel believes that marriage is the covenant union of one man and one woman, a beautiful reflection of Christ's relationship with His Church. Bethel also believes that God immutably creates each person in His image as either male or female, and every single person has inherent worth and dignity because they are created in God's image.

11. Bethel does not require families to be professing Christians or share its beliefs to enroll their children at the school.

12. But Bethel does require students to adhere to its faith-based policies, including its student conduct policies.

13. Based on its religious beliefs, Bethel requires all students to conduct themselves consistently with Bethel's student conduct policy, which—among other things—prohibits students from engaging in any sexual communications or conduct.

14. All students must comply with the student conduct policy, regardless of sexual orientation, sexual attraction, or sexual identification.

15. Based on its religious beliefs, Bethel also requires all students to identify with their biological sex, adhere to the dress code of their biological sex, and use the private facilities of their biological sex.

16. BOOST provides scholarship vouchers for K-12 students from low-income families to attend an eligible nonpublic school of their choosing.

17. Bethel participated in the BOOST voucher program during the 2016-2017 and 2017-2018 school years.

18. Based on my review of the Maryland General Assembly's website, a true and correct copy of the BOOST budget language in effect for the 2017-2018 is attached to the Complaint as Ex. 2, and to this Motion as Ex. 2.

19. During the two years Bethel participated in BOOST, it complied with MSDE's eligibility requirements and certified in writing to the Maryland State Department of Education each year that it has not and will not deny an applicant admission to Bethel based on the applicant's sexual orientation.

20. In October 2017, Bethel received a letter from BOOST Board Chair Matthew Gallagher directing us to "review [Bethel's] moral and religious position on non-discrimination, particularly sexual orientation." The Letter stated that "[i]f you sign the assurance but continue a discriminatory practice, the consequences are severe." A true and correct copy of this letter is attached to this Motion as Ex. 10.

21. In December 2017, the BOOST Board began investigating the handbooks of religious schools, including Bethel.

22. The Board had not previously conducted any such investigations and had previously accepted Bethel's assurances of compliance for the last two years.

23. The Board requested, and I provided, a copy of the 2017-2018 Parent/Student Handbook, which was then in effect. A true and accurate copy of this handbook is attached to the Verified Complaint as Exhibit 1, as well as to this Motion as Exhibit 1.

24. Bethel makes minor adjustments to its handbooks before the start of each school year, and the school handbook for the 2016-2017 school year and subsequent school years are substantially similar.

25. A true and accurate copy of Bethel's current 2019-2020 Parent/Student Handbook is attached to this Motion as Exhibit 9.

26. I received from MSDE a letter dated March 5, 2018 that asked how Bethel's statement on marriage and biological sex is consistent with our school's assurance not to discriminate in admissions based on sexual orientation. A true and correct copy of that letter is attached to this Motion as Exhibit 12.

27. I responded in a letter dated March 13, 2018 that Bethel "does not ask any questions about sexual orientation at all during the admissions process and is willing to enroll any student who meets and the academic criteria and whose past school conduct has not been demonstrably disruptive in a previous school." I also stated that students are expected to comply with Bethel's behavioral standards and are "engaging in sexual behavior of any type, whether heterosexual or homosexual." A true and correct copy of that letter was attached to the Complaint as Exhibit 3 is attached to this Motion as Exhibit 3.

28. I also submitted a statement to the BOOST Advisory Board for its May 3, 2018 meeting, reiterating that (1) Bethel is open to any student who can meet our academic standards

and thrive in our structured environment, (2) Bethel does not discriminate in admissions, but it does communicate its mission and core values to families that are considering enrollment, (3) it complies with the nondiscrimination requirement because the BOOST bill explicitly prohibited Defendants from “requir[ing] any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings” and because “[a] statement of policy regarding *student conduct*” is irrelevant to discrimination in admissions. A true and correct copy of that letter was attached to the Complaint as Exhibit 4 is attached to this Motion as Exhibit 4.

29. On May 4, 2018, Monica Kearns notified me that the BOOST Board would likely not decide Bethel’s eligibility before the May 21, 2018 BOOST application deadline.

30. MSDE also informed our school that it would condition Bethel’s eligibility for the Aid to Non-Public Schools Program on Bethel’s eligibility for BOOST.

31. I later received a letter from Monica Kearns dated May 25, 2018 that asked: “1) Does your school discriminate in student admissions on the basis of sexual orientation? 2) If your school was to discover that one of its students was in violation of the school’s religious or moral teachings concerning sexual orientation, what would the school do to address it?” A true and correct copy of that letter is attached to this Motion as Exhibit 14.

32. I responded on May 29, 2018 and attached our prior communication with MSDE, and stated: “[a]ny student who can meet our academic standards and is likely to thrive in our structured environment is welcome to join our school community regardless of religious beliefs, experience of same-sex attraction, sexual self-identification, past participation in same-sex behavior, beliefs about marriage, or beliefs about sexual morality.” *Id.* And Bethel made clear that if a student violates the conduct policy, its objective is to work with the student to bring that student

back into compliance. *See id.* A true and correct copy of that letter is attached to the Complaint as Ex. 5 and to this Motion as Ex. 5.

33. Weeks later, I received a letter dated August 8, 2018 from BOOST Board Chairman Gallagher stating that our statement of religious beliefs and conduct policy violated the nondiscrimination clause. Bethel was therefore expelled from BOOST. A true and correct copy of that letter is attached to the Complaint as Ex. 6 and to this Motion as Exhibit 6.

34. Monica Kearns told me that there was no way to appeal the decision.

35. As a result of being expelled from BOOST, Bethel was also expelled from the non-public schools textbook program and aging schools program.

36. As a result of our inability to receive grant money from MSDE's nonpublic school aid programs, Bethel has been forced to forgo hiring teachers and backfilling positions and updating student education equipment.

37. Bethel attempted to provide its own scholarships to impacted BOOST students, but it could not completely compensate for the loss of BOOST vouchers.

38. In the 2018-2019 school year, Bethel lost at least six students due to loss of BOOST vouchers.

39. At least two new prospective students desired to attend Bethel in the 2018-2019 school year, but informed us that they could not due to Bethel's inability to receive BOOST funding.

40. In 2019-2020, Bethel lost three more students due to lack of BOOST funding. These families had stretched financially to keep their children at Bethel even with the loss of BOOST, but could not sustain it long-term.

41. An additional 20 prospective students inquired about attending Bethel and the financial aid available but were unable to join Bethel in the 2019-2020 school year due to lack of sufficient financial aid, including BOOST funding.

42. At least one other Bethel student will be forced to leave our school next year unless Bethel is readmitted to BOOST.

43. Bethel's enrollment numbers have fallen from 329 in 2017-2018, to 281 in 2018-2019, to 251 in 2019-2020.

44. In December 2018, I received a letter demanding repayment of \$102,600 in past BOOST scholarships for the 2016–2017 and 2017–2018 school years. A true and correct copy of that letter is attached to the Complaint as Ex. 7 and to this Motion as Exhibit 7.

45. BOOST Program Executive Director Donna Gunning in a February 28, 2019 letter stated that Bethel could regain its eligibility for BOOST by revising the language in its student handbook. A true and correct copy of that letter is attached to this Motion as Exhibit 16.

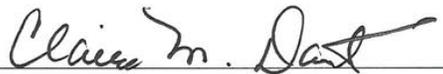
46. I continued to communicate with MSDE throughout the spring of 2018.

47. MSDE provided examples of how other schools had changed their handbook language in order to remain eligible for BOOST. A true and correct copy of that letter is attached to the Complaint as Ex. 8 and to this Motion as Exhibit 8.

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 25<sup>th</sup> day of October, 2019, at Savage, Maryland.



Claire Dant  
Bethel Christian Academy  
9001 Vollmerhausen Road  
Savage, MD 20763

# Exhibit 6

## Bethel Christian Academy

### **The BOOST Scholarship Program has Certain Requirements for Participating Schools :**

The Broadening Options and Opportunities for Students Today (BOOST) scholarship program is governed by House Bill 150 of the 2017 legislative session (beginning on page 135) for the 2017-2018 school year, and the Bill includes certain requirements for nonpublic schools to participate. House Bill 150 requires that BOOST schools must: participate in the Nonpublic Textbook and Technology Program; offer programs beyond kindergarten; certify that they administer assessments and will provide certain assessment results; and certify that they will comply with certain non-discrimination laws. The BOOST Advisory Board has developed additional requirements, and the Maryland State Department of Education (MSDE) has developed requirements related to administration of the program. This web form is being made available to nonpublic schools that meet the initial criteria of: participating in the 2016-2017 Textbook Program, and offering programs beyond kindergarten. This form serves as the way for schools to certify whether they Agree or Do Not Agree that they comply with all the terms and conditions to participate in BOOST for 2017-2018. Please read this Assurances form and fill in the information at the bottom of the form. Your school must Agree that it complies with the terms and conditions in the Assurances in order to participate in the BOOST 2017-2018 program. If you have questions, please email them to MSDE at [boost.msde@maryland.gov](mailto:boost.msde@maryland.gov). Thank you.

### **Assurances for Schools Participating in BOOST for School Year 2017-2018: :**

I hereby agree, as the official representative of the school, that our school complies with the following terms and conditions: 1) Non-discrimination: a. The school operates in compliance with the Title VI of the Civil Rights Act of 1964, as amended. The school complies with Title 20, Subtitle 6 of the State Government Article, which prohibits discrimination in employment. The school does not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation. If a nonpublic school does not comply with these requirements, it shall reimburse MSDE all scholarship funds received under the BOOST program and may not charge the student tuition and fees instead. The only other legal remedy for violation of this provision is ineligibility for participation in the BOOST program. 2) Assessments: a. Eligible BOOST schools are those that will administer assessments to all students: - in math and reading - annually, in each of grades 3 through 8; - in science - once in elementary school, and once in middle school; - in biology, government, Algebra 1 and English 10 in high school; - and, to students with disabilities, consistent with their Individualized Education Program (IEP). b. The assessments referenced in #2a must be administered in the 2017-2018 school year. c. The assessment results must be maintained by the school. d. For nonpublic schools administering norm referenced assessments, the schools shall provide to MSDE the results for all students receiving BOOST scholarships to whom norm referenced assessments were administered. For those nonpublic schools administering non-standardized assessments, the nonpublic schools shall provide to MSDE the results for all students receiving BOOST scholarships to whom non-standardized assessments were administered and how students receiving BOOST scholarships performed in comparison to students who did not receive BOOST scholarships. MSDE is required to report these assessment results to the Maryland General Assembly in an aggregate manner that does not violate student data privacy. 3) If an eligible student becomes ineligible during the course of the school year, the school will notify MSDE within 7 business days. 4) If a student becomes ineligible (withdraws from the school) during the course of the school year, the school will return the scholarship funds to

MSDE on a pro-rata basis. The pro-rata calculation is to divide the number of school days the student was enrolled (numerator) by the total number of school days in the school's academic year (denominator). The school's written tuition refund policy will be considered by MSDE in calculating the pro-rata amount owed.5) The school will provide MSDE financial aid information for each BOOST student so that MSDE can determine whether BOOST aid plus non-BOOST aid exceeds tuition; if so, MSDE will reduce the BOOST award accordingly or require the school to reimburse MSDE.6) BOOST Scholarships are to supplement, not supplant, other financial aid that the student may be receiving in 2017-2018. Schools may not use BOOST funds as a substitute for other financial aid funds.7) Parents or guardians are required to make a meaningful contribution to the school consistent with the school's policies. The contribution may be monetary or based on volunteer work, as determined by the school.8) The school will maintain BOOST records for three years and will make all records related to the program available for review and audit by authorized representatives of MSDE.9) The school understands that it may be randomly selected to participate in an annual MSDE on-site technical review of schools participating in the BOOST program.10) The school agrees that it will provide MSDE with the following information, at such time and in such manner as prescribed by MSDE:a. The number of State certified and non-certified teachers in core subject areas. MSDE will request this information in July 2017 and the deadline for submitting the information will be August 15, 2017;b. Confirmation that the BOOST student is enrolled in the school for the 2017-2018 school year. MSDE will request this information in August 2017 and the deadline for submitting the information will be September 25, 2017;c. The amount and type of non-BOOST financial aid the BOOST student received in the 2016-2017 school year, if the student attended the same school and received financial aid, and the amount and type of non-BOOST financial aid the BOOST student will receive in the 2017-2018 school year. MSDE will request this information in August 2017 and the deadline for submitting the information will be September 25, 2017;d. Tuition rates for the 2016-2017 school year and the 2017-2018 school year, including fees. MSDE will request this information in August 2017 and the deadline for submitting the information will be September 25, 2017; ande. The name of the assessments administered and the assessment results required in accordance with Assurance #2. MSDE will distribute a survey tool in June 2017 to collect the assessment information and the response deadline will be July 31, 2017.

**Name of School** : Bethel Christian Academy

**Name of School Official** : Patti Wecker

**Title of School Official** : Business Manager

**School Official's Phone Number** : 3017254673

**School Official's Email Address** : patti.wecker@teambethel.org

**By receiving funds under this program, I hereby agree, as the official representative of the school, that our school complies with the above terms and conditions.** : Agree

**Linked to School Profile - DO NOT DELETE** : BETHEL CHRISTIAN ACADEMY - SAVAGE

*Created by* : integrations+22921@zenginehq.com

*Record ID #* : 3218584

*Last change* : 2017-05-26T18:42:47+0000

# Exhibit 7

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NO. 1:19-CV-01853-SAG

BETHEL MINISTRIES, INC.,  
Plaintiff

V.

DR. KAREN B. SALMON, ET AL.,  
Defendants

DEPONENT: Claire Dant  
DATE: March 31, 2021  
REPORTER: Brooke Andrew

1 participated that year?

2 A Approximately 18.

3 Q And what was Bethel's understanding of the  
4 purpose of the BOOST program?

5 A To provide the means by which low-income  
6 families could attend private school.

7 Q And you mentioned that you -- when you first  
8 began participating, that you pulled out forms online,  
9 notified the people accepted. Were you the person who  
10 completed the applications?

11 A As best I recall, yes.

12 Q And at that time, was Bethel aware that in  
13 order to participate in the BOOST program that they had  
14 to agree that would not discriminate against students in  
15 admissions based on race, sex, national origin, or  
16 sexual orientation, correct?

17 A Correct.

18 Q And Bethel, when you submitted the online  
19 application you had to acknowledge or agreed to some  
20 assurances to that effect, correct?

21 A We did have to sign that statement. Yes.

22 Q And you were the person who would sign off on

1 them, right?

2 A Yes.

3 Q And Bethel also participated in a couple of  
4 related programs, the agent schools program, and a  
5 textbook and technology program; is that right?

6 A That's correct.

7 Q And that was the same timeframe, 2016, 2017,  
8 2018, 2019; is that right?

9 A We participated in the other two programs  
10 prior to that as well.

11 Q Okay. And the other two programs also  
12 required Bethel sign or prove assurances about not  
13 having any discrimination admissions, correct?

14 A I don't recall precisely what it involved  
15 prior to my taking over on those programs since they  
16 pre-existed me.

17 Q Well, who was in charge before you taking  
18 over?

19 A The former principal.

20 Q And who was that?

21 A Alice Green.

22 Q When did Ms. Green leave?

1 reflect, you know, you and Mo -- and Ms. Kearns  
2 communicating back and forth about the BOOST program and  
3 Bethel's application or desire to stay in the program,  
4 but you don't recall any other -- you don't recall any  
5 verbal communications you had with her other than what  
6 you already described to me, correct?

7 A Correct.

8 MR. SCOTT: All right. Let's go to Exhibit 13.

9 (EXHIBIT 13 MARKED FOR IDENTIFICATION)

10 VIDEOGRAPHER: Stand by.

11 BY MR. SCOTT:

12 Q All right. So this Exhibit 13 is an e-mail  
13 dated May 2, 2018, from you to Monica Kearns, correct?

14 A Correct.

15 Q And you're telling her that you're not going  
16 to be able to make the meeting, correct?

17 A Correct.

18 Q And then you attach a copy of your statement  
19 that you want the board to consider, correct?

20 A Correct.

21 Q Did you ever attend any BOOST board meetings?

22 A No. I did not.

1 (EXHIBIT 20A MARKED FOR IDENTIFICATION)

2 VIDEOGRAPHER: Stand by.

3 MR. SCOTT: Okay.

4 VIDEOGRAPHER: Actually, it's right here.

5 MR. SCOTT: Yes. Success.

6 BY MR. SCOTT:

7 Q Okay. Exhibit 20A is a letter to you dated  
8 February 28, 2019, from Donna Gunning at the Maryland  
9 State Board of Educa -- Department of Education. Have  
10 you seen this before?

11 A Can you scroll down? It looks familiar.

12 Q Okay. In paragraph 2 on the first page,  
13 Ms. Gunning is telling you that to the extent that  
14 Christian Aca -- Bethel Christian Academy decides to  
15 revise the language in its student handbook, that the  
16 board has restored eligibility of some schools for the  
17 BOOST program on that basis. Did you ever revi -- or  
18 did Bethel ever revise its handbook language in an  
19 attempt to regain eligibility for BOOST?

20 A No.

21 Q Why not?

22 A We were satisfied with our language,

1 Q Why did Bethel reapply in 2020?

2 A Because we had been told that we were not  
3 qualified for the previous two years, and so that time  
4 was up, and so we went ahead and reapplied.

5 Q And it was ultimately determined that your  
6 application was not timely, correct?

7 A Was not what?

8 Q Timely. It was late?

9 A Yes. They had stated that because we were not  
10 being notified anymore regarding when the deadlines were  
11 or any of that, and so I was not completely sure when  
12 the deadline was.

13 Q Prior to submitting this new application in  
14 2020, did Bethel make any revisions to its handbook?

15 A We make revisions every year, so yes.

16 MR. SCOTT: Let's take a look at Exhibit 21,  
17 please.

18 (EXHIBIT 21 MARKED FOR IDENTIFICATION)

19 VIDEOGRAPHER: Stand by.

20 MR. SCOTT: All right. Go to the second page,  
21 please.

22 BY MR. SCOTT:

1 statement of faith.

2 Q Okay.

3 A That's a script of foundation for that.

4 Q Okay. And it also has language about  
5 condemning a homosexual lifestyle, correct?

6 MR. TUCKER: Objection. Form.

7 A It states the scripture reference.

8 Q About condemning a homosexual lifestyle,  
9 correct?

10 MR. TUCKER: Objection. Form.

11 A The statement in the handbook reads that way.

12 Q Okay. So let's go back to 35 -- page 35,  
13 which is the conduct policy. And at the bottom, you  
14 pointed out that there were some new language here. It  
15 looks like -- it says that, "Any conduct that is in  
16 violation of the school statement of faith will be  
17 considered grounds for disciplinary action, including  
18 the expectation that BCA students identify with, dress  
19 in accordance with, and use facilities associated with  
20 their biological gender," right?

21 A Yes.

22 Q Okay. And why was that added to the

1 disciplinary section of the handbook?

2 A Because it was a conduct statement, it was  
3 simply moved from one place to the other.

4 MR. SCOTT: Let's look at Exhibit 22, please.

5 (EXHIBIT 22 MARKED FOR IDENTIFICATION)

6 VIDEOGRAPHER: Stand by.

7 BY MR. SCOTT:

8 Q Ms. Dant, Exhibit 22 is a document I received  
9 from your attorney. It is a two-page document entitled  
10 "Aid to Non-Public Schools Program Fiscal Year 2019 to  
11 2020, Program Assurances." And then about appears to be  
12 your signature on the second page; is that right?

13 A That's correct.

14 Q Okay. So this would have been something that  
15 you signed and submitted in support of your -- of the  
16 school's application in 20 -- for the 2019-2020 program,  
17 correct?

18 A I always get confused with fiscal years and  
19 school years.

20 Q I think this --

21 A It's for year 2020?

22 Q Yeah. And then in parenthesis it says "SY

1 2019-2020." Do you see that?

2 A Yes.

3 Q So I think that means school year. So --

4 A I think it -- I think it does.

5 Q Yes. So this was something that you signed  
6 and submitted in support of Bethel's application for the  
7 program for the 2019-2020 school year, correct?

8 A Yes.

9 Q All right. And item number 4 on the first  
10 page says "the school does not discriminate in student  
11 admissions, retention, or expulsion or otherwise  
12 discriminate against any student on the basis of race,  
13 color, national origin, sexual orientation, or gender  
14 identity or expression," right?

