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Dr. Hocker and CDA School Board,

AFL is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans. I am Nick Barry, an attorney at America First Legal, and I am writing you today on behalf of Parents' Rights in Education, North Idaho Chapter, and Parents' Rights in Education, National Organization.

The Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. § 1232h, secures parental rights against state encroachment. It requires, among other things, that schools obtain prior written consent from parents before asking certain questions and gathering specified categories of information. It also requires schools to provide parents with a meaningful opportunity to have their child opt-out from certain types of information requests and activities. Specifically:

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

- (1) political affiliations or beliefs of the student or the student's parent;
- (2) mental or psychological problems of the student or the student's family;
- (3) sex behavior or attitudes;
- (4) illegal, anti-social, self-incriminating, or demeaning behavior;

- (5) critical appraisals of other individuals with whom respondents have close family relationships;
- (6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- (7) religious practices, affiliations, or beliefs of the student or student's parent; or
- (8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program),

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.¹

20 U.S.C. § 1232h(b).

34 C.F.R. 98.4, in turn, specifically requires prior parental consent whenever a student is subject to “psychiatric examination, testing, or treatment, or psychological examination, testing or treatment” with respect to, *inter alia*, mental and psychological problems, sex behavior and attitudes, and critical appraisals of other individuals with whom the student has close family relationships. *See* 34 C.F.R. 98.4(a), (b). The regulation defines psychiatric or psychological examination or test as a “method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings.” 34 C.F.R. 98.4(c)(1). Psychiatric or psychological treatment is defined as “an activity involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group.” 34 C.F.R. 98.4(c)(2).

It has been brought to the attention of Parents’ Rights in Education that Coeur d’Alene School District is contemplating a new Social-Emotional Learning (SEL) curriculum called “Sources of Strength” for grades K-5. However, the District apparently has no plans to obtain prior written consent from parents before implementing this curriculum in the classroom. Nor has it seen fit to provide parents with the transparency they deserve and are guaranteed under law, including complete access to all instructional and teacher training materials relevant thereto. 20 U.S.C. § 1232h(a).

However, *as a matter of federal law*, the District must provide specific notice and obtain specific consent from each student’s parent or legal guardian before “Sources of Strength” or any similar SEL curriculum may be taught to a child. The very point and essential purpose of “Sources of Strength” and other SEL programs is first to

¹ The PPRA is not limited to third-party surveys. Instead, 20 U.S.C. § 1232h(c)(1)(A) covers third-party surveys. That is not relevant to the Sources of Strength curriculum.

“elicit information about attitudes, habits, traits, opinions, beliefs or feelings” and second to “affect behavioral, emotional, or attitudinal characteristics of an individual or group.” For example, the curriculum apparently includes the following information requests and prompts:

What is a new connection you made with someone this week?

Turn to a neighbor and share what are the things that help you when you feel hurt or sad.

Turn to a neighbor and share one thing that helps you feel better when you are sad.

Have a full circle share of what helps you regulate when you are angry, mad or upset.

Share about someone who helps you calm down in a Full Talking Circle.

Can you think of a time where you were upset or full of energy and someone helped you regulate? How did that person help you co-regulate?

Turn to a partner and share a transition that you have experienced in your life.

What are some customs, routines, and traditions that you have with your Family Support.

Turn to a neighbor and share a specific way you experience Spirituality through people, places, or practices and how it lifts your spirit.

Share how you experience Spirituality with the class.

Turn to a partner and share about a time when you have been connected to help or when you have connected someone else to help. Maybe you were connected to the school counselor, or you brought a friend who was hurting physically, mentally, or emotionally to a Trusted Adult for help.

Further, Sources of Strength gathers information relating to the religious practices, affiliations, or beliefs of children and their families. The curriculum even uses a spirituality mosaic which explicitly includes items like “Church,” “Temple,” “Mosque,” “Writing a prayer,” “Yoga,” and “Praying.”

“Sources of Strength” curriculum is promoted as an anti-suicide and anti-bullying program and as a general health program. Its purpose is to change children’s behavioral, emotional, and/or attitudinal characteristics. Implementation without both complete transparency and the express and specific prior consent from each parent or guardian is illegal, exposing the District to potential federal enforcement action and lawsuits by aggrieved parents.

Failure to receive consent from each parent also violates state law pursuant to Idaho Code § 39-4504 which requires parental consent for minors.

Idaho law also restricts the provision of healthcare by persons not licensed to provide such care by making the unlicensed practice of medicine a felony, and granting a private right of action against the unauthorized provider to the recipient of the services or their personal representative.