15 A Right. It does say that.

16 Q Okay. And you signed it certifying that the  
17 school complied with that, correct?

18 A Correct.

19 Q Okay. But that's not true, is it?

20 MR. TUCKER: Objection to form.

21 A What's not true?

22 Q That the school does not discriminate based on

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CERTIFICATE OF REPORTER

I do hereby certify that the witness in the foregoing transcript was taken on the date, and at the time and place set out on the Stipulation page hereof, by me after first being duly sworn to testify the truth, the whole truth, and nothing but the truth; and that the said matter was recorded by me and then reduced to typewritten form under my direction, and constitutes a true record of the transcript as taken, all to the best of my skill and ability. I certify that I am not a relative or employee of either counsel and that I am in no way interested financially, directly or indirectly, in this action.

*Brooke Andrew*

\_\_\_\_\_  
BROOKE ANDREW

COURT REPORTER/NOTARY

MY COMMISSION EXPIRES: 11/27/2021

SUBMITTED ON: 04/19/2021

# Exhibit 8



5 Central Avenue  
Glen Burnie, MD 21061  
Phone: (410) 760-6221  
(800) 707-7972  
Fax: (410) 760-6344  
[www.mdpta.org](http://www.mdpta.org)

October 11, 2017

Advisory Board Meeting, BOOST Program  
Maryland State Department of Education  
200 West Baltimore Street  
Baltimore, MD 21201

Dear Advisory Board,

Thank you for allowing the Maryland PTA provide public comments before the Board that oversees the Program on Broadening Options and Options for Students Today; in other words, BOOST. While many of you are familiar with the Parent Teacher Association (PTA), we want reiterate that we are the largest child advocacy organization in the United States. The Maryland Congress of PTAs promote the PTA's mission to make every child's potential a reality by engaging and empowering families and communities to advocate for all children.

We are pleased to see that the Biblical Lifestyle Requirement of the 2017-18 school year Parent Handbook of Trinity Lutheran Christian School (TLCS) is on the agenda for discussion on acceptance of either of the school's proposal to modify such language to comport with the eligibility requirements of the BOOST Program. Maryland PTA appreciates your being proactive to diligently approach the school for them to amend their handbook and hopefully, practice.

The Maryland PTA has had a long-standing position of endorsing the use of public funds exclusively for public schools. Any consideration for funding the student tuition of private schools with tax payer dollars via legislative appropriations must be met with the strongest application to hold schools accountable to the laws, policies and regulations pertaining to such administration of funds.

It is important to hold schools not only accountable to eligibility requirements but also making schools transparent. Hence, given TLCS's previous two years of being an awardee of BOOST funds while maintaining an open discrimination policy disguised as a Biblical Lifestyle Requirement to refuse admission of an applicant or to discontinue enrollment of a student based on the sexual orientation of a child's parents, it is warranted to say that a stronger partnership is needed between education advocacy organizations such as the Maryland PTA and MSDE to assist in holding schools accountable. It is doubtful that MSDE would have known of such policy if it weren't for any outside organization.

Thus, the Maryland PTA recommends that for all schools that have accepted BOOST funding since inception of the program during the 2016-17 school year as well as for those seeking eligibility henceforth, that following be required of all participating schools:



- All school related parent or student handbooks or annual correspondence to parents that reflect the policies, guidelines and expectations of the students be provided online for public accountability and access.
- All schools establish a clear anti-discrimination policy consistent with the eligibility requirements of BOOST as well as the Nonpublic Schools Textbook Program.
- Appropriation of any BOOST funding should be contingent upon the establishment of the above aforementioned recommendations:
  - to make parent/student handbook communications available online and
  - to establish and publish publicly an online anti-discrimination policy in its admissions and enrollment process

With specific regard to Trinity Lutheran Christian School their initial proposal to modify their Oct. 4 re-write of their policy to *“Reserve the right within the school’s sole discretion to refuse admission of an applicant or to discontinue enrollment of a student, when on those occasions, in which the atmosphere or conduct inside or outside the school is counter to or in opposition to the biblical standards the school teaches.”* is completely unacceptable as it does nothing to ameliorate not penalizing children based on their parents’ or family’s actions, behaviors or lifestyles.

Furthermore, the school’s Oct. 6 concession to completely withdraw the “Present Lifestyle Document” doesn’t mean that there is no adherence to silently implement a policy that has been established for years. Withdrawing the text from the Parent Handbook doesn’t mean that it still won’t be in practice. Hence, the omission of the text along with an established public anti-discrimination policy is better suited to make the school accountable to the eligibility requirements of the BOOST Program.

In terms of administration of the program by MSDE, Maryland PTA respectfully requests that an annual public calendar be established as soon as possible along with the minutes of meetings published within a designated time. Moreover, the agenda should be made public at least a week or more prior to the scheduled board meeting so that interested parties can provide feedback in a timely fashion. Maryland PTA also requests that the MSDE website be updated to reflect a specific person to contact in name, number and email regarding the oversight or administration of the BOOST Program.

During the 102<sup>nd</sup> Maryland PTA Convention July 28-29, our Congress was informed that the next public meeting was on Aug. 7 and when a call was made to confirm a few days before the meeting it was stated that the meeting was cancelled and when inquired about when the next meeting would occur the lady who answered the phone could not find out when. Maryland PTA has since learned that there was a meeting Aug. 11 and then on Sept. 1. There is a concerned that the public notice was insufficient for interested stakeholders to provide comment or witness the meeting. Lastly, please add Maryland PTA as a partner with which to communicate and send materials such as the agenda or other pertinent meeting information that will be provided at the Advisory Board meetings. Materials may be submitted to the current Maryland PTA President, Latisha Corey at [president@mdpta.org](mailto:president@mdpta.org). Thank you so much for your time.

\*Follow-up Comments that were requested after public statement.\*

As an addendum to the public comments, the Maryland PTA would like to provide additional remarks as a follow-up to the question asked of Maryland PTA’s opinion about the Advisory Board’s decision to disqualify Trinity Lutheran Christian School from participating in the BOOST Program. Part of the disqualification from not adhering to the assurances required by the BOOST Program and guaranteed by a school official, the Advisory Board is considering whether the school ought to pay back the funds granted last school year which is supported

via regulatory language along with not forcing the parents to pay the differential of the tuition promised to them by the state and foregone by the school.

Because Maryland PTA supports the well-being of all students and teachers as well as understands the budgetary nature of private schools and how potential teacher layoffs or increase in tuition could result from any implementation of a claw back clause that requires repayment of the tuition funds from a disqualified institution, the Maryland PTA would rather have a disqualified school penalized in a non-retroactive method. Preference would be to implement a future-oriented penalty and a continued ineligibility status for the same number of years the school was non-compliant. We also believe that, in this instance, allowing parents to have their children matriculate without the economic hardship of having responsibility to pay the gap in tuition expenses are fair as authorized via the budget bill of the 2016 legislative session.

Sincerely,

Maryland PTA

# Exhibit 9

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BETHEL MINISTRIES, INC., \*

*Plaintiffs,* \*

v. \*

No. 1:19-cv-01853-ELH

DR. KAREN B. SALMON, *et al.*, \*

*Defendants.* \*

\* \* \* \* \*

**AFFIDAVIT OF DONNA GUNNING**

I, Donna Gunning, do solemnly declare and affirm under the penalties of perjury this 14<sup>th</sup> day of November, 2019, that the following facts are true and correct based upon my personal knowledge:

1. I am over the age of 18 years and am competent to testify as a witness.
2. I am the Executive Director for the Maryland State Department of Education Office of Policy and Fiscal Analysis, a position I have held since September 2018. I have worked for the Maryland State Department of Education since July 2000. My principle duties as Executive Director entail providing fiscal policy and analysis supervision and direct management support to programs within MSDE, including the Broadening Opportunities and Options for Students Today (BOOST) program, and managing MSDE's Fiscal Note responses to the Maryland General Assembly. As Executive Director, I have personal knowledge of the matters set forth herein that occurred subsequent to September

6. I have examined the records of MSDE, and from that examination and based on my knowledge and belief of the practices of MSDE, the October 13, 2017 letter from Matthew Gallagher to BOOST-Eligible Schools was sent to the list of schools attached as Exhibit A.

7. Upon my review of the file, the Maryland Parent Teacher Association submitted written testimony to the BOOST Board in 2017, declaring that at least one school which had been deemed BOOST-eligible and had signed and submitted an assurances document, had policies that expressly discriminated against students based on the sexual orientation of the child's parents. A copy of this written testimony is attached as Exhibit B. It was after this testimony was received that the BOOST Board sought information from BOOST-eligible schools regarding their handbooks and other admissions policies.

I declare under penalty of perjury that the foregoing is true and correct.

11/13/19  
Dated

  
Donna Gunning

Case 1:19-cv-01853-SAG Document 22-1 Filed 11/14/19 Page 4 of 19

# Attachment A



**Potential Participating Schools for the BOOST Scholarship Program  
2017-2018 School Year**

THIS IS NOT A FINAL LIST OF ELIGIBLE SCHOOLS FOR THE 2017-2018 BOOST PROGRAM. This list represents schools that meet the criteria for participating in the Nonpublic Textbook Program and offering programs beyond kindergarten. To become fully eligible, schools must certify they: administer certain assessments, will provide certain assessment results, and comply with certain non-discrimination laws.

As of September 29, 2017

School Name
ACADEMY CHILD DEVELOPMENT CENTER - ROCKVILLE
AL HUDA SCHOOL - COLLEGE PARK
AL RAHMAH SCHOOL - BALTIMORE
ALEF BET MONTESSORI SCHOOL - BETHESDA
ALIM ACADEMY AKA MUSLIM COMMUNITY SCHOOL THE - POTOMAC
ALPERT FAMILY ALEPH BET JEWISH DAY SCHOOL - ANNAPOLIS
ARCHBISHOP BORDERS SCHOOL - BALTIMORE
ARCHBISHOP CURLEY HIGH SCHOOL - BALTIMORE
ARCHBISHOP NEALE ELEMENTARY SCHOOL- LA PLATA
ARCHBISHOP SPALDING HIGH SCHOOL - SEVERN
ARNOLD CHRISTIAN ACADEMY - ARNOLD
ARTS AND IDEAS SUDBURY SCHOOL - BALTIMORE
ARUNDEL CHRISTIAN SCHOOL - HANOVER
ATHOLTON ADVENTIST ACADEMY - COLUMBIA
BAIS HAMEDRASH AND MESIVTA OF BALTIMORE - BALTIMORE
BAIS YAAKOV SCHOOL FOR GIRLS - BALTIMORE
BALTIMORE ACTORS THEATRE CONSERVATORY THE - BALTIMORE

BALTIMORE JUNIOR ACADEMY - BALTIMORE	
BALTIMORE SCHOOL OF INDEPENDENT LEARNERS - PIKESVILLE	
BALTIMORE TORAH SCHOOL - BALTIMORE	
BALTIMORE WHITE MARSH ADVENTIST SCHOOL - ROSEDALE	
BANNER SCHOOL THE - FREDERICK	
BEDDOW HIGH SCHOOL THE - ACCOKEEK	
BEDDOW SCHOOL INC THE - WALDORF	
BEDDOW SCHOOL INC THE - FT WASHINGTON	
BEGINNINGS MONTESSORI SCHOOL - CUMBERLAND	
BETHEL CHRISTIAN ACADEMY - SAVAGE	
BISHOP MCNAMARA HIGH SCHOOL - FORESTVILLE	
BISHOP WALSH MIDDLE HIGH SCHOOL - CUMBERLAND	
BNOS YISROEL OF BALTIMORE - BALTIMORE	
BOWIE MONTESSORI CHILDRENS HOUSE - BOWIE	
BROADFORDING CHRISTIAN ACADEMY - HAGERSTOWN	
BROOKWOOD SCHOOL - KENSINGTON	
BUTLER SCHOOL - DARNESTOWN	
CALVARY CHRISTIAN ACADEMY - CRESAPTOWN	
CALVARY LUTHERAN SCHOOL - BALTIMORE	
CALVERT HALL COLLEGE HIGH SCHOOL - BALTIMORE	
CAMBRIDGE SCHOOL - BALTIMORE	
CARDINAL HICKEY ACADEMY - OWINGS	
CARDINAL SHEHAN SCHOOL - BALTIMORE	
CARROLL LUTHERAN SCHOOL - WESTMINSTER	
CATHEDRAL CHRISTIAN ACADEMY - BALTIMORE	
CATHOLIC HIGH SCHOOL OF BALTIMORE THE - BALTIMORE	

CELEBRATION CHRISTIAN ACADEMY - COLUMBIA	
CENTER FOR CREATIVE LEARNING THE - BALTIMORE	
CHABAD OF PARK HEIGHTS - BALTIMORE	
CHESAPEAKE CHRISTIAN SCHOOL - EASTON	
CHESTER RIVER ADVENTIST SCHOOL - CHESTERTOWN	
COLUMBIA ACADEMY ELEMENTARY AND MIDDLE SCHOOL - COLUMBIA	
COUNTRYSIDE CHRISTIAN SCHOOL	
CREST LANE SCHOOL - WESTMINSTER	
CRISTO REY JESUIT HIGH SCHOOL - BALTIMORE	
DARCHEI NOAM MONTESSORI	
DEMATHA CATHOLIC HIGH SCHOOL - HYATTSVILLE	
DON BOSCO CRISTO REY HIGH SCHOOL - TAKOMA PARK	
EBENEZER CHRISTIAN SCHOOL - HAGERSTOWN	
ELIZABETH SETON HIGH SCHOOL - BLADENSBURG	
ELVATON CHRISTIAN ACADEMY - MILLERSVILLE	
EMMANUEL LUTHERAN SCHOOL - BALTIMORE	
FAIRHAVEN SCHOOL - UPPER MARLBORO	
FIRST BAPTIST SCHOOL OF LAUREL	
FORCEY CHRISTIAN SCHOOL - SILVER SPRING	
FREDERICK ADVENTIST ACADEMY - FREDERICK	
FREDERICK COUNTRY DAY - FREDERICK	
FRIENDS MEETING SCHOOL - IJAMSVILLE	
GEORGE E PETERS SDA ELEM SCHOOL - HYATTSVILLE	
GERMAN SCHOOL WASHINGTON D C - POTOMAC	
GLA ACADEMY "SCHOOL OF EXCELLENCE" - ROSEDALE	
GLENWOOD COUNTRY DAY SCHOOL - MT. AIRY	

GOOD SHEPHERD SCHOOL - PERRYVILLE	
GRACE ACADEMY - HAGERSTOWN	
GRACE CHRISTIAN ACADEMY OF MARYLAND - WALDORF	
GRACE LUTHERAN SCHOOL - LA PLATA	
GREATER GRACE CHRISTIAN ACADEMY - BALTIMORE	
GREATER YOUTH ACADEMY - BALTIMORE	
HIGHLAND PARK CHRISTIAN ACADEMY - LANDOVER	
HIGHLAND VIEW ACADEMY - HAGERSTOWN	
HOLY ANGELS ELEMENTARY SCHOOL - BALTIMORE	
HOLY CROSS SCHOOL - GARRETT PARK	
HOLY FAMILY SCHOOL - HILLCREST HEIGHTS	
HOLY REDEEMER SCHOOL - COLLEGE PARK	
HOLY TRINITY EPISCOPAL DAY SCHOOL - GLENN DALE	
IMMACULATE CONCEPTION SCHOOL - TOWSON	
IMMACULATE CONCEPTION SCHOOL - ELKTON	
IMMACULATE HEART OF MARY SCHOOL - BALTIMORE	
INSTITUTE OF NOTRE DAME - BALTIMORE	
ISLAMIC COMMUNITY SCHOOL - BALTIMORE	
ISRAEL HENRY BEREN HIGH SCHOOL - BALTIMORE	
JEWELS SCHOOL	
JOHN CARROLL SCHOOL - BEL AIR	
JOHN NEVINS ANDREWS SCHOOL - TAKOMA PARK	
KINGS CHRISTIAN ACADEMY - CALLAWAY	
KRIEGER SCHECHTER DAY SCHOOL - BALTIMORE	
LAMB OF GOD SCHOOL - BALTIMORE	
LANHAM CHRISTIAN SCHOOL - LANHAM	

LEO BERNSTEIN JEWISH ACADEMY OF FINE ARTS - SILVER SPRING	
LEONARD HALL JUNIOR NAVAL ACADEMY INC - LEONARDTOWN	
LIGHTHOUSE CHRISTIAN ACADEMY - CUMBERLAND	
LITTLE FLOWER SCHOOL - BETHESDA	
LITTLE FLOWER SCHOOL - GREAT MILLS	
LUCY SCHOOL - MIDDLETOWN	
MARY OF NAZARETH ROMAN CATHOLIC SCHOOL - DARNSTOWN	
MARYLAND INTERNATIONAL DAY SCHOOL - FT. WASHINGTON	
MARYVALE PREPARATORY SCHOOL - LUTHERVILLE	
MELVIN J BERMAN HEBREW ACADEMY - ROCKVILLE	
MERCY HIGH SCHOOL - BALTIMORE	
MESIVTA NE'IMUS HATORAH - BALTIMORE	
MONSIGNOR SLADE REGIONAL CATHOLIC SCHOOL - GLEN BURNIE	
MONTESSORI MANOR - PHOENIX	
MONTESSORI SCHOOL OF WESTMINSTER - WESTMINSTER	
MOST BLESSED SACRAMENT CATHOLIC SCHOOL - OCEAN PINES	
MOTHER CATHERINE ACADEMY - HELEN	
MOTHER OF GOD SCHOOL - GAITHERSBURG	
MOTHER SETON ACADEMY - BALTIMORE	
MOTHER SETON SCHOOL - EMMITSBURG	
MOUNT AVIAT ACADEMY - CHILDS	
MOUNT DE SALES ACADEMY - CATONSVILLE	
MOUNT PLEASANT CHRISTIAN SCHOOL	
MT. AETNA ADVENTIST SCHOOL - HAGERSTOWN	
MT. ST. JOSEPH HIGH SCHOOL - BALTIMORE	
NATIONAL CHRISTIAN ACADEMY - FT. WASHINGTON	

NEW CHAPEL CHRISTIAN ACADEMY - CAMP SPRINGS	
NEW HOPE ACADEMY - LANDOVER HILLS	
NEW SPIRITUAL FOUNDATION CHRISTIAN ACADEMY - BALTIMORE	
NORTH CARROLL COMMUNITY SCHOOL - WESTMINSTER	
NOTRE DAME PREPARATORY SCHOOL - TOWSON	
OHR CHADASH ACADEMY - BALTIMORE	
OLNEY ADVENTIST PREPARATORY SCHOOL - OLNEY	
OUR LADY OF GOOD COUNSEL HIGH SCHOOL - OLNEY	
OUR LADY OF HOPE ST LUKE SCHOOL - BALTIMORE	
OUR LADY OF LOURDES SCHOOL - BETHESDA	
OUR LADY OF MERCY SCHOOL - POTOMAC	
OUR LADY OF MT. CARMEL SCHOOL - BALTIMORE	
OUR LADY OF PERPETUAL HELP SCHOOL - ELLICOTT CITY	
OUR LADY OF VICTORY SCHOOL - BALTIMORE	
OUR LADY STAR OF THE SEA SCHOOL - SOLOMONS	
PERRY HALL CHRISTIAN SCHOOL - PERRY HALL	
PILGRIM CHRISTIAN DAY SCHOOL - BALTIMORE	
PROGRESSIVE EDUCATION CENTER DAY SCHOOL - BALTIMORE	
REID TEMPLE CHRISTIAN ACADEMY - GLENN DALE	
RESURRECTION ST PAUL SCHOOL - ELLICOTT CITY	
SACRED HEART SCHOOL - GLYNDON	
SAINT MARY'S RYKEN - LEONARDTOWN	
SAINTS PETER AND PAUL HIGH SCHOOL - EASTON	
SALISBURY CHRISTIAN SCHOOL - SALISBURY	
SCHOOL OF THE CATHEDRAL OF MARY OUR QUEEN - BALTIMORE	
SCHOOL OF THE INCARNATION - GAMBRILLS	

SENECA ACADEMY - DARNESTOWN	
SHABACH CHRISTIAN ACADEMY - LANDOVER	
SISTERS ACADEMY OF BALTIMORE - BALTIMORE	
SLIGO ADVENTIST SCHOOL - TAKOMA PARK	
SOUTHERN MARYLAND CHRISTIAN ACADEMY - WHITE PLAINS	
SPENCERVILLE ADVENTIST ACADEMY - SPENCERVILLE	
ST PETER AND PAUL ELEMENTARY SCHOOL - EASTON	
ST. AGNES SCHOOL - BALTIMORE	
ST. AMBROSE SCHOOL - CHEVERLY	
ST. ANDREW APOSTLE SCHOOL - SILVER SPRING	
ST. ANDREWS UNITED METHODIST DAY SCHOOL - EDGEWATER	
ST. AUGUSTINE SCHOOL - ELKRIDGE	
ST. BARTHOLOMEW SCHOOL - BETHESDA	
ST. BERNADETTE SCHOOL - SILVER SPRING	
ST. CASIMIR CATHOLIC SCHOOL - BALTIMORE	
ST. COLUMBA SCHOOL - OXON HILL	
ST. ELIZABETHS SCHOOL - ROCKVILLE	
ST. FRANCES ACADEMY - BALTIMORE	
ST. FRANCIS DE SALES SCHOOL - SALISBURY	
ST. FRANCIS INTERNATIONAL SCHOOL - SILVER SPRING	
ST. FRANCIS OF ASSISI SCHOOL - BALTIMORE	
ST. IGNATIUS LOYOLA ACADEMY - BALTIMORE	
ST. JAMES AND ST JOHN CAMPUS OF QUEEN OF PEACE SCHOOL - BALTIMORE	
ST. JANE DE CHANTAL SCHOOL - BETHESDA	
ST. JANE FRANCES SCHOOL - PASADENA	
ST. JEROMES ACADEMY - HYATTSVILLE	

ST. JOAN OF ARC SCHOOL - ABERDEEN	
ST. JOHN CATHOLIC SCHOOL - WESTMINSTER	
ST. JOHN REGIONAL CATHOLIC SCHOOL - FREDERICK	
ST. JOHN THE BAPTIST SCHOOL - SILVER SPRING	
ST. JOHN THE EVANGELIST CATHOLIC SCHOOL - HYDES	
ST. JOHN THE EVANGELIST SCHOOL - SILVER SPRING	
ST. JOHN THE EVANGELIST SCHOOL - SEVERNA PARK	
ST. JOHN THE EVANGELIST SCHOOL - CLINTON	
ST. JOHN'S CATHOLIC PREP - BUCKEYSTOWN	
ST. JOHNS SCHOOL - HOLLYWOOD	
ST. JOSEPH SCHOOL - BALTIMORE	
ST. JOSEPHS SCHOOL - COCKEYSVILLE	
ST. JOSEPHS SCHOOL - BELTSVILLE	
ST. JUDE CATHOLIC SCHOOL - ROCKVILLE	
ST. LOUIS SCHOOL - CLARKSVILLE	
ST. MARGARET SCHOOL - BEL AIR	
ST. MARIA GORETTI HIGH SCHOOL - HAGERSTOWN	
ST. MARK SCHOOL - BALTIMORE	
ST. MARTINS IN THE FIELD EPISCOPAL SCHOOL - SEVERNA PARK	
ST. MARTINS LUTHERAN CHURCH SCHOOL - ANNAPOLIS	
ST. MARTINS OF TOURS SCHOOL - GAITHERSBURG	
ST. MARY OF THE ASSUMPTION SCHOOL - UPPER MARLBORO	
ST. MARY OF THE MILLS SCHOOL - LAUREL	
ST. MARY SCHOOL - HAGERSTOWN	
ST. MARYS CATHOLIC SCHOOL - LANDOVER HILLS	
ST. MARYS ELEMENTARY SCHOOL - ANNAPOLIS	

ST. MARYS HIGH SCHOOL - ANNAPOLIS	
ST. MARYS SCHOOL - BRYANTOWN	
ST. MARYS SCHOOL - ROCKVILLE	
ST. MARYS SCHOOL OF PISCATAWAY - CLINTON	
ST. MATTHIAS APOSTLE SCHOOL - LANHAM	
ST. MICHAEL THE ARCHANGEL SCHOOL - BALTIMORE	
ST. MICHAEL'S SCHOOL - RIDGE	
ST. PATRICKS SCHOOL - ROCKVILLE	
ST. PAUL LUTHERAN CHURCH AND SCHOOL - CATONSVILLE	
ST. PAULS LUTHERAN SCHOOL - GLEN BURNIE	
ST. PAULS LUTHERAN SCHOOL - KINGSVILLE	
ST. PETERS CHRISTIAN DAY SCHOOL - BALTIMORE	
ST. PETERS PAROCHIAL SCHOOL - OLNEY	
ST. PETERS SCHOOL - WALDORF	
ST. PHILIP NERI SCHOOL - LINTHICUM	
ST. PHILIP THE APOSTLE SCHOOL - CAMP SPRINGS	
ST. PIUS X REGIONAL SCHOOL - BOWIE	
ST. PIUS X SCHOOL - BALTIMORE	
ST. RAPHAELS SCHOOL - ROCKVILLE	
ST. STEPHEN SCHOOL - BRADSHAW	
ST. THOMAS MORE ACADEMY - MIDDLETOWN	
ST. URSULA SCHOOL - BALTIMORE	
ST. VINCENT PALLOTTI HIGH SCHOOL - LAUREL	
STEPPING STONES LEARNING ACADEMY - FRUITLAND	
TAKOMA ACADEMY - TAKOMA PARK	
TALMUDICAL ACADEMY OF BALTIMORE - BALTIMORE	

THE AVALON SCHOOL - GAITHERSBURG	
THE SALISBURY SCHOOL - SALISBURY	
THE WATSON HALL MONTESSORI SCHOOL - BALTIMORE	
TIDEWATER SCHOOL - HUNTINGTOWN	
TOME SCHOOL - NORTH EAST	
TORAH INSTITUTE OF BALTIMORE - OWINGS MILLS	
TORAH SCHOOL OF GREATER WASHINGTON - SILVER SPRING	
TRINITY LUTHERAN SCHOOL - JOPPA	
TRINITY SCHOOL - ELLICOTT CITY	
TRUTH CHRISTIAN ACADEMY - HAGERSTOWN	
UNSELDS SCHOOL - BALTIMORE	
VICTORY DAY SCHOOL - REISTERSTOWN	
WASHINGTON CHRISTIAN ACADEMY - OLNEY	
WASHINGTON UNITED CHRISTIAN ACADEMY - HYATTSVILLE	
WICOMICO DAY SCHOOL - SALISBURY	
WOODSTREAM CHRISTIAN ACADEMY - MITCHELLVILLE	
YESHIVA OF GREATER WASHINGTON - SILVER SPRING	
YESIVAS TORAS SIMCHA	



# Attachment B



5 Central Avenue  
Glen Burnie, MD 21061  
Phone: (410) 760-6221  
(800) 707-7972  
Fax: (410) 760-6344  
[www.mdpta.org](http://www.mdpta.org)

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October 11, 2017

Advisory Board Meeting, BOOST Program  
Maryland State Department of Education  
200 West Baltimore Street  
Baltimore, MD 21201

Dear Advisory Board,

Thank you for allowing the Maryland PTA provide public comments before the Board that oversees the Program on Broadening Options and Options for Students Today; in other words, BOOST. While many of you are familiar with the Parent Teacher Association (PTA), we want reiterate that we are the largest child advocacy organization in the United States. The Maryland Congress of PTAs promote the PTA's mission to make every child's potential a reality by engaging and empowering families and communities to advocate for all children.

We are pleased to see that the Biblical Lifestyle Requirement of the 2017-18 school year Parent Handbook of Trinity Lutheran Christian School (TLCS) is on the agenda for discussion on acceptance of either of the school's proposal to modify such language to comport with the eligibility requirements of the BOOST Program. Maryland PTA appreciates your being proactive to diligently approach the school for them to amend their handbook and hopefully, practice.

The Maryland PTA has had a long-standing position of endorsing the use of public funds exclusively for public schools. Any consideration for funding the student tuition of private schools with tax payer dollars via legislative appropriations must be met with the strongest application to hold schools accountable to the laws, policies and regulations pertaining to such administration of funds.

It is important to hold schools not only accountable to eligibility requirements but also making schools transparent. Hence, given TLCS's previous two years of being an awardee of BOOST funds while maintaining an open discrimination policy disguised as a Biblical Lifestyle Requirement to refuse admission of an applicant or to discontinue enrollment of a student based on the sexual orientation of a child's parents, it is warranted to say that a stronger partnership is needed between education advocacy organizations such as the Maryland PTA and MSDE to assist in holding schools accountable. It is doubtful that MSDE would have known of such policy if it weren't for any outside organization.

Thus, the Maryland PTA recommends that for all schools that have accepted BOOST funding since inception of the program during the 2016-17 school year as well as for those seeking eligibility henceforth, that following be required of all participating schools:

- All school related parent or student handbooks or annual correspondence to parents that reflect the policies, guidelines and expectations of the students be provided online for public accountability and access.
- All schools establish a clear anti-discrimination policy consistent with the eligibility requirements of BOOST as well as the Nonpublic Schools Textbook Program.
- Appropriation of any BOOST funding should be contingent upon the establishment of the above aforementioned recommendations:
  - to make parent/student handbook communications available online and
  - to establish and publish publicly an online anti-discrimination policy in its admissions and enrollment process

With specific regard to Trinity Lutheran Christian School their initial proposal to modify their Oct. 4 re-write of their policy to *“Reserve the right within the school’s sole discretion to refuse admission of an applicant or to discontinue enrollment of a student, when on those occasions, in which the atmosphere or conduct inside or outside the school is counter to or in opposition to the biblical standards the school teaches.”* is completely unacceptable as it does nothing to ameliorate not penalizing children based on their parents’ or family’s actions, behaviors or lifestyles.

Furthermore, the school’s Oct. 6 concession to completely withdraw the “Present Lifestyle Document” doesn’t mean that there is no adherence to silently implement a policy that has been established for years. Withdrawing the text from the Parent Handbook doesn’t mean that it still won’t be in practice. Hence, the omission of the text along with an established public anti-discrimination policy is better suited to make the school accountable to the eligibility requirements of the BOOST Program.

In terms of administration of the program by MSDE, Maryland PTA respectfully requests that an annual public calendar be established as soon as possible along with the minutes of meetings published within a designated time. Moreover, the agenda should be made public at least a week or more prior to the scheduled board meeting so that interested parties can provide feedback in a timely fashion. Maryland PTA also requests that the MSDE website be updated to reflect a specific person to contact in name, number and email regarding the oversight or administration of the BOOST Program.

During the 102<sup>nd</sup> Maryland PTA Convention July 28-29, our Congress was informed that the next public meeting was on Aug. 7 and when a call was made to confirm a few days before the meeting it was stated that the meeting was cancelled and when inquired about when the next meeting would occur the lady who answered the phone could not find out when. Maryland PTA has since learned that there was a meeting Aug. 11 and then on Sept. 1. There is a concerned that the public notice was insufficient for interested stakeholders to provide comment or witness the meeting. Lastly, please add Maryland PTA as a partner with which to communicate and send materials such as the agenda or other pertinent meeting information that will be provided at the Advisory Board meetings. Materials may be submitted to the current Maryland PTA President, Latisha Corey at [president@mdpta.org](mailto:president@mdpta.org). Thank you so much for your time.

\*Follow-up Comments that were requested after public statement.\*

As an addendum to the public comments, the Maryland PTA would like to provide additional remarks as a follow-up to the question asked of Maryland PTA’s opinion about the Advisory Board’s decision to disqualify Trinity Lutheran Christian School from participating in the BOOST Program. Part of the disqualification from not adhering to the assurances required by the BOOST Program and guaranteed by a school official, the Advisory Board is considering whether the school ought to pay back the funds granted last school year which is supported

via regulatory language along with not forcing the parents to pay the differential of the tuition promised to them by the state and foregone by the school.

Because Maryland PTA supports the well-being of all students and teachers as well as understands the budgetary nature of private schools and how potential teacher layoffs or increase in tuition could result from any implementation of a claw back clause that requires repayment of the tuition funds from a disqualified institution, the Maryland PTA would rather have a disqualified school penalized in a non-retroactive method. Preference would be to implement a future-oriented penalty and a continued ineligibility status for the same number of years the school was non-compliant. We also believe that, in this instance, allowing parents to have their children matriculate without the economic hardship of having responsibility to pay the gap in tuition expenses are fair as authorized via the budget bill of the 2016 legislative session.

Sincerely,

Maryland PTA

# Exhibit 10

## Chapel and Religion

Separate chapel services are conducted each Wednesday in the Church Nave for Pre-K through grade 4 and for grades 5-8. Their services are conducted by the headmaster and feature a great deal of involvement from staff members and students alike, along with occasional guest participants.

The 4th & 5th Grade Choruses participate on a regular basis, as does the Middle School Drama Club. A song leader and musical accompaniment assist in leadership. The message or theme of the day is frequently presented through multi-media resources such as videos, DVDs, and a PowerPoint format. There is a strong emphasis on student involvement in a celebration atmosphere of joy. At all times, a proper worship spirit and reverent attitude toward God are maintained.

Worship services of praise are observed for Thanksgiving, Christmas, Lent, Easter and other festivals. A major component of all chapels is to lead a student to faith in Jesus, God's Son, and to provide opportunities for the students to experience their love of God by a loving involvement with their fellowman. Special projects and offerings are prepared by our students to experience their love for humankind, such as food baskets for the poor, special offering for Tsunami victims, Day of Hope, care packages for our military and others. The middle school chapel celebrates Holy Communion each month and Baptism when requested. Instrumentalists accompany services whenever they are available.

Every class opens and closes each day with a prayer in the classroom. Daily devotions and Pledge to the Christian and American Flags are also part of the morning routine. There is a daily emphasis on Bible stories, Bible verses, Christian living with our neighbors and application to daily life.

The families of our school system are always invited and welcome to all the weekly chapel and worship celebrations of Trinity Lutheran congregation.

## Biblical Lifestyle Requirement

"When schools flourish, things go well and the church is secure. Let us make more doctors and masters...When we are dead, where are others [to take our place] if there are no schools? God has preserved the church through schools." -- Martin Luther, LW 54, p. 452.

Trinity Lutheran Christian School & Early Learning Center is a religious institution providing an education in a distinct Christian environment, and it believes that its Biblical role is to work in conjunction with the home to mold students to be Christ like.

On those occasions in which the atmosphere or conduct, inside or outside the school, is counter to or in opposition to the Biblical lifestyle the school teaches, the school reserves the right, within its sole discretion, to refuse admission of an applicant or to discontinue enrollment of a student. This includes, but is not necessarily limited to, living in, condoning, or practicing homosexual lifestyle or alternative gender identity; promoting such practices; or otherwise having the inability to support the moral principles of the school. (Leviticus 20: 1 3a, Romans 1:27, Matthew 19:4-6). As such, the school reserves the right, within its sole discretion, to refuse admission of an applicant or to discontinue enrollment of a student of a same sex marriage or relationship.

Martin Luther was in favor of education. In fact, he deeply influenced the way schools developed in Germany. Because of Luther's concern for education, he and his fellow reformers...

- ...began reform of education before reform of the church
- ...developed new curricula and pedagogies that shaped both schools and universities
- ...favored adult education as well as the education of the "traditional student"
- ...facilitated the education of international students
- ...advocated schools for both boys and girls

While Luther clearly believed in the effectual power of the preached Word, he also believed that preachers needed to be taught who and what to preach. What his methods show us is that he put most of his effort into education. Trinity Lutheran follows in this Biblical heritage with their church and school.

The Sacred Scriptures teach that in the beginning the blessed Trinity instituted marriage to be the life-long union of one man and one woman (Gen 2:24, Matt 19:4-6), to be held in honor by all and kept pure (Heb 13:4, 1 Thess 4:2-5). God's Word assures us that each time one man and one woman join themselves together in the union of marriage commitment and relationship, God himself has joined them as one. It is important to see that marriage is not only a grace-filled institution of the church, but part of the very fabric of God's creation, which extends to every time and place on earth and includes every man and woman who are joined together in this "one flesh" commitment and bond. Marriage is created by God and is not simply a social contract or convenience.

Flowing from the gift of marriage is another precious gift of God, the gift of children. "Be fruitful and multiply" (Gen 1:28) is as much a word of divine blessing as it is a command. Children are the most obvious, distinctive, and natural gift of marriage, for the child is in every sense the "one flesh" of the mother and father.

# Exhibit 11



Karen B. Salmon, Ph.D.  
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • marylandpublicschools.org

October 13, 2017

Pastor John Austin  
Trinity Lutheran Christian School  
1100 Philadelphia Road  
Joppa, MD 21085

Dear Pastor Austin:

At the BOOST Advisory Board meeting on October 11, 2017, the Board reviewed the “Biblical Lifestyle Requirement” section of the Handbook of Trinity Lutheran Christian School and Early Learning Center. That section of the Handbook states in part:

Trinity Lutheran Christian School and Early Learning Center is a religious institution providing an education in a distinct Christian environment, and it believes that its Biblical role is to work in conjunction with the home to mold students to be Christ like.

On those occasions in which the atmosphere or conduct, inside or outside the school, is counter to or in opposition to the Biblical lifestyle the school teaches, the school reserves the right, within its sole discretion, to refuse admission of an applicant or to discontinue enrollment of a student. This includes, but is not necessarily limited to, living in, condoning, or practicing homosexual lifestyle or alternative gender identity; promoting such practices; or otherwise having the inability to support the moral principles of the school. (Leviticus 20:1 3a, Romans 1:27, Matthew 19:4-6). As such, the school reserves the right, within its sole discretion, to refuse admission of an applicant or to discontinue enrollment of a student of a same sex marriage or relationship.

The Board also reviewed two letters in which you describe changes that the school proposed to make to the “Biblical Lifestyle Requirement” section of the Handbook. Those changes were proposed after the school was notified by BOOST staff that the statements included in the “Biblical Lifestyle Requirement” contradicted the Assurances that you signed on behalf of the school in both the 2016-2017 and 2017-2018 school years. The Assurances stated that the school “will not discriminate in student admission on the basis of... sexual orientation.” In the Handbook, however, it states that “the school reserves the right, within its sole discretion, to refuse admission of an applicant or discontinue enrollment of a student of a same sex marriage relationship.” The Handbook also states that the school may refuse to admit or disenroll a student practicing a homosexual lifestyle or alternative gender identity.

Trinity Lutheran Christian School  
Page 2

Despite the fact that you proposed two options to change the Handbook, the BOOST Advisory Board determined that signing the non-discrimination Assurance in two school years in the face of the statements in the Handbook is in direct contradiction of the BOOST law. On the one hand, the school agreed not to discriminate in admissions. On the other, it reserved the right to do so. The Board decided that the proposed changes could not cure such a violation of State law.

The law governing compliance with the BOOST non-discrimination clause states that a nonpublic school that does not comply "shall reimburse MSDE all scholarship funds received under the BOOST Program and may not charge the student tuition and fees instead." Ineligibility for participating in BOOST is also a legal remedy. Based on that law, the BOOST Advisory Board has disqualified Trinity Lutheran Christian School as BOOST school for the 2017-2018 school year. The Board is considering, but has not definitively decided, whether to seek reimbursement of scholarship funds in the amount of \$64,284 (including pro-rated awards) that Trinity Lutheran Christian School received under the BOOST Program in the 2016-2017 school year.

It is our understanding that for the 2017-2018 school year, 20 students that received BOOST awards selected Trinity Lutheran Christian School and 19 of them are currently enrolled in the school. Pursuant to the law, the school may not charge the students tuition and fees to replace the BOOST scholarship funds that the school would have received if it were deemed an eligible BOOST school. The Board will notify the parents of each student that the law protects them from having to pay tuition and fees to replace the BOOST scholarship funds that will not be paid to Trinity Lutheran Christian School. The Board will also explain that the student's eligibility for a BOOST scholarship is not impacted by the fact that Trinity Lutheran Christian School is an "ineligible" school. The BOOST scholarship is portable. Thus, the Board will advise parents that they may seek enrollment of their students in another BOOST school for the 2017-2018 school year, if they wish.

The Board also discussed the fact that Trinity Lutheran Christian School is a participant in the Non-Public School Textbook Program which requires the school to sign a non-discrimination assurance similar to the BOOST Program non-discrimination assurance. The Board has referred the issue of non-compliance with the Textbook Program non-discrimination requirements to the Maryland State Department of Education for consideration and decision. You will receive a separate letter concerning the school's continued participation in the Non-Public School Textbook Program.

The Board wishes to inform you that Trinity Lutheran Christian School may re-apply for BOOST school eligibility in the 2018-2019 school year. At that time, the Board may require a comprehensive review of the Handbook and admission documents, as well as supplemental information on admission and denials of admission of students and other relevant information.

The Board wishes to point out that there are nonpublic schools in Maryland that disqualified themselves to be BOOST schools because, in light of their religious or moral beliefs, they could not sign the non-discrimination assurance. That was the honorable decision, one that respected the use of public dollars to fund nonpublic education; one that respected the law. It is the expectation of the BOOST Advisory Board that all BOOST schools will follow that course of action.