The practice of medicine is defined broadly in Idaho. The “practice of medicine” means:

- (a) The investigation, diagnosis, treatment, correction, or prevention of or prescription for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality that involves the application of principles or techniques of medical science; or
- (b) Offering, undertaking, or holding oneself out as able to do any of the acts described in paragraph (a) of this subsection.

Idaho Code § 54-1803(1).

The unlicensed “practice of medicine” is punishable as a felony in Idaho:

Except as provided in subsection (1) of this section, it shall constitute a felony for any person to practice medicine in this state without a license and upon conviction thereof shall be imprisoned in the state prison for a period not to exceed five (5) years, or shall be fined no more than ten thousand dollars (\$10,000), or shall be punished by both such fine and imprisonment.

Idaho Code § 54-1804(3).

Furthermore, a private right of action is created if parents of Idaho children are provided medical services for “physical or mental” conditions under the “Sources of Strength” program by an unlicensed provider. Remedies for such conduct include an award of attorneys’ fees and costs:

When a person has been the recipient of services constituting the unlawful practice of medicine, whether or not he knew the rendition of the services was unlawful, proof of the rendition of such unlawful services by the recipient or his personal representative in an action against the provider of such services for damages allegedly caused by the services constitutes prima facie evidence of negligence shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:

- ...
- (b) Reasonable attorney's fees and court costs.

Idaho Code § 54-1804(5).

Finally, parents have a fundamental right to control and make decisions concerning their children's education. Idaho Code § 32-1012. The protections contained in the Idaho Parental Rights Act are "rooted in [and require faithful observance of] the due process of law guaranteed pursuant to section 13, article I, of the constitution of the state of Idaho." Idaho Code § 23-1010(5). The "interest of parents in the care, custody and control of their children is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme Court]." *Hardwick v. Cnty. of Orange*, 980 F.3d 733 (9th Cir. 2020) (quoting *Troxel v. Granvill*, 530 U.S. 57, 65 (2000); see e.g., *Pierce v. Soc'y of the Sisters*, 268 U.S. 510, 530 (1925)).

As a political subdivision and governmental actor, you are prohibited from violating "a parent's fundamental and established rights protected by [the Idaho Parental Rights Act], and any restriction of or interference with such rights shall not be upheld unless it demonstrates by clear and convincing evidence that the restriction or interference is both: (a) essential to further a compelling governmental interest; and (b) the least restrictive means available for the furthering of that compelling governmental interest." Idaho Code § 32-1013(1).

Our clients believe that if the Sources of Strength program is implemented as proposed, it will violate and interfere with parents' fundamental and established rights. The Sources of Strength SEL curriculum goes beyond academic instruction and intrudes into the boundaries of parental responsibility. It seeks to undermine a parent's decision concerning the care, custody, and control of their children. Any parent may then "assert that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against the government entity." Idaho Code § 32-1013(4). If a parent prevails, then that parent will be "entitled to reasonable attorney's fees and costs." Idaho Code § 32-1013(5).²

² Other sources of law upon which parents will likely bring claims include *inter alia*: ID CONST. §§ Article I, section 4 ("The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious

The liberty interests at stake here that form the fabric of our Nation’s history also protect the child’s interests as well. “The child’s interest in her relationship with a parent is sufficiently weighty by itself to constitute a cognizable liberty interest.” *Hardwick v. Cnty. of Orange*, 980 F.3d 733, 741 (9th Cir. 2020). Interference or violation of students’ rights further exposes the District to litigation far into the future because “[n]o person who is a minor shall be required to present and file a claim against a governmental entity or its employee under this chapter until one hundred eighty (180) days after said person reaches the age of majority or six (6) years from the date the claim arose or should reasonably have been discovered, whichever is earlier.” Idaho Code § 6-906A.

The gravity of our concerns, and the critical federal and state interests potentially implicated by the proposed curriculum, should be clear.

Therefore, to avoid potential litigation and/or regulatory enforcement action, we urge you to comply with the law, respect parents’ right to control the care, custody, and upbringing of their children, and to cease and desist from subjecting any child to “Sources of Strength” and other similar SEL curriculum without obtaining express prior written parental consent and providing parents complete access to all instructional and teacher training materials.

Sincerely,

/s/ Nicholas R. Barry
Senior Litigation Counsel
America First Legal Foundation

opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the state...”);

Art. I, section 18 (“Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay, or prejudice.”);

Art. I, section 21 (“This enumeration of rights shall not be construed to impair or deny other rights retained by the people.”);

Art. XXI, section 19 (“It is ordained by the state of Idaho that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship.”); and

Idaho Code § 73-401 *et seq.*