If you have questions about this matter, please contact Monica Kearns, Assistant State Superintendent, at 410-767-8863 or [monica.kearns@maryland.gov](mailto:monica.kearns@maryland.gov).

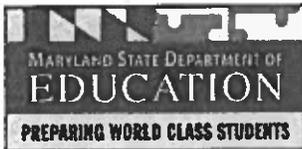
Trinity Lutheran Christian School  
Page 3

Sincerely,

A handwritten signature in black ink that reads "Matt D. Gallagher". The signature is written in a cursive style with a long horizontal line extending to the right.

Matthew Gallagher  
Chair, BOOST Advisory Board

cc: BOOST Advisory Board  
State Board Members  
Karen B. Salmon, Ph.D.  
Kristy Michel  
Monica Kearns  
Parents of BOOST Students Enrolled in the School  
William Reinhard  
Gayle Secrist  
Elizabeth M. Kameen



Karen B. Salmon, Ph.D.  
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • marylandpublicschools.org

October 13, 2017

Dear Parent of a Trinity Lutheran School BOOST Student:

On behalf of the BOOST Advisory Board, I take this opportunity to inform you about a change in status of Trinity Lutheran Christian School. You will see in the letter attached here that Trinity Lutheran Christian School is no longer an eligible BOOST school for the 2017-2018 school year. As a result, it is not eligible to receive BOOST scholarship funds.

I understand that you have a child or children who have BOOST scholarships and are enrolled in or plan to enroll in the school. The school's ineligibility *will not* affect your child's scholarship or your pocketbook. The BOOST Advisory Board told the school that, under the law governing the BOOST Program, the school cannot charge you tuition or fees to make up for the BOOST Scholarship funds it will not receive from the State of Maryland. Of course, the BOOST scholarship is "portable," so if for any reason you wish to seek to enroll your child in a different BOOST school, you may do so, but you are not required to do so.

If you have any questions about this letter, please contact me or my colleague Felicia Holloway Wise at [boost.msde@maryland.gov](mailto:boost.msde@maryland.gov) or call Ms. Holloway Wise at 410-767-0118. I wish you and your student a very successful school year.

Sincerely,

Monica Kearns  
Assistant State Superintendent

cc: BOOST Advisory Board  
State Board Members  
Karen B. Salmon, Ph.D.  
Kristy Michel  
Monica Kearns  
William Reinhard  
Gayle Secrist  
Pastor John Austin

# Exhibit 12



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

February 28, 2019

Pastor John Austin  
Trinity Lutheran Christian School  
1100 Philadelphia Road  
Joppa, Maryland 21085

Dear Pastor Austin:

On October 13, 2017, the BOOST Advisory Board notified you that that it had disqualified Trinity Lutheran Christian School from the BOOST Program for the 2017-2018 school year, based on language in its student handbook that contradicted the nondiscrimination requirements in the BOOST law. As a result, the school did not receive scholarship funds in the 2017-2018 school year and could not charge BOOST students tuition to replace those funds. The Board notified you that the school could re-apply to participate in the BOOST Program for the 2018-2019 school year, which it did, following revisions to the student handbook.

The Board also included the following statement in its October 13, 2017 letter:

The Board is considering, but has not definitively decided, whether to seek reimbursement of scholarship funds in the amount of \$64,284 (including pro-rated awards) that Trinity Lutheran Christian School received under the BOOST Program in the 2016-2017 school year.

At the BOOST Advisory Board meeting on May 3, 2018, the Board discussed the question of whether to seek reimbursement of scholarship funds received in the 2016-2017 school year. The Board decided to exercise its authority under the BOOST law to seek reimbursement from schools with noncompliant handbook language. Notably, Trinity Lutheran Christian School did not receive an invoice at that time because it had revised its student handbook. The Board, however, had not specifically addressed the question of whether it would waive reimbursement for schools that revised their student handbooks.

At the BOOST Advisory Board meeting on February 5, 2018, the Board considered, and definitively decided, that question. The Board determined that it will not waive the requirement for schools to reimburse scholarship funds received while their student handbooks contradicted the nondiscrimination requirements, despite subsequent revisions. While the Board recognizes the effort of schools to revise their student handbooks and has restored their eligibility for the BOOST Program on that basis, reimbursement is critical to enforcing the importance and integrity of the nondiscrimination assurances, recognizing that the content of student handbooks as they were presented to prospective students was contrary to the assurances each school signed.

Pastor John Austin  
February 28, 2019  
Page 1

Therefore, enclosed is invoice # E14079 in the amount of \$61,850.00, which represents repayment to the BOOST Program of 19 student scholarship payments in the 2016-2017 school year.

Recognizing the realities of school budgeting, however, the Board also determined that it would offer schools the option to utilize a prospective payment plan to accomplish the required payment. While this will allow schools to pay down the amount owed at the same time they are receiving new BOOST scholarship awards, please know that students must still be credited for the full value of their awards. The BOOST Program can offer payment plans for three years or less, which incur no fee. The Board is willing to consider authorizing payment plans for four years or longer, but be aware that such plans must be arranged with the Maryland Central Collection Unit and may incur a collection fee.

I have enclosed a sample three-year repayment agreement for your consideration. You may suggest other payment options on behalf of your school, which the BOOST Program will consider in light of their reasonableness and practicality. If you have any questions, or to begin the process of arranging for a payment plan, please contact me by phone at 410-767-0757 or by e-mail at [donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov), within 30 days of the date of this letter.

Sincerely,

Donna Gunning  
BOOST Program Executive Director

Cc: BOOST Advisory Board  
Elizabeth Kameen

# Exhibit 13



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • marylandpublicschools.org

October 13, 2017

Dear BOOST-Eligible School:

The BOOST Advisory Board takes this opportunity to emphasize the meaning and effect of the assurances your school signs to become a BOOST-eligible school. Those assurances are attached.

In May 2017, the Maryland State Department of Education had two informational meetings for schools participating in the 2017-2018 BOOST Program during which a copy of the BOOST law was distributed, the provisions of the law were articulated, and the assurances to which schools must agree were distributed and explained. This information also was distributed via email.

On behalf of the Board, I point out particularly the assurance (as seen on page 4 of the attachment) that your school will not discriminate in admissions on the basis of race, color, national origin or sexual orientation. It is important that you review your school's moral and religious position on non-discrimination, particularly on sexual orientation. You are not required to adopt a position that conflicts with your moral or religious teaching, but your school is not allowed, under the BOOST law, to accept publically-funded scholarships if you cannot, in good faith, sign the assurance not to discriminate. If you sign the assurance but continue a discriminatory practice, the consequences are severe. The school will be disqualified from the BOOST Program, may be required to reimburse BOOST funds to the State, and will be required not to charge BOOST students tuition or fees to replace the BOOST scholarship funds the school did not or will not receive. A copy of the BOOST law is enclosed here for your records.

Thank you for your participation in the BOOST Program and for working with us to expand educational opportunities for students in Maryland.

Sincerely,



Matthew Gallagher  
Chair, BOOST Advisory Board

cc: BOOST Advisory Board  
State Board Members  
Karen B. Salmon, Ph.D.  
Kristy Michel  
Monica Kearns  
William Reinhard  
Gayle Secrist

# Exhibit 14



Karen B. Salmon, Ph.D.  
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • marylandpublicschools.org

December 19, 2017

**Re: Assurance of Non-Discrimination and Review of Student Handbooks**

Dear BOOST Schools:

Prior to the 2017-2018 school year, a representative from your school signed the Assurances that outline the legal requirements to be eligible to receive BOOST scholarship funds. This means that your school, among other things, agreed that it “does not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation,” as specified in House Bill 150 of the 2017 session, which governs BOOST for the 2017-2018 school year.

In recent weeks, however, the Maryland State Department of Education (MSDE) learned of two schools with admission policies that directly contradicted the Assurances, specifically with regard to sexual orientation. As a result, the BOOST Advisory Board has disqualified those schools from the BOOST Program for the 2017-2018 school year.

The purpose of this letter is to inform you that MSDE is conducting a review of student handbooks of all participating BOOST schools. If your school’s handbook is not available on the school web site, MSDE staff will be contacting you to obtain a copy. If the school does not have a handbook, then MSDE staff will request to receive the school’s written admissions policies.

The consequences for a school that violates the Assurances are serious and financial. The law governing the BOOST Program states that if a school not does comply with the non-discrimination requirements, the school “shall reimburse MSDE all scholarship funds received under the BOOST Program and may not charge the student tuition and fees instead.” Ineligibility for participating in the BOOST Program is also a legal remedy. Students enrolled with BOOST awards have the option to enroll in another eligible school or remain at their current school, even though that school will not be receiving BOOST scholarship funds. The BOOST Advisory Board has exercised these remedies to protect students and to uphold the integrity of the Assurances.

As you may know, there are schools that disqualified themselves from the BOOST program because, in light of their religious or moral beliefs, they could not sign the Assurances with regard to non-discrimination. That was a decision that respected the use of public dollars to fund nonpublic education, one that respected the law. It is the expectation of the BOOST Advisory Board that all schools will follow that course of action.

BOOST Schools  
Assurance of Non-Discrimination and Review of Student Handbooks  
Page 2

If you have questions about this matter, please contact Monica Kearns at MSDE at (410) 767-8863 or [monica.kearns@maryland.gov](mailto:monica.kearns@maryland.gov).

Sincerely,

A handwritten signature in black ink that reads "Matthew D. Gallagher". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Matthew Gallagher  
Chair, BOOST Advisory Board

cc: BOOST Advisory Board  
State Board Members  
Karen B. Salmon, Ph.D.  
Kristy Michel  
William Reinhard  
Gayle Secrist  
Elizabeth M. Kameen

# Exhibit 15

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

BETHEL MINISTRIES, INC.,  
*Plaintiffs,*

\*

\*

v.

\*

No. 1:19-cv-01853-SAG

DR. KAREN B. SALMON, *et al.*,  
*Defendants.*

\*

\*

\* \* \* \* \*

DECLARATION OF JAMES KLARMAN

I, James Klarman, do solemnly declare and affirm under the penalties of perjury that the following facts are true and correct based upon my personal knowledge:

1. I am more than the age of 18 years and am competent to testify as a witness.
2. I am employed as the Nonpublic Schools Program Coordinator at the Maryland State Department of Education (“MSDE”). I have held this position since 2016.
3. As Non-public Schools Coordinator, I have personal knowledge of the matters set forth herein.
4. My job duties include administering MSDE’s Textbook and Technology Program (the “Textbook Program”), which provides financial assistance to eligible Maryland students attending non-public schools.
5. My job duties include reviewing documentation from non-public schools to determine whether they meet the State’s qualifications to participate in the Textbook Program and receive State funds.

6. The Textbook Program serves as a “gateway” for other aid programs, including the Broadening Opportunities and Options for Students Today (“BOOST”) program, which provides tuition scholarships to low-income students attending non-public schools.

7. In order to qualify for BOOST, a non-public school must first qualify for the Textbook Program.

8. To qualify for the Textbook Program and for BOOST, a non-public school must agree, among other things, to not discriminate against students based on sexual orientation.

9. In October, 2017, I became aware that the Maryland Parent Teacher Association (the “PTA”) complained to the board overseeing the BOOST program (the “BOOST Board”) that a private school participating in the BOOST program, Trinity Lutheran Christian School, maintained a discriminatory written policy that allowed it to deny admission or discontinue enrollment of a student based on the sexual orientation of the student’s parents.

10. After that complaint was received, MSDE employees who worked on the Textbook Program and BOOST, including myself, BOOST Coordinator Felicia Wise, and my supervisor Monica Kearns, decided that it would be prudent to review the policies of all other schools participating in BOOST to see if any had similar discriminatory policies.

11. The initial review of school admission policies was conducted by Felicia Wise and me.

12. In reviewing the policies, we applied the same standards to all of the schools' policies, regardless of the religious or non-religious affiliation of the school.

13. Schools were not singled out or treated differently based on their religious beliefs.

14. We did not question the sincerity of any school's religious proclamations or question any school's interpretation of cited religious text.

15. Rather, we looked carefully at the language of each school's policies to determine whether they were potentially discriminatory.

16. Upon review, we discovered that the admissions policies of the vast majority of schools did not have discriminatory language.

17. Other schools, however, had policies that appeared to be inconsistent with the BOOST law's non-discrimination requirements.

18. In instances where it was not clear to MSDE staff whether the school's policies were inconsistent with the BOOST non-discrimination requirements, the question was referred to the BOOST Board for a decision.

I declare under penalty of perjury that the foregoing is true and correct.

6/17/21  
Date

  
James Klarman

# Exhibit 16



---

bethel christian academy

*Parent/Student Handbook*  
**2017-2018**

*8455 Savage-Guilford Road · Savage, Maryland 20763*  
*Main Phone: (301) 725-4673 · Fax: (301)490-0153*  
*[www.bethelchristianacademy.com](http://www.bethelchristianacademy.com)*



## ADMISSIONS POLICY

Bethel Christian Academy (BCA) is a ministry of Bethel Assembly of God. BCA does not require that families be professing Christians in order to enroll their children in the school. However, it should be understood that BCA exists unashamedly for the purpose of reaching families with the gospel of Jesus Christ and training and equipping young people to serve Him.

Students are accepted for admission based on an evaluation of prerequisite skills or a qualifying score on the BCA entrance exam, an evaluation of previous grades and behavior, and a pre-enrollment interview. Preschool through kindergarten applicants must meet our age deadline of September 1, and may be required to spend part of the day in a BCA classroom (i.e., shadow). Bethel Christian Academy is not equipped to facilitate the needs of special needs students, and all new students are admitted under a Performance Plan by which their academic progress and their behavior are evaluated during the 1<sup>st</sup> quarter of attendance.

Enrollment of students in Bethel Christian Academy is a privilege, not a right. Parents must agree to support the BCA Core Values and school policies. Middle school students are required to sign a Code of Conduct and parents must agree to support the enforcement of the Code of Conduct. Parents must understand that continued enrollment of their child(ren) is dependent on their support of the school, its staff, and its policies.

### Statement of Nondiscrimination

Bethel Christian Academy admits students of any race, color, and national or ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

It should be noted, however, that Bethel Christian Academy supports the biblical view of marriage defined as a covenant between one man and one woman, and that God immutably bestows gender upon each person at birth as male or female to reflect His image. (Gen. 1:27, Gen. 2:23-24) Therefore, faculty, staff, and student conduct is expected to align with this view. Faculty, staff, and students are required to identify with, dress in accordance with, and use the facilities associated with their biological gender.

## STATEMENT OF FAITH

1. We believe in the scriptures of the Old and New Testaments as verbally inspired of God, and inerrant in the original writings; that they are of supreme and final authority in faith and life. (II Tim. 3:16,17; II Peter 1:20,21; Matt. 5:18; John 16:12,13)
2. We believe in one God, eternally existing in three persons - Father, Son, and Holy Spirit. (Ps. 83:18; Ex. 15:11; Mark 12:30; II Cor. 13:14; John 10:30; John 17:5,10; Phil. 2:5,6; Eph. 1:3-14)
3. We believe that Jesus Christ was begotten by the Holy Spirit, born of the virgin Mary, and is true God and true man. (John 1:12,14; Luke 1:35)
4. We believe that man was created in the image of God, and that he sinned. He thereby incurred not only physical death but also spiritual death which is separation from God, and that all human beings are born with a sinful nature, and in the case of those who reach moral responsibility become sinners in thought, word, and deed. (Gen. 1:26,27; Rom. 3:22,23; 5:12; Eph. 2:1-3,12)
5. We believe that God created mankind in His image, male and female (Gen. 1:27, Gen. 5:2) and, according to His word, marriage is a sacred union between one man and one woman (Gen. 2:18-24; 1 Corinthians 7:1-5; Mark 10:6-9; Romans 1:24-27) condemning a homosexual lifestyle (Romans 1:24-26, 1 Timothy 1:10).
6. We believe that the Lord Jesus Christ died for our sins according to the scriptures as a representative and substitutionary sacrifice, and that all who believe in Him are justified on the ground of His shed blood. (Rom. 3:24,25; I Peter 2:24; Eph. 1:7; I Peter 1:3-5)
7. We believe in the resurrection of the crucified body of our Lord, in His ascension into heaven, and in His present life there for us, as High Priest and Advocate. (Acts 1:9,10; Heb. 9:24; 7:25; Rom. 8:34; I John 2:1,2)
8. We believe in the local church, which was established by Jesus Christ. We believe in water baptism by immersion, as a public confession of our identification with Christ. (Acts 14:27; 20:17, 28-32; I Tim. 1:1-13; Titus 1:5-11; Heb. 20:25; Acts 2:41,42; I Cor. 1:2)
9. We believe in "that blessed hope", the personal, premillennial, and imminent return of our Lord and Savior, Jesus Christ. (I Thess. 4:13-18; Zech. 14:4-11; Rev. 19:11-16; 20:1-6; I Thess. 1:10; 5:9; Rev. 3:10)
10. We believe in the bodily resurrection of the just and the unjust, the everlasting blessedness of the saved, and the everlasting conscious punishment of the lost. (Matt. 25:46; John 5:28,29; 11:25,26; Rev. 20:5,6,12,13)

# Exhibit 17



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • marylandpublicschools.org

March 5, 2018

Clair Dant, Principal  
Bethel Christian Academy  
8455 Savage-Guilford Rd.  
Savage, MD 20763

Dear Ms. Dant,

Thank you for participating in the BOOST Scholarship Program for 2017-2018. As a participant, your school signed an assurance regarding non-discrimination in admissions. As a follow-up to the assurance signed by all participating schools, the BOOST Advisory Board and the Maryland State Department of Education (MSDE) recently requested copies of each school's Student Handbook.

MSDE staff have reviewed your school's handbook. It contains a statement that has raised some questions as it relates to the assurance your school signed stating that the school will not discriminate in admissions on the basis of sexual orientation. The statement in your handbook says the following:

**Statement of Nondiscrimination**

Bethel Christian Academy admits students of any race, color, and national or ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

It should be noted, however, that Bethel Christian Academy supports the biblical view of marriage defined as a covenant between one man and one woman, and that God immutably bestows gender upon each person at birth as male or female to reflect His image. (Gen. 1:27, Gen. 2:23-24) Therefore, faculty, staff, and student conduct is expected to align with this view. Faculty, staff, and students are required to identify with, dress in accordance with, and use the facilities associated with their biological gender.

Here is the non-discrimination requirement in the BOOST law for 2017-2018 (House Bill 150 of the 2017 legislative session, page 135-136):

To be eligible to participate in the BOOST Program, a nonpublic school must ... (d) comply with Title VI of the Civil Rights Act of 1964 as amended, Title 20, Subtitle 6 of the State Government Article, and not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will not discriminate in student admissions based on race, color, national origin, or sexual orientation. If a nonpublic school does not comply with these requirements, it shall reimburse MSDE

BOOST Scholarship Program, Handbook Review

March 5, 2018

Page 2

all scholarship funds received under the BOOST Program and may not charge the student tuition and fees instead. The only other legal remedy for violation of this provision is ineligibility for participating in the BOOST Program.

Before the BOOST Advisory Board can authorize payment of the BOOST scholarships for students in your school, the Advisory Board asks that you explain how your handbook statement reconciles with the assurance the school signed regarding non-discrimination in admissions. A brief written response by March 14, 2018 will be helpful.

If you have questions, you can reach me at (410) 767-8863 or [monica.kearns@maryland.gov](mailto:monica.kearns@maryland.gov). Thank you for your cooperation.

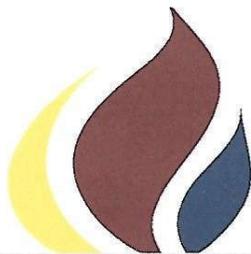
Sincerely,



Monica Kearns

Assistant State Superintendent for Business Services

# Exhibit 18



## bethel christian academy

March 13, 2018

Dear Ms. Kearns:

This letter is BCA's response to the question raised by the BOOST Advisory Board regarding how Bethel Christian Academy's student handbook "reconciles with" the assurance BCA signed regarding non-discrimination in student admissions.

As a condition of participating in the BOOST program, BCA indicated that it does not "discriminate in student admissions on the basis of race, color, national origin, or sexual orientation."

BCA's Statement of Nondiscrimination reads as follows:

Bethel Christian Academy admits students of any race, color, and national or ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

BCA also states as follows:

Bethel Christian Academy supports the biblical view of marriage defined as a covenant between one man and one woman, and that God immutably bestows gender upon each person at birth as male or female to reflect His image. (Gen. 1:27, Gen. 2:23-24) Therefore, faculty, staff, and *student conduct* is expected to align with this view. Faculty, staff, and students are required to identify with, dress in accordance with, and use the facilities associated with their biological gender.

As I understand it, the BOOST Advisory Board has raised a concern that this secondary statement is somehow incompatible with BCA's assurance that it does not discriminate on the basis of sexual orientation in student admissions.

BCA believes that its admissions policies and practices are consistent with its assurance.

The statement about marriage and gender identity by its very terms is a statement of belief and expected conduct that applies only to BCA students (and faculty and staff) indicating that a student *has been admitted*. It says nothing about applicants for admission or the admissions

process. Bethel Christian Academy does not ask any questions about sexual orientation at all during the admissions process and is willing to enroll any student who meets the academic criteria and whose past school conduct has not been demonstrably disruptive in a previous school. Once a student is admitted, he/she is expected to comply with behavioral expectations and is subject to disciplinary action for violation of those behavioral standards, including engaging in sexual behavior of any type, whether heterosexual or homosexual.

Because the assurance pertains only to admissions decisions, the conduct policies that BCA applies to already-admitted students are irrelevant to the assurance it signed to participate in the BOOST program.

In light of the foregoing, I am confident you will agree that there is no incompatibility between BCA's admissions policies and the assurance it executed to participate in the BOOST program.

Please let me know if you have any questions.

Sincerely,



Claire M. Dant  
Principal

# Exhibit 19

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BETHEL MINISTRIES, INC.,

\*

*Plaintiffs,*

\*

v.

\*

No. 1:19-cv-01853-SAG

DR. KAREN B. SALMON, *et al.*,

\*

*Defendants.*

\*

\* \* \* \* \*

**DECLARATION OF MATTHEW GALLAGHER**

I, Matthew Gallagher, do solemnly declare and affirm under the penalties of perjury that the following facts are true and correct based upon my personal knowledge:

1. I am more than the age of 18 years and am competent to testify as a witness.

2. I serve as the chair of the advisory board that oversees a school voucher program established and funded by the State of Maryland called the Broadening Opportunities and Options for Students Today (“BOOST”) program.

3. The Maryland General Assembly enacted BOOST in 2016 to provide financial aid to help children of low-income families attend private schools.

4. The BOOST program is administered by the Maryland State Department of Education (“MSDE”) and is overseen by a seven-member advisory board of volunteers (the “BOOST Board”).

5. I was appointed as the chairman of the BOOST Board by the President of the Maryland Senate and the Speaker of the Maryland House of Delegates.

6. I have served as chairman of the BOOST board since the program's inception in 2016.

7. As chairman of the BOOST advisory board, I have personal knowledge of the matters set forth herein.

8. The 2016 law establishing the BOOST program prohibited private schools participating in BOOST from discriminating in student admissions based on "race, color, national origin, or sexual orientation."

9. Each school participating in BOOST was required to sign a written assurance that it complied with this non-discrimination requirement.

10. In October, 2017, the BOOST Board became aware of a complaint by the Maryland Parent Teacher Association (the "PTA") that a private school participating in the BOOST program, Trinity Lutheran Christian School, maintained a discriminatory written policy that allowed it to deny admission or discontinue enrollment of a student based on the sexual orientation of the student's parents.

11. After that complaint was received, MSDE employees conducted a review of the policies of all schools participating in BOOST to see if any others had similar discriminatory policies.

12. After the review of school policies by MSDE staff in consultation with the Office of the Attorney General, MSDE identified a group of several schools that had policy language which was potentially discriminatory. The policies for these schools

were presented to the BOOST Board to make a determination as to whether the schools' policies violated the BOOST law's non-discrimination requirement.

13. The BOOST Board carefully reviewed these schools' policies and determined that some of them violated the non-discrimination provisions in the BOOST law while others did not.

14. With respect to Bethel Christian Academy, the BOOST Board decided at its meeting on June 21, 2018 that Bethel Christian Academy's policies violated the BOOST law's non-discrimination provisions.

15. This decision was made based, not on the board's hostility toward Bethel's religious beliefs, but rather on the terms of Bethel's 2017-18 parent-student handbook, which stated that students were required to "align" their "conduct" with Bethel's "view" that defined marriage "as a covenant between one man and one woman" to remain enrolled at the school.

16. In reaching this decision concerning Bethel, the BOOST Board also considered written correspondence and a written statement from Bethel, which were submitted in response to requests from MSDE to Bethel for additional information concerning its policies toward homosexuality.

17. To maximize participation in BOOST, the BOOST Board endeavored to be flexible and accommodating to schools with discriminatory language in their policies.

18. The Board restored eligibility to six of the 10 schools that were initially declared ineligible after those six schools removed the discriminatory language from their admissions policies.

19. Bethel, like other schools that were declared ineligible for BOOST based on discriminatory policies, had the opportunity to remove the discriminatory language from its policies, but it declined to do so.

20. The BOOST Board did not target schools or treat schools differently based on their religious beliefs. Rather, the BOOST Board looked carefully at the language of each school's policies to determine whether they were discriminatory in violation of the BOOST law. The BOOST Board applied the same standards to all of the schools' policies, including Bethel.

21. The BOOST Board did not question the sincerity of any school's religious proclamations or question any school's interpretation of cited religious text.

I declare under penalty of perjury that the foregoing is true and correct.

June 22, 2021

\_\_\_\_\_  
Date



\_\_\_\_\_  
Matthew Gallagher

# Exhibit 20



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

May 25, 2018

Clair Dant, Principal  
Bethel Christian Academy  
8455 Savage-Guilford Rd.  
Savage, MD 20763

Dear Ms. Dant,

I am writing to follow-up on the March 13, 2018 statement that Bethel Christian Academy provided to the BOOST Advisory Board that explains how your school's student handbook reconciles with the assurance the school signed regarding non-discrimination in admissions. As you know, the assurance addresses the legal requirement that a school that accepts BOOST scholarships "will not discriminate in student admissions on the basis of ... sexual orientation."

The March 13, 2018 statement did not fully answer the questions that the BOOST Advisory Board has about Bethel Christian Academy's compliance with the BOOST law. The law prohibits discrimination in student admissions but it can be argued that it is problematic if a school admits a student and then summarily expels the student based on sexual orientation. Therefore, the BOOST Advisory Board is asking for a statement from your school that addresses the following questions:

- 1) *Does your school discriminate in student admissions on the basis of sexual orientation?*
- 2) *If your school was to discover that one of its students was in violation of the school's religious or moral teachings concerning sexual orientation, what would the school do to address it?*

Please provide a written response by June 6, 2018. The response can be emailed to me at [monica.kearns@maryland.gov](mailto:monica.kearns@maryland.gov). If you have questions, you can reach me by email or by phone at (410) 767-8863. Thank you for your cooperation.

Sincerely,

Monica Kearns  
Assistant State Superintendent for Business Services

# Exhibit 21



## bethel christian academy

May 29, 2018

Dear Ms. Kearns and the BOOST Advisory Board:

Following is Bethel Christian Academy's response to the additional questions posed by the BOOST Advisory Board via the letter dated May 25, 2018.

In the second paragraph of your letter is the statement that ***"The law prohibits discrimination in student admissions but it can be argued that it is problematic if a school admits a student and then summarily expels the student based on sexual orientation."*** I would first like to assert that this is not what BCA does.

**1) Does your school discriminate in student admissions on the basis of sexual orientation?**

As stated in my March 13 letter, "BCA believes that its admissions policies and practices are consistent with its assurance" and "there is no incompatibility between BCA's admissions policies and the assurance it executed to participate in the BOOST program." From its inception in 1985, Bethel Christian Academy has had an "open enrollment" policy. Any student who can meet our academic standards and is likely to thrive in our structured environment is welcome to join our school community regardless of religious beliefs, experience of same-sex attraction, sexual self-identification, past participation in same-sex behavior, beliefs about marriage, or beliefs about sexual morality.

**2) If your school was to discover that one of its students was in violation of the school's religious or moral teachings concerning sexual orientation, what would the school do to address it?**

Since Bethel Christian Academy has a policy of "open enrollment", there is no requirement that families or students who apply or attend the school must *agree* with the school's Statement of Faith or specific beliefs. They are simply asked to *acknowledge* that the school has such a statement and that the school's core values include teaching from a biblical worldview.

My March 13 letter stated that an admitted student "is expected to comply with behavioral expectations and is subject to disciplinary action for violation of those behavioral standards, including engaging in sexual behavior of any type, whether heterosexual or homosexual." The school behavioral standards address student actions. A student's *private beliefs* about sexual morality and marriage would not be in violation of BCA's student conduct policy although they may be different from BCA's religious or moral teachings about sexual morality.

When BCA responds to a violation of school rules, its primary hope in virtually all circumstances is to bring the student into compliance with behavioral expectations and thus be fully restored and reconciled to the school community. This biblically-mandated approach is what guides BCA.

Along with this letter, BCA is submitting a written statement that was emailed just prior to the May Advisory Board meeting and a statement from a BCA parent who has benefited from the BOOST Scholarship.

Sincerely,

Claire M. Dant

# Exhibit 22



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

August 8, 2018

Clair Dant, Principal  
Bethel Christian Academy  
8455 Savage-Guilford Rd.  
Savage, MD 20763

Dear Ms. Dant,

At its June 21, 2018 meeting, the BOOST Advisory Board determined that the following statement in Bethel Christian Academy's handbook violated the nondiscrimination clause contained in the BOOST law:

"Bethel Christian Academy supports the biblical view of marriage defined as a covenant between one man and one woman, and that God immutably bestows gender upon each person at birth as male or female to reflect His image. (Gen. 1:27 Gen: 2:23-24). Therefore, faculty, staff, and student conduct is expected to align with this view. Faculty, staff, and students are required to identify with, dress in accordance with, and use the facilities associated with their biological gender."

The Board concluded that a handbook recipient may reasonably view this statement, on its face, as a prohibition on students with a non-heterosexual identity because it expects all students to align their conduct to the view of marriage as a covenant between one man and one woman (i.e., heterosexual). A non-heterosexual student may reasonably view the policy as one that allows denial of admission or discipline or expulsion on the basis of his or her sexual orientation. Therefore, the Board concluded that this policy, on its face, was in conflict with the nondiscrimination clause contained in the BOOST law.

In reaching this decision, the Board recognized the specific non-discrimination in admissions provision that the Maryland General Assembly added to the BOOST law to assure that public funds would not be available to schools that had admissions policies that were discriminatory. In reviewing the school's admission policy, the Board did not pass judgment on religious principles, which is not the Board's role. The Board applied the following principles in making its decision:

1. Admission means acceptance as a student at the school;
2. The BOOST law requires nondiscriminatory treatment throughout the process of acceptance as a student at the school;

**Bethel Ministries, Inc. v. Salmon, et al.**

**Plaintiff's MPI, Exhibit 6**

Case 1:19-cv-01853-SAG Document 19-10 Filed 10/31/19 Page 3 of 3

**0077**

BOOST Letter to Bethel Christian Academy – Savage

August 8, 2018

Page 2

3. A bona fide admission means that the school will not take into account the student's sexual orientation when offering entry to the school, nor will the school discipline or expel a student because of the student's sexual orientation, as this would make acceptance at the school illusory (i.e., a sham admission);
4. A discipline policy that focuses on conduct or behavior without regard to the sexual orientation of the student does not violate the nondiscrimination clause contained in the BOOST law; and
5. A discipline policy that, on its face, singles out conduct or behavior based on the sexual orientation of the student for discipline or expulsion does violate the nondiscrimination clause contained in the BOOST law.

Although our decision was not favorable to Bethel Christian Academy, the Board wishes Bethel Christian Academy and its students success in the upcoming school year.

Sincerely,



Matthew Gallagher  
Chair, BOOST Advisory Board

cc: BOOST Advisory Board  
State Board Members  
Karen B. Salmon, Ph.D.  
Amalie Brandenburg  
Monica Kearns  
William Reinhard  
Gayle Secrist  
Elizabeth M. Kameen

# Exhibit 23

**School Status - BOOST Program Discriminatory Practices Review**

<b>School</b>	<b>Status</b>	<b>Clawback</b>
Arnold Christian	Ineligible	Not pd in 2018
Arundel Christian	Participating	
Atholoton Adventist	Eligible	Paid in Full
Bethel Christian	Ineligible	Invoiced
Broadfording Christian	Participating	
Caroll Lutheran	Participating	
Cathedral Christian	Participating	
Celebration Christian	Ineligible	No students in 2018
Elvaton Christian	Participating	
Frederick Adventist	Eligible	Paid in Full
Grace Academy - Hagerstown	Participating	
Highland View	Eligible	Paid in Full
Lighthouse Christian	Opted-out	
Mt. Aetna Adventist	Eligible, opted-out	
Salisbury Christian	Opted-out	
Spencerville Adventist	Eligible	Repayment Plan
St. Joseph's - Beltsville	Participating	
St. Louis - Clarksville	Participating	
St. Margaret - Bel Air	Participating	
Takoma Academy	Eligible	Repayment Plan
Trinity Lutheran	Participating	Repayment Plan
Woodstream Christian	Ineligible	Invoiced

**Notes**

176 Participating Schools for 2016-17

22 Schools with questionable handbook language

9 Schools were reviewed further, deemed eligible

10 Schools were disqualified and required to pay back program funds

Of this 10, 6 submitted revised handbook language, approved to participate

Of this 10, 4 remain ineligible

22 other schools opted not to participate in BOOST in 2018-19

# Exhibit 24



Karen B. Salmon, Ph.D.  
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • marylandpublicschools.org

March 16, 2018

Robin Davis, Principal  
Celebration Christian Academy  
6080 Foreland Garth  
Columbia, MD 21045

Dear Principal Davis,

In a letter from the BOOST Advisory Board dated December 19, 2017, schools participating in the BOOST Scholarship Program were notified that the Maryland State Department of Education (MSDE) would be conducting a review of student handbooks of all participating BOOST schools. The review was conducted because MSDE learned of schools that had admissions policies that directly contradicted the BOOST law, specifically with regard to sexual orientation.

Your school's handbook has been reviewed, and it has been determined that the handbook contains statements that contradict the BOOST law. Your school's handbook says the following:

### **ADMISSIONS POLICY**

#### **STATEMENT OF NONDISCRIMINATION**

Celebration Christian Academy does not discriminate on the basis of race, color, physical ability, national or ethnic origin in the administration of its educational policies, admissions policies, financial aid program, athletics, or other school-administered programs.

All new students are admitted under a Performance Plan, which their academic progress and their behavior are evaluated during their first quarter of attendance. Celebration Christian Academy is not equipped to facilitate special needs students.

Enrollment in Celebration Christian Academy is a privilege, not a right. Parents must understand that continued enrollment of their children is dependent on their support of the academy, its staff, and its policies.

**It should be noted that CCA supports the biblical view of marriage defined as a covenant between one man and one woman, and that God immutably bestows gender upon each person as male and female to reflect His image. Therefore, faculty, staff and student conduct is expected to align with this view.**

PAGE | 7

*CCA reserves the right to make changes to the content in this handbook when deemed necessary.*

BOOST Scholarship Program

March 16, 2018

Page 2

Those statements in the student handbook contradict the Assurances that an official from your school signed on behalf of the school in 2017. The Assurances address the legal requirement that a school that accepts BOOST scholarships “will not discriminate in student admission on the basis of ... sexual orientation.”

The law governing compliance with the BOOST non-discrimination clause states that a nonpublic school that does not comply “shall reimburse MSDE all scholarship funds received under the BOOST Program and may not charge the student tuition and fees instead.” Ineligibility for participating in BOOST is also a legal remedy. Based on that law, the BOOST Advisory Board has disqualified your school from the BOOST Program for the 2017-2018 school year.

It is our understanding that for the 2017-2018 school year, your school has 2 BOOST awardees with a total scholarship value of \$7,800. Pursuant to the law, the school may not charge the student tuition and fees to replace the BOOST scholarship funds that the school would have received if it were deemed an eligible BOOST school. The BOOST Advisory Board will notify the parents of the student that the law protects them from having to pay tuition and fees to replace the BOOST scholarship funds that will not be paid to your school. The Board will also explain that the student’s eligibility for a BOOST scholarship is not impacted by the fact that your school is an “ineligible” school. The BOOST scholarship is portable.

The Board wishes to inform you that your school may re-apply for BOOST school eligibility for the 2018-2019 school year. At that time, the Board may require a comprehensive review of the handbook and admission documents, as well as supplemental information on admission and denials of admission of students and other relevant information.

Finally, the Board wishes to point out that there are nonpublic schools in Maryland that disqualified themselves to be BOOST schools because, in light of their religious or moral beliefs, they could not sign the non-discrimination Assurance. That was the honorable decision, one that respected the use of public dollars to fund nonpublic education, one that respected the law. It is the expectation of the BOOST Advisory Board that all BOOST schools will follow that course of action, and do so before enrolling students with BOOST awards.

If you have questions about this matter, please contact Monica Kearns, Assistant State Superintendent, at (410) 767-8863 or [monica.kearns@maryland.gov](mailto:monica.kearns@maryland.gov).

Sincerely,



Matthew Gallagher  
Chair, BOOST Advisory Board

BOOST Scholarship Program

March 16, 2018

Page 3

cc: BOOST Advisory Board  
State Board Members  
Karen B. Salmon, Ph.D.  
Kristy Michel  
Monica Kearns  
Parents of BOOST Students Enrolled in the School  
William Reinhard  
Gayle Secrist  
Elizabeth M. Kameen

# Exhibit 25



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

February 28, 2019



Claire Dant, Principal  
Bethel Christian Academy  
8455 Savage-Guilford Road  
Savage, Maryland 20763

Dear Ms. Dant:

This responds to your e-mail dated February 3, 2019, following up on the letter you received from the BOOST Program in December 2018. In your e-mail, you stated that Bethel Christian Academy had only recently opened the letter, and that its Board of Directors would need some time to respond. In the meantime, I want to provide you with some additional information that may be helpful. Bethel Christian Academy is currently ineligible for the BOOST Program due to language in its student handbook that contradicted the nondiscrimination requirements in the BOOST law. As a result, the school has been invoiced for BOOST scholarship funds received while its student handbook contradicted the nondiscrimination requirements.

To the extent Bethel Christian Academy decides to revise the language in its student handbook, please know that the BOOST Advisory Board has restored the eligibility of schools for the BOOST Program on that basis. It is therefore possible that Bethel Christian Academy could regain its eligibility to participate in the BOOST Program during the upcoming 2019-2020 school year. This, of course, remains contingent on the school's meeting all eligibility requirements contained in the relevant BOOST law, which governs operation of the BOOST Program and places conditions on expenditure of funds during the applicable fiscal year.

To the extent Bethel Christian Academy is finding it difficult to reimburse BOOST scholarship funds received in the 2016-2017 and 2017-2018 school years, the Board recently decided that it would offer schools the option to utilize a prospective payment plan to accomplish the required payment. If you have your eligibility for the BOOST Program restored as noted above, this would effectively allow the school to pay down the amount owed at the same time it is receiving new BOOST scholarship awards. Please know, however, that students must still be credited for the full value of their awards.

Looking ahead, the BOOST Program can offer payment plans for three years or less, which incur no fee. The Board is willing to consider authorizing payment plans for four years or longer, but be aware that such plans must be arranged with the Maryland Central Collection Unit and may incur a collection fee. I have enclosed a sample three-year repayment agreement for your consideration. You may suggest other payment options on behalf of your school, which the BOOST Program will consider in light of their reasonableness and practicality.

Claire Dant  
February 28, 2019  
Page 1

If you would like to discuss student handbook revisions that have previously been upheld by the Board, or are interested in beginning the process of arranging for a payment plan, please contact me by phone at 410-767-0757 or by e-mail at [donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov), within 30 days of the date of this letter.

Sincerely,

Donna Gunning  
BOOST Program Executive Director

Cc: BOOST Advisory Board  
Elizabeth Kameen

# Exhibit 26

**From:** Claire Dant <claire.dant@teambethel.org>

**To:** Donna Gunning <donna.gunning@maryland.gov>

**Subject:** Re: BOOST Program Invoice - Bethel Christian Academy

**Date:** Fri, 24 May 2019 14:23:46 -0400

**Inline-Images:** changingMD.png



Donna,

Thank you so much for this information. We will review it right away.

Sincerely,

Claire

On Fri, May 24, 2019 at 12:47 PM Donna Gunning <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)> wrote:

Claire -

The alternate language that we discussed is in the attached word document. The attached pdf document contains revised handbook pages from impacted schools.

I hope this information is helpful. Please let me know if you have any questions.



Donna Gunning, Executive Director  
Maryland State Department of Education  
Office of Finance and  
Administration  
Office of Policy and Fiscal Analysis  
200 West Baltimore Street  
Baltimore, Maryland 21201  
410-767-0757 (office)  
410-333-2232 (fax)  
[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)

[Click here](#) to complete a three question customer experience survey.

On Fri, May 3, 2019 at 11:18 AM Claire Dant <[claire.dant@teambethel.org](mailto:claire.dant@teambethel.org)> wrote:

Sounds good, thank you!

On Fri, May 3, 2019 at 10:56 AM Donna Gunning <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)> wrote:

Claire -

That's fine. I will work to get you that document as soon as possible, but as I mentioned, it won't be until late next week at the earliest.



Donna Gunning, Executive Director  
Maryland State Department of Education  
Office of Finance and  
Administration  
Office of Policy and Fiscal Analysis  
200 West Baltimore Street  
Baltimore, Maryland 21201  
410-767-0757 (office)

410-333-2232 (fax)

[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)

[Click here](#) to complete a three question customer experience survey.

On Fri, May 3, 2019 at 10:54 AM Claire Dant <[claire.dant@teambethel.org](mailto:claire.dant@teambethel.org)> wrote:

Hi, Donna,

Yes, if you could send the updated version of that document to us, that would be very helpful. We will plan to respond to your letter about re-qualifying for BOOST and repayment options after we receive that document, if that's all right.

Thank you!

Claire

—

On Thu, May 2, 2019 at 3:29 PM Donna Gunning <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)> wrote:

Claire -

I have been in contact with the Attorney General's office and they provided a document that was shared with schools in early 2018. I will update that document and provide it to you, but it won't be until late next week or early the following week. Will that work?



Donna Gunning, Executive Director  
Maryland State Department of Education  
Office of Finance and  
Administration  
Office of Policy and Fiscal Analysis  
200 West Baltimore Street  
Baltimore, Maryland 21201  
410-767-0757 (office)  
410-333-2232 (fax)  
[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)

[Click here](#) to complete a three question customer experience survey.

On Thu, May 2, 2019 at 2:52 PM Donna Gunning <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)> wrote:

Claire -

Unfortunately, the BOOST program has not suggested alternative language to any schools with discriminatory language in their handbooks.



Donna Gunning, Executive Director  
Maryland State Department of Education  
Office of Finance and  
Administration  
Office of Policy and Fiscal Analysis  
200 West Baltimore Street  
Baltimore, Maryland 21201  
410-767-0757 (office)  
410-333-2232 (fax)  
[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)

[Click here](#) to complete a three question customer experience survey.

On Thu, May 2, 2019 at 2:50 PM Claire Dant <[claire.dant@teambethel.org](mailto:claire.dant@teambethel.org)> wrote:

Ms. Gunning,

Yes, I do believe the letter included the language at issue. However, I am mostly looking for guidance regarding specific revisions suggested that would be acceptable. Might that be provided?

Thanks,

Mrs. Dant

On Thu, May 2, 2019 at 2:36 PM Donna Gunning <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)> wrote:

Claire -

I believe I provided the letter sent by the BOOST Board which identified the specific language at issue in the school's handbook. If that is not what you're looking for, please let me know.



Donna Gunning, Executive Director  
Maryland State Department of Education  
Office of Finance and  
Administration  
Office of Policy and Fiscal Analysis  
200 West Baltimore Street  
Baltimore, Maryland 21201  
410-767-0757 (office)  
410-333-2232 (fax)  
[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)

[Click here](#) to complete a three question customer experience survey.

On Thu, May 2, 2019 at 9:08 AM Claire Dant <[claire.dant@teambethel.org](mailto:claire.dant@teambethel.org)> wrote:

Dear Ms. Gunning,

I just wanted to follow up my request for guidance on handbook revisions per my email on April 11, 2019. Specifically, could you tell us what kinds of revisions have been deemed acceptable, and which provisions in Bethel's handbook are problematic?

Thank you!

Claire

On Thu, Apr 11, 2019 at 7:47 AM Donna Gunning <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)> wrote:

Claire -

I thought I responded to this request earlier in the week - I apologize if you did not receive the response. We are fine with extending the deadline.

On Thu, Apr 11, 2019 at 7:44 AM Claire Dant <[claire.dant@teambethel.org](mailto:claire.dant@teambethel.org)> wrote:

Ms. Gunning,

In your letter, you mentioned that the BOOST Advisory Board has restored schools' eligibility based on their handbook revisions. Could you share some more information about what kinds of revisions would have to be made for Bethel to be eligible for the 2019-2020 school year? I'd appreciate any guidance you can provide.

I also wanted to follow up on my request for an extension till May 4 to respond more fully to your letter. Can you let me know if that would be acceptable?

Thank you!

Claire Dant

BCA Principal

On Thu, Apr 4, 2019 at 11:56 AM Donna Gunning <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)> wrote:

Ms. Dant and Ms. Wecker -

The BOOST Program sent a letter via certified mail to Bethel Christian Academy regarding the school's participation in the BOOST Program, which provides publicly-funded scholarships for income-eligible students to attend nonpublic schools.

The letter included information on the school's status in the program as well as options for repaying the funds provided to Bethel Christian Academy. The deadline to respond to that offer has passed.

An electronic copy of the letter is attached and this email is a reminder and request to respond to this offer by not later than Friday, April 13, 2019.

Thank you for your attention to this matter.



Donna Gunning, Executive Director  
Maryland State Department of Education  
Office of Finance and  
Administration  
Office of Policy and Fiscal Analysis  
[200 West Baltimore Street](#)  
[Baltimore, Maryland 21201](#)  
410-767-0757 (office)  
410-333-2232 (fax)  
[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)

[Click here](#) to complete a three question customer experience survey.

--

Claire M. Dant  
Principal, Bethel Christian Academy

*"The only thing that counts is faith expressing itself through love." Galatians 5:6*

--

Sent from Gmail Mobile

--

Claire M. Dant  
Principal, Bethel Christian Academy

*"The only thing that counts is faith expressing itself through love." Galatians 5:6*

--

Claire M. Dant  
Principal, Bethel Christian Academy

*"The only thing that counts is faith expressing itself through love." Galatians 5:6*

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Claire M. Dant  
Principal, Bethel Christian Academy

*"The only thing that counts is faith expressing itself through love." Galatians 5:6*

--

Claire M. Dant  
Principal, Bethel Christian Academy

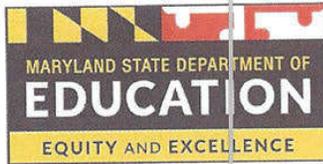
*"The only thing that counts is faith expressing itself through love." Galatians 5:6*

--

Claire M. Dant  
Principal, Bethel Christian Academy

*"The only thing that counts is faith expressing itself through love." Galatians 5:6*

# Exhibit 27



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

**CERTIFIED MAIL**

December 12, 2018

Claire Dant, Principal  
Bethel Christian Academy  
8455 Savage – Guilford Road  
Savage, MD 20763

Dear Principal Griffin:

A letter dated August 8, 2018 from the BOOST Advisory Board notified you of the Board's June 21, 2018 determination that the Bethel Christian Academy student handbook contained statements that violated the non-discrimination in admission requirement set forth in the BOOST law. The law governing compliance with the BOOST non-discrimination clause states that a nonpublic school that does not comply "shall reimburse MSDE all scholarship funds received under the BOOST program and may not charge the student tuition and fees instead." Ineligibility for participating in BOOST is also a legal remedy. Based on that law, the BOOST Advisory Board has disqualified your school from the BOOST program for the 2018-2019 and 2019-2020 school years.

The BOOST Advisory Board voted to enforce the BOOST statute to require schools that had discriminatory admissions policies and accepted BOOST scholarship funds to reimburse MSDE for those funds. Our records indicate that for the 2016-2017 school year, your school had 17 awardees with a total scholarship value of \$46,800 and for the 2017-2018 school year, your school had a total of 18 awardees with a total scholarship value of \$55,800. The total amount of BOOST Scholarship funds distributed parents and Bethel Christian Academy is \$102,600.

This letter and the attached invoice provide notice that payment of the above described debt is due and owing. As a reminder, pursuant to the law, the school may not charge the student tuition and fees to replace the BOOST Scholarship funds that the school is ineligible to receive.

A check in the full amount should be made payable to the Maryland State Department of Education and mailed to: MSDE, 200 W. Baltimore St, 2<sup>nd</sup> Floor Accounts Receivable, Baltimore MD 21201.

**Bethel Ministries, Inc. v. Salmon, et al.**

Case 1:19-cv-01853-SAG Document 19-11 Filed 10/31/19 Page 3 of 3

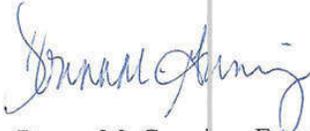
**Plaintiff's MPI, Exhibit 7**

**0080**

Ms. Claire Dent  
December 10, 2018  
Page Two

If the school can demonstrate that it is financially unable to pay this indebtedness in one lump sum, payment in installments may be arranged. Please contact Kausar Syed at 410-767-7420 or [kausar.syed@maryland.gov](mailto:kausar.syed@maryland.gov) by **January 15, 2019** to discuss possible installment payments.

Sincerely,



Donna M. Gunning, Executive Director  
Office of Policy and Fiscal Analysis

c: Valerie Carpenter  
Kausar Syed

# Exhibit 28



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

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**Broadening Options and Opportunities for Students Today (BOOST)  
Advisory Board Meeting – February 5, 2019  
Summary of Decisions**

- 1) The BOOST Advisory Board approved the decision summary for the October 30, 2018 meeting.
- 2) The Board agreed to the application schedule. The online application will be open March 8 through midnight on April 17.
- 3) The Board agreed to a timeframe for school reporting. The deadline for schools to submit the required reports will be August 16, 2019. Schools will be required to complete the enrollment confirmations by mid-September.
- 4) The Board requested historical data to inform future discussions. Specifically, the Board requested:
  - a. Data showing how the prior year available fund balance is developed.
  - b. Average tuition by year and by grade.
  - c. Student data
    1. By grade by type of school in prior year
    2. By award category, by grade, by type of school in prior year
    3. By Special Services category (ELL, Special Ed)
    4. High School enrollment
- 5) The Board went into closed session to deliberate a request from the Columbia Union Conference, 7<sup>th</sup> Day Adventist Church.
- 6) The Board came back into open session and Board Chair summarized the Board's decisions:
  - a. Restore program eligibility to the four schools with revised handbook language:
    1. Atholton Adventist Academy
    2. Frederick Adventist Academy
    3. Highland View Academy
    4. Takoma Academy
  - b. Spencerville Adventist Academy submitted revised handbook language at the meeting. The Boost Board offered the school the same status contingent on the OAG review of the school's handbook.
  - c. Declined to waive requirement to repay scholarship funds provided in prior years, but offered a repayment plan consistent with State requirements.
  - d. Prospective repayment to MSDE over at least four years.
- 7) The Board scheduled their next meeting for April 30, 2019 at 10:00 am

###

# Exhibit 29

From: **Donna Gunning** <[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)>  
Date: Fri, Apr 24, 2020 at 1:34 PM  
Subject: Aid to Nonpublic Schools Program Application  
To: Claire Dant <[claire.dant@teambethel.org](mailto:claire.dant@teambethel.org)>  
Cc: James Klarman -MSDE- <[james.klarman@maryland.gov](mailto:james.klarman@maryland.gov)>

Ms. Dant -

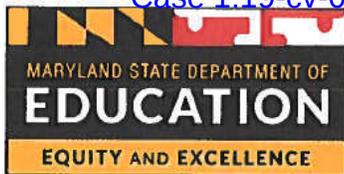
The attached letter is being provided to you electronically, due to the COVID-19 State of Emergency. A hard copy of this information was placed in the U.S. Mail to you today.

Please let me know if you have any questions.



Donna Gunning, Executive Director  
Maryland State Department of Education  
Office of Finance and Administration  
Office of Policy and Fiscal Analysis  
200 West Baltimore Street  
Baltimore, Maryland 21201  
410-767-0757 (office)  
410-333-2232 (fax)  
[donna.gunning@maryland.gov](mailto:donna.gunning@maryland.gov)

[Click here](#) to complete a three question customer experience survey.



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

April 24, 2020

Claire Dant, Principal  
Bethel Christian Academy  
8455 Savage-Guilford Rd.  
Savage, MD 20763

Dear Ms. Dant:

This correspondence is in response to Bethel Christian Academy's application to participate in the Aid to Nonpublic Schools program for the 2019-2020 school year. As a preliminary matter, Bethel Christian Academy did not submit a timely application for the Aid to Nonpublic Schools Program. The deadline for schools to apply was December 31, 2019. Bethel submitted its application on January 17, 2020. Notwithstanding Bethel Christian Academy's late application, the Maryland State Department of Education ("the Department") went ahead and processed your application. Bethel Christian Academy is not approved to participate in the Aid to Nonpublic Schools Program for the 2019-2020 school year.

As you are aware, the Aid to Nonpublic Schools program is governed by language included in the annual budget bill. For the fiscal year 2020 Aid to Nonpublic Schools Program, Chapter 565 of the Acts of 2019 (HB 100) attached as Appendix A, governs the program. This makes clear that "a nonpublic school participating in the program may not discriminate in student admissions, retention, or expulsion or otherwise discriminate against any student on the basis of race, color, national origin, or sexual orientation or gender identity or expression."

The Department is required to review the handbooks of schools applying to participate in the Aid to Nonpublic Schools Program to ensure compliance with program eligibility requirements. Upon our review of Bethel Christian Academy's Handbook, we noted that Bethel "consider[s] grounds for disciplinary action," up to and including "suspension or expulsion even for a first offense," to include "violation" of "the expectation that BCA students identify with, dress in accordance with, and use the facilities associated with their biological gender." Appendix B, p. 35. The Department concluded that these statements violate the nondiscrimination clause contained in House Bill 100.

Sincerely,

Donna Gunning, Executive Director  
Office of Policy and Fiscal Analysis

Attachments

c: James Klarman, Director, Nonpublic Textbook Program

## APPENDIX A

Ch. 565

## 2019 LAWS OF MARYLAND

Jewish Museum of Maryland	13,146
Junior Achievement of Central Maryland	42,068
Living Classrooms Inc.	319,023
Maryland Academy of Sciences	915,879
Maryland Historical Society	125,329
Maryland Humanities Council	43,821
Maryland Leadership	45,575
Maryland Zoo in Baltimore	851,900
Math, Engineering and Science Achievement	79,754
MdBio Foundation	26,223
National Aquarium in Baltimore	497,817
National Great Blacks in Wax Museum	42,068
National Museum of Ceramic Art and Glass	21,034
Northbay	500,000
Olney Theatre	146,365
Outward Bound	133,219
Port Discovery	116,566
Reginald F. Lewis Museum	26,223
Salisbury Zoological Park	18,404
Sotterley Foundation	13,146
South Baltimore Learning Center	42,068
State Mentoring Resource Center	79,755
Sultana Projects	21,034
SuperKids Camp	410,172
Village Learning Place	45,575
Walters Art Museum	16,652
Ward Museum	35,058
Young Audiences of Maryland	89,158

## R00A03.04 Aid to Non-Public Schools

Special Fund Appropriation, provided that this appropriation shall be for the purchase of textbooks or computer hardware and software and other electronically delivered learning materials ~~as permitted under Title II, Section 2416(b)(4), (6), and (7) of the No Child Left Behind Act~~ for loan to students in eligible nonpublic schools with a maximum distribution of \$65 per eligible

LAWRENCE J. HOGAN, JR., Governor

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nonpublic school student for participating schools, except that at schools where ~~at least 20%~~ from 20% to 40% of the students are eligible for the free or reduced-price lunch program there shall be a distribution of \$95 per student, and at schools where more than 40% of the students are eligible for the free or reduced-price lunch program there shall be a distribution of \$155 per student. To be eligible to participate, a nonpublic school shall:

- (1) Hold a certificate of approval from or be registered with the State Board of Education;
- (2) Not charge more tuition to a participating student than the statewide average per pupil expenditure by the local education agencies, as calculated by the department, with appropriate exceptions for special education students as determined by the department; ~~and~~
- (3) Comply with Title VI of the Civil Rights Act of 1964, as amended; and
- (4) Submit its student handbook or other written policy related to student admissions to the Maryland State Department of Education for review to ensure compliance with program eligibility requirements.

The department shall establish a process to ensure that the local education agencies are effectively and promptly working with the nonpublic schools to assure that the nonpublic schools have appropriate access to federal funds for which they are eligible.

Further provided that the Maryland State

Ch. 565

## 2019 LAWS OF MARYLAND

Department of Education shall:

- (1) Assure that the process for textbook, computer hardware, and computer software acquisition uses a list of qualified textbook, computer hardware, and computer software vendors and of qualified textbooks, computer hardware, and computer software; uses textbooks, computer hardware, and computer software that are secular in character and acceptable for use in any public elementary or secondary school in Maryland; and
- (2) Receive requisitions for textbooks, computer hardware, and computer software to be purchased from the eligible and participating schools, and forward the approved requisitions and payments to the qualified textbook, computer hardware, or computer software vendor who will send the textbooks, computer hardware, or computer software directly to the eligible school, which will:
  - (i) Report shipment receipt to the department;
  - (ii) Provide assurance that the savings on the cost of the textbooks, computer hardware, or computer software will be dedicated to reducing the cost of textbooks, computer hardware, or computer software for students; and
  - (iii) Since the textbooks, computer hardware, or computer software shall remain property of the State,

LAWRENCE J. HOGAN, JR., Governor

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maintain appropriate  
shipment receipt records for  
audit purposes.

Further provided that a nonpublic school participating in the Aid to Non-Public Schools Program R00A03.04 shall certify compliance with Title 20, Subtitle 6 of the State Government Article. A nonpublic school participating in the program may not discriminate in student admissions, ***retention, or expulsion or otherwise discriminate against any student*** on the basis of race, color, national origin, ~~or~~ ***sexual orientation, or gender identity or expression***. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will not discriminate in student admissions, ***retention, or expulsion or otherwise discriminate against any student*** on the basis of race, color, national origin, ~~or~~ ***sexual orientation, or gender identity or expression***. Any school found to be in violation of the requirements to not discriminate shall be required to return to the Maryland State Department of Education all textbooks or computer hardware and software and other electronically delivered learning materials ~~loaned to students under the program~~ ***acquired through the fiscal 2020 allocation***. The only other legal remedy for violation of these provisions is ***ineligibility*** for participating in the Aid to Non-Public Schools Program. Any school that is found in violation of the ***nondiscrimination requirements in fiscal 2019 or 2020*** may not participate in the program in fiscal 2020. It is the intent of the General Assembly that a school that violates the ***nondiscrimination requirements*** is ineligible to participate in the Aid to Non-Public Schools Program.

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2019 LAWS OF MARYLAND

the Broadening Options and Opportunities for Students Today Program, the James E. "Ed" DeGrange Nonpublic Aging Schools Program, and the Nonpublic School Security Improvements Program in the year of the violation and the following 2 years .....

6,040,000

R00A03.05 Broadening Options and Opportunities for Students Today

Special Fund Appropriation, provided that this appropriation shall be for a Broadening Options and Opportunities for Students Today (BOOST) Program that provides scholarships for students who are eligible for the free or reduced-price lunch program to attend eligible nonpublic schools. The Maryland State Department of Education (MSDE) shall administer the grant program in accordance with the following guidelines:

- (1) To be eligible to participate in the BOOST Program, a nonpublic school must:
  - (a) ~~participate~~ have participated in Program R00A03.04 Aid to Non-Public Schools Program for textbooks and computer hardware and software administered by MSDE during the 2018-2019 school year;
  - (b) provide more than only prekindergarten and kindergarten programs;
  - (c) ~~administer assessments to all students in accordance with federal and State law;~~ and administer national, norm-referenced standardized assessments chosen from the list of



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bethel christian academy

*Parent/Student Handbook*  
**2019-2020**

*8455 Savage-Guilford Road · Savage, Maryland 20763*  
*Main Phone: (301) 725-4673 · Fax: (301)490-0153*  
*[www.bethelchristianacademy.com](http://www.bethelchristianacademy.com)*

Dear BCA Parents and Students,

**APPENDIX B**

Welcome to Bethel Christian Academy! BCA is proud to offer many fine educational and spiritual opportunities to our students. The faculty and administration are committed to providing a learning environment in which students can grow spiritually, academically, physically, and socially so that they can fulfill the purpose of God for their lives. We trust that you will take opportunity to make the most of what we offer.

This handbook states school policies and procedures as well as general information that will help you to understand our vision and to know how you can fit in and become a valuable part of this exciting learning community.

May this be a great year in the Lord!

The Administration

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# Exhibit 30



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bethel christian academy

*Parent/Student Handbook*  
**2019-2020**

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Dear BCA Parents and Students,

## **ADMISSIONS POLICY**

Bethel Christian Academy (BCA) is a ministry of Bethel Assembly of God. BCA does not require that families be professing Christians in order to enroll their children in the school. However, it should be understood that BCA exists unashamedly for the purpose of reaching families with the gospel of Jesus Christ and training and equipping young people to serve Him.

Students are accepted for admission based on an evaluation of prerequisite skills or a qualifying score on the BCA entrance exam, an evaluation of previous grades and behavior, and a pre-enrollment interview. Preschool through kindergarten applicants must meet our age deadline of September 1, and may be required to spend part of the day in a BCA classroom (i.e., shadow). Bethel Christian Academy is not equipped to facilitate the needs of special needs students, and all new students are admitted under a Performance Plan by which their academic progress and their behavior are evaluated during the 1<sup>st</sup> quarter of attendance.

Enrollment of students in Bethel Christian Academy is a privilege, not a right. Parents must agree to support the BCA Core Values and school policies. Middle school students are required to sign a Code of Conduct and parents must agree to support the enforcement of the Code of Conduct. Parents must understand that continued enrollment of their child(ren) is dependent on their support of the school, its staff, and its policies.

### **Statement of Nondiscrimination**

Bethel Christian Academy admits students of any race, color, and national or ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its admissions policies, scholarship and loan programs, educational policies, and athletic and other school-administered programs.

**APPENDIX B**

directly involved. Your concern should be expressed to the administrator if you cannot work it out with that individual and no one else. (Matthew 5:23,24)

- Express it clearly and respectfully. Make sure the person to whom you are expressing your complaint understands the details of the situation and **exactly what you are complaining about and why**. Please focus on the issue and refrain from general accusations or personal attacks. Clearly state what you would like the person to do.
- **Pray about it.** Ask God to help you to make your complaint in such a way that it will result in a stronger partnership with the individual and the betterment of the school. Read and think about such passages as Ephesians 4:1-3 and Colossians 3:12-13. Pray about it.

***If you overhear or are told a concern/complaint:***

- Encourage the person communicating to express his/her concern/complaint only to the person who is a part of the problem or a part of the solution.
- Pray and ask God to take care of the situation. **Do not continue to listen to the details of the problem after you discern that you are not part of the problem or the solution.**

***If a complaint is made to or about you:***

- Understand what the complaint is and why it is being made.
- Give it prompt attention and agree on an effective solution.
- Make it a growth experience and learn from any mistakes.

Be sure to allow ample time for a problem to be resolved before contacting the administrator. Most of the problems that arise can be resolved by keeping the channels of communication open with the teacher. However, if a problem is not resolved, please contact the administrator for assistance in reaching a resolution. Administrators cannot address concerns of which they are not aware.

## **DISCIPLINE PHILOSOPHY**

Discipline is a biblical principle by which individuals are trained in righteousness (Heb. 12:6-11). Consistent, loving discipline enables students to learn to do what is right and to grow in every area of their lives. We recognize that “no discipline seems pleasant, but painful” to the one being trained by it. However, the fruit of righteousness that results from discipline will ultimately benefit the individual and those around him/her. Our commitment is to apply discipline “with great patience

and careful instruction” and to base all correction on the Word of God (2 Tim. 4:2). When correction is necessary, our goal is to lead the student to repentance and restoration in a spirit of grace while preserving his/her personal dignity.

### **Discipline Policies and Procedures**

To maintain a classroom environment that is conducive to learning, the following behavior is not permitted.

- Being disruptive – intentionally causing a disturbance that draws class attention away from the learning task at hand
- Out of order – doing anything other than the task at hand whether it causes a disturbance or not
- Talking – persistent communicating during a time when talking is not permitted
- Rudeness – speaking/acting in an unkind, disrespectful, or demeaning manner to anyone; teasing
- Attitude lacking – displaying in word or action an unwillingness to submit to the instruction or correction of a teacher

When a student chooses to persist in any of these behaviors, the teacher will record the incident and will issue a consequence. A brief time-out during recess, lunch with the teacher, an essay assignment, a phone call to the parent, or other consequence may be issued. Behavior incidents which result in a consequence are noted through the posting of a demerit on RenWeb. If a pattern of misbehavior persists or an incident is more serious, a demerit will be given, and the parent may receive a call from the teacher or an administrator.

- Intentional disobedience – serious willful rebellion/defiance

Intentional disobedience is considered a serious behavioral offense (*See Behavioral Offenses*). This behavior will be documented in RenWeb and the student will be sent to the administrator. The teacher or administrator will contact the parents to explain the incident and to discuss the disciplinary action to be taken.

Most BCA students receive no demerits throughout a quarterly grading period. Students who earn an excessive number of demerits in a quarter are considered to be in non-compliance BCA behavioral standards. A conference may be scheduled with the administrator and the parent(s) of any student who has exhibited a pattern of misbehavior. The administrator may place the student on a daily accountability plan or behavioral Performance Plan. Students who continue to demonstrate an inability or unwillingness to comply with BCA behavioral expectations may be

suspended or asked to withdraw. Students with a pattern of misbehavior may be prohibited from continued enrollment the following year.

### **Middle School Code of Conduct**

While students in preschool through elementary school are still very much under the control of their teachers, middle school students are expected to take ownership of their education and to make a personal commitment to controlling their own conduct. Therefore, they are expected to conduct themselves in the following manner:

1. Speak and act respectfully to teachers and staff members
  - Make eye contact
  - Speak in a quiet tone of voice at all times
  - Endeavor to portray only positive body language (no eye rolling, etc.)
  - Receive correction in an affirmative manner (Hebrews 12:11 *"For the moment all discipline seems painful rather than pleasant, but later it yields the peaceful fruit of righteousness to those who have been trained by it."*)
  - If a concern or conflict with an adult occurs, speak to the person respectfully in private at an appropriate time
  - Speak respectfully *about* those in authority
2. Speak and act respectfully to classmates
  - Communicate only positive things to others
  - Avoid talking *about* others (If it's positive, say it to them. If it isn't, don't say it at all.)
  - Respect other people's personal space
  - Respect other people's belongings
  - Stay out of other people's business
3. Obey school authorities (teachers, administrators, office staff, lunch room staff, extended care workers)
  - Do what you are asked to do without arguing or complaining
4. Comply with school rules
  - Be in the proper uniform/abide by the dress code
  - Be on time to school and class
  - Be prepared for class with assignments and materials
  - Do assigned work
  - Follow each teacher's classroom rules and procedures
  - No gum chewing on school grounds
  - Respect school property

### **Behavioral Offense Policies and Procedures**

Unfortunately, at times students commit offenses of a more serious nature. The offenses listed below may result in suspension or expulsion from BCA.

- Any communication or behavior of a sexual nature
- Cheating (including plagiarism)
- Destruction of property
- Forging a parent's signature
- Gossip/slander
- Harassment (incl. sexual)
- Inappropriate relationships (There is to be no physical contact or public displays of affection.)
- Leaving a designated area without permission
- Leaving school grounds
- Lying
- Offenses via the Internet and/or social media including, but not limited to, gossip, slander, threatening, teasing, bullying, profanity, crude communication, lying, and harassment, whether perpetrated on school property or from another location. A student may be required by the administrator to give access to his/her online accounts in the course of investigating such behavioral offenses. Refusal to do so may result in expulsion.
- Physical aggression/Fighting (whether the initiator/aggressor or not; includes hitting, punching, shoving, etc.)
- Possession of a weapon
- Possession of inappropriate items (e.g., alcohol, drugs, prescribed medications, or cigarettes)
- Profanity/crude communication
- Stealing
- Teasing/bullying/threatening
- Willful rebellion/defiance

***This list of potential behavioral offenses is not exhaustive. Any conduct that is in violation of the school's Statement of Faith will be considered grounds for disciplinary action, including the expectation that BCA students identify with, dress in accordance with, and use the facilities associated with their biological gender.***

***The administration reserves the right to decide whether misbehavior is serious enough to warrant suspension or expulsion even for a first offense.***

**APPENDIX B**

***Engaging in illegal or biblically immoral behavior at any time, including when off the school campus is grounds for suspension or expulsion.***

If a behavioral offense occurs, the parent will be contacted by the teacher who witnessed the offense or by an administrator. A demerit will be entered in RenWeb to document the offense and to indicate the consequence. A meeting may be scheduled with the administrator.

If a second behavioral offense occurs, a conference with the parent, student, and administrator will be scheduled. The administrator may place the student on a daily accountability system and/or a behavioral Performance Plan.

**Detention**

The administrator may issue lunch/recess detention for misbehavior. Detention consists of the student being detained in an isolated, but monitored, location.

Detention may involve completing a written assignment regarding his/her misbehavior.

**Suspension**

If a behavioral offense requiring suspension occurs, the parent will be contacted by an administrator the day the offense is discovered. A demerit will be entered into RenWeb to document the offense and the disciplinary action to be taken. A meeting may be scheduled with the administrator. The suspension period will begin the day following discovery of the offense and will continue for a minimum of one school day.

Students who are suspended for a behavioral offense will automatically receive a grade of "U" (Unsatisfactory) in Conduct on the quarterly report card for that quarter. Since the student is not present in school during a suspension, he/she is not eligible for a "Perfect Attendance" award.

If a student commits a second behavioral offense requiring suspension, the parent will be contacted to schedule a meeting for the parents and the student with the administrator. Prior to beginning the second suspension period, the requirements for ending the suspension will be agreed upon in writing.

After two suspensions, the student will be placed on behavioral probation for the remainder of the school year. Any additional behavioral offenses that occur during that period will result in the student being expelled or asked to withdraw.

Students who have been suspended more than once during one academic year will be placed on a behavioral Performance Plan in order to re-enroll.

### ***In-School Suspension***

BCA does not conduct in-school suspensions. All behavioral suspensions require that the student be completely removed from the school environment.

### ***Out-of School Suspension***

If a student is suspended from school, it has been deemed in the best interest of the student body to have the student completely removed from the school environment for a period. Clear requirements for the student's reinstatement will be communicated to the parent(s). Students who are suspended from school are not permitted to make up class work, quizzes, or tests that are missed. The student will receive zeroes. However, homework and projects completed at home may be submitted upon the student's return to school but may be considered late.

### **Expulsion**

If a student has been unresponsive to correction during the suspension process and/or there is no significant behavioral change over the time period determined by the administration, the student will be expelled or asked to withdraw from BCA. The administration reserves the right to expel for any one-time offense deemed of a serious enough nature.

## **DRESS CODE**

The BCA administration desires to provide an environment in which students can focus on their schoolwork and on developing their identity in Christ. Experimenting with the styles of the surrounding culture is best left out of the Christian school environment as it distracts from that focus. **We ask that parents and students submit to the spirit of this policy by avoiding dress and grooming choices that may be questionable.**

All students are expected to be in their proper school uniform every day. Clothes should always look clean and well-kept and should fit without being tight or too short. Persistent uniform violations will be deemed non-compliance with the BCA Statement of Cooperation and Agreement and the parent may be contacted by the administrator and other consequences applied, such as calling the parent to bring the student the proper uniform.

**APPENDIX B**

Students in grade 3 – 8 are required to have their shirts tucked in and must wear a belt.

If a student is not in the appropriate uniform for the day, the student will receive a uniform violation. Uniform violations for students in grades 3 – 8 will result in recess detention for the day. Recess detention may involve a written assignment. Parents will be contacted if a student is chronically out of uniform.

**Hairstyles**

All students are expected to keep their hair clean, well-kept, and out of their eyes. Extreme unconventional/fad hair styles or color are discouraged.

**Jewelry**

Jewelry that does not present a classroom or student distraction may be worn. However, only ears may be pierced. Students may not wear “smart” watches that have Internet access, chat features, or email applications. Traditional watches are acceptable.

***UNIFORM OPTIONS***

***NOTE:*** Option components are not interchangeable and asterisked items must be purchased from Flynn & O’Hara Uniform Company.

**Option #1 for All Students**

- \*White, cardinal, or navy blue polo shirt (short or long sleeves) with the BCA flame logo
- Navy blue or khaki/tan colored straight-leg uniform pants
- Plain black belt
- Socks should be navy blue, black, white, tan, or \*cardinal
- **Entirely black** shoes (***black sole, black strings/Velcro, minimum embellishments***) with heels not to exceed one inch

**Option #2 for Preschool - Elementary Girls Only**

- White Peter Pan blouse (short or long sleeves)
- \*Plaid jumper (length at the top of the knee)
- Socks or tights should be navy blue, black, white, tan, or \*cardinal
- **Entirely black** shoes (***black sole, black strings/Velcro, minimum embellishments***) with heel not to exceed one inch

**Option #3 for Middle School Girls Only**

- White oxford blouse (short or long sleeves)
- \*Plaid uniform skirt (length at the top of the knee)
- Socks or tights should be navy blue, black, white, tan, or \*cardinal
- **Entirely black** shoes (*black sole, black strings/Velcro, minimum embellishments*) with heels not to exceed one inch

**P.E. Uniform (1<sup>st</sup> – 8<sup>th</sup> grade only; to be worn only on designated days)**

- \*White logo gym shirt or BCA athletics shirts
- \*Navy blue logo gym shorts (length at top of the knee)
- \*Navy blue logo sweatpants & \*sweatshirt (Wearing a sweatshirt is optional.)
- White **crew-style** socks (no skin visible)
- Athletic shoes (not fashion sneakers)

**Field Trip Uniform (*All students must have a field trip uniform.*)**

- \*Cardinal polo shirt (short or long sleeves) with the BCA flame logo
- Navy blue straight-leg **uniform** pants
- **Plain** black belt
- Navy blue socks
- Entirely black shoes (unless otherwise specified)

**Warmer Weather**

In the fall and spring, students may wear:

- **Knee-length** uniform shorts
- **Knee-length** uniform skorts (girls only)
- \*White, cardinal, or navy blue polo shirt (short or long sleeves) with the BCA flame logo
- Sock color should be navy blue, black, white, tan, or \*cardinal

**Colder Weather**

- A \*Prescott Red cardigan, plain navy blue cardigan, the \*BCA logo fleece jacket, or BCA athletic spirit wear items may be worn in the classroom. Non-uniform sweaters and jackets are not permitted.

**Clothing Items Not Permitted**

- Shorts or skorts out of season or by middle school students
- Corduroy pants
- Casual pants (e.g., pockets on the leg, top-stitching on seams or pockets, back pockets with flaps, skinny, boot-cut, or bell-bottom style)

- Boots
- Long-sleeved shirts under short-sleeved uniform shirts

### **Undershirts/Clothing**

All underclothing worn under a shirt should be a color that is not readily visible through the student's shirt. This includes undershirts and bras. Underclothing with any emblem, decal, pattern, or artwork is not permitted. Undershirts should not extend beyond the outer shirt.

### **Dress for Extended Care**

Students who remain at school for afternoon Extended Care are to remain in their school uniform unless participating in a BCA-sponsored activity that requires other attire (e.g., BCA sports, dance instruction).

### **Sports Uniforms**

The sports fees cover the cost of team uniforms for BCA competitive sports teams.

### **Identification of Clothing**

Since the students wear uniforms, it is necessary that all items of clothing be labeled with the student's name. BCA cannot be held responsible for the loss of a student's clothing.

### **Lost and Found**

There is a *Lost and Found* area in each building. Students should have their name on their belongings. BCA accepts no responsibility for discarding or donating items that have been left unclaimed in the Lost and Found.

## **EXTRA-CURRICULAR SPORTS**

### **Academic Eligibility Policy/Procedure**

Students in 5<sup>th</sup> grade – middle school wishing to participate in the competitive sports program at Bethel Christian Academy must maintain at least a C in all subjects to try out and play. Academic eligibility is determined at the end of each quarterly grading period. If a student's grades fall below a C during the season at the evaluation period, he/she will be removed from the team.

### **Behavioral Eligibility Policy**

Students must demonstrate acceptable behavior in all school situations to be permitted to try out for and to participate in competitive sports. A Conduct grade of at least S (Satisfactory) is required. If, during the season, a student's Conduct grade

# Exhibit 31

**Aid to Non-Public Schools Program  
FY 2020 (SY 2019-20)  
Program Assurances**

**Exhibit #****Dant 22**

AS - 03/31/21

exhibitsticker.com

**By applying to the Maryland State Department of Education (MSDE) to participate in the Aid to Non-Public Schools Program, I hereby agree, as the official representative of the school, to comply with the following terms and conditions:**

1. The school holds a certificate of approval by or is registered with the Maryland State Board of Education.
2. The school operates in compliance with Title VI of the Civil Rights Act of 1964, as amended.
3. The school complies with Title 20, Subtitle 6 of the State Government Article.
4. The school does not discriminate in student admissions, retention, or expulsion or otherwise discriminate against any student on the basis of race, color, national origin, sexual orientation, or gender identity or expression. Nothing herein shall require any school or institution to adopt any rule, regulation, or policy that conflicts with its religious or moral teachings. However, all participating schools must agree that they will not discriminate in student admissions, retention, or expulsion or otherwise discriminate against any student on the basis of race, color, national origin, sexual orientation, or gender identity or expression. If the school is found to be in violation of the requirements to not discriminate, the school shall be required to return to MSDE all textbooks, computer hardware, software and other electronically delivered learning materials acquired through the FY 2020 allocation.
5. The school will submit its student handbook or other written policy related to student admissions to MSDE for review to ensure compliance with program eligibility requirements.
6. The school will not charge more tuition to a participating student than the statewide per pupil expenditure, which has been calculated by MSDE as \$15,941, with appropriate exceptions for special education students.
7. The school will dedicate the savings on the cost of textbooks and equipment to reducing the cost of textbooks for students. The school's records will show that the eligible student's cost of textbooks was reduced by the requisite amount.
8. The school will maintain an inventory of all books purchased under the program, including the location of the books and equipment, and final disposition for worn or outdated books.
9. The school understands that the textbooks and equipment are the property of MSDE. The school will not sell merchandise purchased through this program.
10. The school will receive prior approval from the MSDE Office of Fiscal and Policy Analysis regarding the disposition of outdated or worn textbooks and equipment.
11. The school will maintain records for three years and will make all records related to the program available for review and audit by authorized representatives of MSDE.
12. Erin's Law requirement – A school that holds a certificate of approval from the State Board under the Education Article §2-206(e) and participates in the Aid to Non-Public Schools Program shall develop and implement a program of age-appropriate education on the awareness and prevention of sexual abuse and assault. The program shall be taught by a teacher who is trained to provide instruction on the awareness

and prevention of sexual abuse and assault and incorporated into the school's health curriculum.

**I further certify that all of the facts, figures, and representations made with respect to student enrollment, number and percentage of students eligible to receive free and reduced price lunch, and tuition costs are true and correct to the best of my knowledge, information, and belief.**

Name: <u>Claire M. Dant</u>	Signature: <u>Claire M. Dant</u>
Title: <u>Principal</u>	Date: <u>1/17/2020</u>

# Exhibit 32

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

BETHEL MINISTRIES, INC.,  
Plaintiffs Case No.  
vs. 1:19-CV-01853  
DR. KAREN SALMON, ET AL,  
Defendants

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Pursuant to Notice, the remote  
video-recorded deposition of MONICA KEARNS was  
taken on Friday, April 23, 2021, commencing at  
9:31 a.m., before David C. Corbin, a Registered  
Professional Reporter and Notary Public.

REPORTED BY: David Corbin, RPR

1 Q. Okay. So the complaint comes in for  
2 Trinity Lutheran. Do you remember this ordeal kind  
3 of starting?

4 A. I do, yes. Yes, I do.

5 Q. Okay. So what happened?

6 A. Yes, I do.

7 Q. What happens then?

8 A. I guess I'm not sure what you mean.

9 Q. Okay. I'll ask maybe a more specific  
10 question. So the complaint comes to you and then  
11 the board at that meeting in the fall of 2017. Can  
12 you walk me through what occurred from that point on  
13 once you've been made aware of the allegation of the  
14 discriminatory policies at Trinity Lutheran?

15 A. I am not recalling a particular sequence,  
16 but I can tell you that the -- the big moment for me  
17 and my team was we, and I felt very strongly about  
18 this because there was a -- there was a discussion  
19 about this handbook and this school, but we can't  
20 consider this in isolation. If this is being used  
21 to determine whether this particular school -- if a  
22 handbook is being used to determine whether a school  
23 is eligible to participate, again, we have to treat  
24 all the schools the same. So the big moment for us,  
25 and I felt that it was important, then we need to

1 look at all school handbooks. So which you would --  
2 so here we are assigning ourselves more work. So  
3 that hurt. That hurt. But that's what had to be  
4 done. That was what had to be done to administer  
5 the program in accordance with the law and that was  
6 my job. So that was -- again, I don't recall -- so  
7 it must have come up at a board meeting, and I  
8 really don't remember like what -- who -- what  
9 discussions ensued. I'm sure the AG's office was  
10 brought in then at that moment. You know, I don't  
11 know. But for us, the big thing was handbook review  
12 across the board, everybody.

13 Q. So before that point handbooks had not  
14 been required to be submitted?

15 A. Correct.

16 Q. To participate for the BOOST program?

17 A. Correct. There was an assurance. We  
18 wrote an assurance. The AG's office and me, we  
19 worked together to write assurance language, and  
20 that was part -- I talked about the application for  
21 the -- the households, the parent and student. We  
22 also had a way for the schools to kind of apply to  
23 be in the program and there was -- there was  
24 assurance language as part of that. And they had to  
25 indicate that they complied with the assurance

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STATE OF MARYLAND

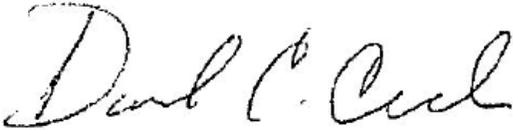
I, David Corbin, a Notary Public in and for the State of Maryland, do hereby certify that the within named, MONICA KEARNS, personally appeared before me at the time and place herein set according to law, was interrogated by counsel.

I further certify that the examination was recorded stenographically by me and then transcribed from my stenographic notes to the within printed matter by means of computer-assisted transcription in a true and accurate manner.

I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, not an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

AS WITNESS my hand and Notarial Seal this 27th day of April, 2021, at Centerville, Maryland.



David C. Corbin  
Notary Public

My commission expires November 13, 2023

# Exhibit 33

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BETHEL MINISTRIES, INC.,

\*

*Plaintiff,*

\*

v.

\*

No. 1:19-cv-01853-SAG

DR. KAREN B. SALMON, *et al.*,

\*

*Defendants.*

\*

\* \* \* \* \*

**DEFENDANTS’ ANSWERS TO PLAINTIFF’S FIRST SET OF  
INTERROGATORIES**

Defendants, Dr. Karen B. Salmon, Matthew Gallagher, Marva Jo Camp, Linda Eberhart, Dr. Nancy S. Grasmick, Elizabeth Green, Beth Sandbower Harbinson, and Dr. A. Skipp Sanders, in their official capacities, by their undersigned attorneys, pursuant to Federal Rule of Civil Procedure 33 and Local Rule 104, respond to the interrogatories propounded by Plaintiff Bethel Ministries, Inc. as follows:

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

1. The language, word usage, and sentence structure in these answers may be that of the attorney who assisted in the preparation of these answers and do not necessarily purport to be the exact language of the executing party.

2. The interrogatories have been interpreted and answered according to the Federal Rules of Civil Procedure (“Rules”), the Court’s Local Rules, plain English usage, and, to the extent not specifically challenged by objection, any definitions and instructions in the interrogatories.

3. The defendants object to the interrogatories to the extent they seek information subject to the attorney-client privilege, the work-product doctrine, the deliberative-process privilege, the executive privilege, the legislative privilege, or any other privilege, including information prepared in anticipation of litigation.

4. The defendants object to the interrogatories to the extent that they seek information that is confidential, proprietary, a trade secret, or subject to privacy restrictions.

5. The defendants object to the interrogatories to the extent that they purport to require the provision of information and/or documents not in the possession, custody, or control of the defendants.

6. The defendants object to the interrogatories to the extent that under Rule 26(b), they are not relevant to any party's claim or defense or not proportional to the needs of the case.

7. The defendants object to these interrogatories and their definitions and instructions to the extent that they impose duties that exceed those required by the Rules and the Local Rules.

8. The defendants object to these interrogatories to the extent that they are vague, ambiguous, overly broad, unlimited in time, duplicative, or cumulative.

9. The defendants object to any interrogatories that improperly combine discrete subparts in violation of Rule 33(a)(1).

10. The defendants reserve the right to supplement, amend, or correct the answers to these interrogatories.

11. The defendants do not concede the relevancy, materiality, or admissibility of any information, documents, or other information provided in these answers, which are provided without prejudice to the right to object to the admissibility of any evidence.

12. The defendants do not waive any protections or privileges by responding to these interrogatories. The inadvertent production or disclosure of protected or privileged information shall not constitute a waiver of any privilege or any other basis to object to the admissibility of such information into evidence.

13. The defendants adopt and incorporate by reference the preliminary statement and general objections into each of the following answers.

14. Subject to and without waiving the foregoing preliminary statement and objections, defendants respond to the interrogatories as follows.

### **ANSWERS TO INTERROGATORIES**

**Interrogatory No. 1:** Please identify all complaints or allegations of discrimination on the basis of sexual orientation or gender identity made against a school to the BOOST advisory board or the Maryland State Department of Education.

**Answer No. 1:** Defendants object to this interrogatory because it is overly broad, not relevant to the allegations in the complaint, and not proportional to the needs of this case, including because the interrogatory is not limited to the time period alleged in the complaint or to nonpublic schools participating in the BOOST program, and it would be unduly burdensome to identify “all” complaints submitted to the BOOST Advisory Board or the Maryland State Department of Education (“MSDE”). Additionally, complaints or allegations of gender-identity discrimination are not relevant to this matter

because the BOOST Advisory Board determined that plaintiff's student handbook and admissions policies violated the BOOST law prohibition on sexual orientation.

Subject to and without waiving these objections, the Maryland Parent Teacher Association contended in 2017 that at least one BOOST-eligible school had policies that discriminated against students based on the sexual orientation of the child's parents. A copy of the Maryland PTA letter is attached as attachment B to exhibit 1 of defendants' response in opposition to plaintiffs' motion for preliminary injunction, ECF No. 36-1 at 18, and has been produced at pages 450-452 in defendants' document production.

**Interrogatory No. 2:** Please identify and describe all complaints of discrimination on the basis of sexual orientation or gender identity made against Bethel Christian Academy or any other private school to the BOOST advisory board or the Maryland State Department of Education.

**Answer No. 2:** Defendants adopt and incorporate by reference Answer No. 1. Defendants further object that this interrogatory is not relevant, and identifying "all" such complaints submitted to the BOOST Advisory Board or the MSDE about "any other private school" is not proportional to the needs of this case.

Subject to and without waiving these objections, defendants are unaware of a complaint about plaintiff on this basis that was submitted to the Boost Advisory Board or MSDE.

**Interrogatory No. 3:** Please identify each school that has participated in BOOST and the years of their participation from 2016 to the present.

**Answer No. 3:** Defendants object to this interrogatory because it is overly broad, unduly burdensome, not relevant to the allegations in the complaint, and not proportional to the needs of this case. Without waiving its objections, defendants will

provide documents listing this information, including pages 394 to 435 of defendants' document production.

**Interrogatory No. 4:** Please describe why the MSDE and/or BOOST Advisory Board reviewed BOOST schools' student handbooks during the years 2017 and 2018.

**Answer No. 4:** Defendants object to this interrogatory on the basis of the attorney-client privilege, the work-product doctrine, and the deliberative-process privilege.

Subject to and without waiving these objections, defendants adopt and incorporate by reference Interrogatory Answer No. 1. After the MSDE received the Maryland PTA's written testimony, it sought information from BOOST-eligible schools regarding their handbooks and other admissions policies and conducted the initial review of the schools' policies. Additionally, defendants have produced records which contain information responsive to this interrogatory, including documents relating to Boost Advisory Board meetings and written correspondence to BOOST-participating schools from the Boost Advisory Board and MSDE. See pages 1 to 393 and 459 to 491 of defendants' document production.

**Interrogatory No. 5:** Please identify each school whose handbook was reviewed by the BOOST Advisory Board or MSDE, the years those handbooks were reviewed from 2016 to the present, and by whom they were reviewed.

**Answer No. 5:** Defendants object to this interrogatory because the term "handbook" is vague, undefined, and not limited to the allegations in the complaint.

Subject to and without waiving these objections, the student handbook and admissions policies of each school identified in Answer No. 3 were reviewed beginning in 2017 for each year that school was eligible to receive BOOST-related financial support.

The MSDE staff members who were primarily responsible for reviewing the handbooks were James Klarman, Program Manager, and Felicia Holloway Wise, Staff Specialist. It is possible that other staff members and attorneys also participated in the review process. To the extent this interrogatory seeks these individuals' contact information, they are either current or former State employees and may be reached through undersigned counsel.

**Interrogatory No. 6:** Please identify each school that participated in the BOOST program from 2016 to present, but that did not have its handbook reviewed by the MSDE or BOOST Advisory Board.

**Answer No. 6:** Defendants object to this interrogatory because the term "handbook" is vague, undefined, and not limited to the allegations in the complaint.

Subject to and without waiving these objections, all schools that participated in the BOOST program from 2016 to the present had their student handbook and admissions policies reviewed.

**Interrogatory No. 7:** Please identify each school that received a follow-up correspondence from the BOOST Advisory Board or the MSDE after handbooks were collected in the fall of 2017 and describe why they received follow-up correspondence.

**Answer No. 7:** Defendants object to this interrogatory because the term "handbook" is vague, undefined, and not limited to the allegations in the complaint. The interrogatory is not tailored to plaintiffs' allegations or to BOOST-participating schools who received follow-up correspondence from the BOOST advisory board or the MSDE since 2017 because of their student handbook or admissions policies.

Subject to and without waiving these objections, the following schools' handbooks were reviewed because of concerns that they may have violated the non-discrimination requirements in the BOOST law: Arnold Christian Academy, Arundel Christian School,

Atholoton Adventist Academy, Bethel Christian Academy, Broadfording Christian Academy, Carroll Lutheran School, Cathedral Christian Academy, Celebration Christian Academy, Elvaton Christian Academy, Frederick Adventist Academy, Grace Academy, Grace Christian Academy of Maryland, Highland View Academy, Lighthouse Christian Academy, Mount Aetna Adventist, Salisbury Christian School, Spencerville Adventist Academy, Saint Joseph's Regional Catholic School (Beltsville), Saint Louis School, Saint Margaret School, Takoma Academy, Trinity Lutheran School, and Woodstream Christian Academy.

**Interrogatory No. 8:** Please identify each school that changed language in their handbook in response to concerns raised by the MSDE or the BOOST Advisory Board and describe the changes made to those handbooks.

**Answer No. 8:** Defendants object to this interrogatory because the terms “handbook” and “concern” are vague, undefined, and not limited to the allegations in the complaint.

Subject to and without waiving these objections, Atholoton Adventist Academy, Frederick Adventist Academy, Highland View Academy, Spencerville Adventist Academy, Takoma Academy, and Trinity Lutheran School.

**Interrogatory No. 9:** Please identify all schools that were removed from the BOOST program due to (a) handbook language; (b) admissions policies; or (c) student discipline policies, and identify the specific provision or policy in each case.

**Answer No. 9:** Defendants object to this interrogatory because the terms “handbooks” and “student discipline policies” are vague, undefined, ambiguous and not limited to the allegations in the complaint.

Subject to and without waiving these objections, the Boost Advisory Board determined the following schools to be ineligible for the BOOST program because their student handbooks or admission policies violated the BOOST law about non-discrimination on the basis of sexual orientation: Arnold Christian Academy, Atholton Adventist Academy, Bethel Christian Academy, Celebration Christian Academy, Frederick Adventist Academy, Highland View Academy, Spencerville Adventist Academy, Takoma Academy, Trinity Lutheran School, and Woodstream Christian Academy. The BOOST Advisory board initially concluded that Broadfording Christian Academy and Grace Academy were ineligible for BOOST funds but granted these schools requests for reconsideration.

**Interrogatory No. 10:** Please identify all of the individuals whose records were searched to respond to any of Plaintiff's discovery requests in this Lawsuit.

**Answer No. 10:** Defendants object to this interrogatory because discovery and defendants' investigation of plaintiff's allegations are ongoing, and defendants reserve the right to supplement this answer.

Subject to and without waiving these objections, the emails of the following individuals are being searched: the Boost Advisory Board defendants; Monica Kearns, Assistant State Superintendent, Division of Business Services; James Clark, Director of Business Services; James Klarman, Program Manager; Felicia Holloway Wise, Staff Specialist; Valerie Carpenter, Program Manager; and Donna Gunning, Executive Director, Office of Policy and Fiscal Analysis. These individuals are defendants, current State employees, or former State employees and may be contacted through undersigned counsel.

**Interrogatory No. 11:** Please identify all schools that the BOOST Advisory Board, MSDE, or the State of Maryland pursued a “clawback” of previously distributed BOOST funds, whether the school paid or did not return the funds, and all instances when a “clawback” of BOOST funds from a school was referred to collections.

**Answer No. 11:** The MSDSE and BOOST Advisory Board sought repayment of BOOST funds from the schools listed in Interrogatory Answer No. 9, except that Celebration Christian Academy did not have students who received BOOST funds in 2018. None of these schools was referred to collections.

**Interrogatory No. 12:** Please describe the rationale and process followed by the BOOST Advisory Board and MSDE in deciding whether to pursue “clawbacks” of previously paid BOOST funds, generally, and as applied to Bethel Christian Academy.

**Answer No. 12:** Defendants object to this interrogatory on the basis of the attorney-client privilege, the work-product doctrine, and the deliberative-process privilege.

Subject to and without waiving these objections, defendants state that repayment was requested from all schools that had admission policies that violated the non-discrimination requirement in the BOOST Law.

**Interrogatory No. 13:** Please identify any communications or documents considered by the BOOST Advisory Board and/or MSDE in their evaluation of schools’ policies in relation to Maryland’s BOOST nondiscrimination requirements.

**Answer No. 13:** Defendants object to this interrogatory on the basis of the attorney-client privilege, the work-product doctrine, and the deliberative-process privilege. Defendants further object because the term “policies” is vague and undefined.

Subject to and without waiving these objections, the Boost Advisory Board and MSDE considered the schools’ admission policies and student handbooks, correspondence from the schools, and discussions during BOOST Advisory Board meetings.

**Interrogatory No. 14:** Please describe all discussion concerning Bethel Christian Academy during the BOOST Board's closed session meeting on June 21, 2018.

**Answer No. 14:** Defendants object to this interrogatory because the Boost Advisory Board's June 21, 2018 meeting was closed for the purpose of obtaining legal advice, and the information sought by this interrogatory is subject to the attorney-client privilege, the work-product doctrine, and the deliberative-process privilege.

**Interrogatory No. 15:** For each school removed from, expelled from, suspended from, or deemed ineligible for the BOOST program because of alleged discriminatory actions or policies, please describe the decision-making process in each instance.

**Answer No. 15:** Defendants object to this interrogatory on the basis of the attorney-client privilege, the work-product doctrine, and the deliberative-process privilege. Defendants also object because the terms "decision-making process," "actions" and "policies" are vague and undefined.

Subject to and without waiving these objections, defendants state the schools identified in answer to Interrogatory No. 9 were deemed ineligible for the BOOST program because their admissions policies were found to be discriminatory. In further response, defendants adopt and incorporate by reference Interrogatory Answers Nos. 4, 7, 8, 9, 11, 12, and 13.

**Interrogatory No. 16:** Please identify all schools that have been removed from, expelled from, suspended from, or otherwise deemed ineligible for other state aid programs such as the Textbooks and Technology Program, the Aging Schools Program, or others due to concerns about the state's nondiscrimination laws, policies, or requirements.

**Answer No. 16:** Defendants object to this interrogatory because "other" state-aid programs and the phrase "concerns about the state's nondiscrimination laws, policies, or requirements" is vague, overly broad, not tailored to the allegations in the complaint,

and not proportional to the needs of this case. Defendants also object to this interrogatory because it is not limited to the time period relevant to the pleadings.

Subject to and without waiving these objections, for the years 2016 to the present, the schools identified in Answer No. 9 were ineligible for the Textbooks and Technology Program and the Aging Schools Program unless and until those schools revised their student handbooks or admissions policies to comply with the BOOST law and were later approved for participation in those programs.

**Interrogatory No. 17:** Describe how and why the BOOST Board determined that language about marriage in Bethel's parent/student handbook constituted discrimination against minor children in admissions on the basis of sexual orientation.

**Answer No. 17:** Defendants object to this interrogatory on the basis of the attorney-client privilege, the work-product doctrine, and the deliberative-process privilege.

Subject to and without waiving these objections, defendants have produced records containing information responsive to this interrogatory, including audio recordings of Boost Advisory Board meetings and written correspondence to plaintiff from the Boost Advisory Board and MSDE. *See, e.g.*, pages 337 to 341, 377 to 378, 436 to 446, and 459 to 491 of defendants' document production.

**Interrogatory No. 18:** Describe why the BOOST Board interpreted the BOOST statute to prohibit discrimination in student discipline in the 2016-17 and 2017-18 school years.

**Answer No. 18:** Defendants objects to this interrogatory on the basis of the attorney-client privilege, the work-product doctrine, the deliberative privilege, and the executive privilege. Additionally, the information sought by this interrogatory is not relevant to and beyond the scope of the allegations in the complaint because the BOOST

Advisory Board determined that plaintiff's student handbook and admissions policies violated the BOOST law prohibition on sexual-orientation discrimination.

Subject to and without waiving these objections, defendants adopt and incorporate by reference Interrogatory Answers Nos. 4, 7, 8, 9, 11, 12, and 13.

**Interrogatory No. 19:** Describe any involvement that any defendants had in encouraging, advising, or assisting the legislature to expand the BOOST law to include discrimination on the basis of gender identity.

**Answer No. 19:** Defendants object to this interrogatory on the basis of relevancy and because this interrogatory is not proportional to the needs of this case; plaintiff was disqualified from the BOOST program because of discrimination on the basis of sexual orientation. Further, any purported involvement by the defendants with the "legislature," which presumably refers to the Maryland General Assembly, regarding the BOOST law and gender-identity discrimination is not relevant to or within the scope of the allegations of the complaint.

**Interrogatory No. 20:** Please identify all individuals you intend to call as witnesses in this Lawsuit.

**Answer No. 20:** Defendants object to this interrogatory on the ground that it seeks to discover the trial strategy of defendants' counsel, which is work product and not discoverable. Defendants further object on the ground that his interrogatory is premature. Discovery and defendants' investigation of this matter is not complete. Defendants will identify witnesses to the extent required by any pretrial orders entered by the Court.

**Interrogatory No. 21:** Describe how the BOOST Board or MSDE applied the BOOST law's provision that states that schools are not required to "adopt any rule, regulation, or policy that conflicts with [their] religious or moral teachings" to schools with traditional teachings on human sexuality.

**Answer No. 21:** Defendants object to this interrogatory on the basis of the attorney-client privilege, the work-product doctrine, and the deliberative-process privilege. Defendants also object because the term “traditional teachings on human sexuality” is vague, undefined, and ambiguous. Defendants further object because this interrogatory is not relevant or proportional to the needs of this case. Without waiving its objections, defendants state that the BOOST law did not affect the ability of plaintiff, or any other BOOST program school, to include “traditional teachings on human sexuality” in its curriculum. The Boost law instead required participating schools to “agree that they will not discriminate in student admissions on the basis of race, color, national origin, or sexual orientation.” 2016 Md. Laws ch. 143.

AS TO FORM AND OBJECTIONS:

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Attorney General of Maryland

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September 3, 2020

Attorneys for Defendants

**VERIFICATION**

I, Matthew Gallagher, hereby execute these answers to interrogatories in my official capacity as Chairman of the BOOST Advisory Board. Some of the information set forth in these answers was collected by others and such information is not necessarily within my personal knowledge. However, in my official capacity, I solemnly affirm under the penalties of perjury that the foregoing Answers to Interrogatories are true to the best of my knowledge, information and belief.

September 2, 2020

\_\_\_\_\_  
Date



\_\_\_\_\_  
Signature

### CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2020, the foregoing answers to interrogatories were sent by email to:

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/s/ Robert A. Scott

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

BETHEL MINISTRIES, INC.,

\*

*Plaintiffs,*

\*

v.

\*

No. 1:19-cv-01853-SAG

DR. KAREN B. SALMON, *et al.*,

\*

*Defendants.*

\*

\* \* \* \* \*

**ORDER**

Upon consideration of Defendants’ motion for summary judgment, all responses and replies thereto, and oral argument, the Court finds, based on the undisputed material facts, that Defendants are entitled to summary judgment on all claims asserted in the Complaint. Pursuant to Fed. R. Civ. Proc. 56, the Court hereby grants summary judgment in favor of the Defendants on all claims and enters judgment in the Defendants’ favor.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
STEPHANIE A. GALLAGHER, DISTRICT JUDGE