

No. _____

In the Supreme Court of the United States

OUR LADY OF GUADALUPE SCHOOL,

Petitioner,

v.

AGNES MORRISSEY-BERRU,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOHN J. MANIER
LINDA MILLER SAVITT
STEPHANIE KANTOR
BALLARD ROSENBERG
GOLPER & SAVITT, LLP
15760 Ventura Blvd.
18th Floor
Encino, CA 91436

MARGARET G. GRAF
ROMAN CATHOLIC
ARCHDIOCESE OF
LOS ANGELES
3424 Wilshire Blvd.
Los Angeles, CA 90010

ERIC C. RASSBACH
Counsel of Record
DANIEL H. BLOMBERG
DIANA M. VERM
ADÈLE AUXIER KEIM
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1200 New Hampshire
Ave. NW, Suite 700
Washington, D.C. 20036
(202) 955-0095
erassbach@becketlaw.org

Counsel for Petitioner

QUESTION PRESENTED

The First Amendment's Religion Clauses forbid government interference in a religious group's selection of its ministerial employees. The federal courts of appeals and state courts of last resort have long agreed that the key to determining ministerial status is whether an employee performed important religious functions. This Court's unanimous 2012 ruling in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* was consistent with that existing analytical consensus, and other circuits and states since 2012 have continued to rely on it. Yet the Ninth Circuit has now twice ruled that, under *Hosanna-Tabor*, important religious functions alone can never suffice—those functions must always be accompanied by considerations such as a religious title or religious training in order to demonstrate ministerial status.

The question presented is:

Whether the Religion Clauses prevent civil courts from adjudicating employment discrimination claims brought by an employee against her religious employer, where the employee carried out important religious functions.

**PARTIES TO THE PROCEEDINGS AND
CORPORATE DISCLOSURE STATEMENT**

Petitioner Our Lady of Guadalupe School was the defendant-appellee below. Respondent Agnes Morrissey-Berru was the plaintiff-appellant below.

Petitioner Our Lady of Guadalupe School has no parent corporation and issues no stock. Our Lady of Guadalupe School is a canonical entity and part of the canonical parish of Our Lady of Guadalupe in the Roman Catholic Archdiocese of Los Angeles; civilly, Our Lady of Guadalupe School is treated as an unincorporated association under the corporate laws of the State of California. The Archdiocese of Los Angeles operates in the civil forum through several religious corporations under the corporate laws of the State of California; civilly, the real property and related assets of Our Lady of Guadalupe School and Parish are held by and operated through certain of those corporations.

RELATED PROCEEDINGS

There are no related proceedings.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT	ii
RELATED PROCEEDINGS	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	viii
INTRODUCTION	1
OPINIONS BELOW	3
JURISDICTION	4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	4
I. Factual Background	4
A. Petitioner Our Lady of Guadalupe School	4
B. The role of teachers at Our Lady	5
C. Respondent Morrissey-Berru’s role at Our Lady	6
D. Our Lady decides not to renew Morrissey-Berru’s contract	10
II. The proceedings below	11
A. Morrissey-Berru’s complaint	11
B. Ninth Circuit proceedings	12
REASONS FOR GRANTING THE PETITION	14

I. The Ninth Circuit and the California Court of Appeal are in a square, deep, and acknowledged split with the “functional consensus” approach to ministerial exception analysis adopted by seven other federal circuits and seven state courts of last resort.....	14
A. Prior to <i>Hosanna-Tabor</i> , the lower courts consistently focused on function in determining ministerial status.	15
B. In <i>Hosanna-Tabor</i> , this Court acted consistently with the “functional consensus” identified by Justices Alito and Kagan as the governing ministerial exception standard in the lower courts.....	16
C. After <i>Hosanna-Tabor</i> and before <i>Biel</i> , the lower courts consistently focused on function to determine ministerial status.	19
D. The Ninth Circuit rejected the functional consensus, first in <i>Biel</i> and then in <i>Morrissey-Berru</i>	21
E. The Seventh Circuit has recognized the split with the Ninth Circuit.....	25
F. Only this Court can resolve the split.....	26
II. The scope of the ministerial exception is a vital and recurring question of nationwide importance for thousands of religious organizations and individuals.....	27

CONCLUSION	32
APPENDIX	
Opinion, <i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , No. 17-56624 (9th Cir. Apr. 30, 2019), ECF No. 38-1.....	1a
Order Granting Summary Judgment, <i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , 2:16-cv-09353-SVW-AFM (C.D. Cal. Sept. 27, 2017), ECF No. 58.	4a
29 U.S.C. § 623.	10a
29 U.S.C. § 631.	10a
Excerpts from Defendant’s Reply to Plaintiff’s Statement of Controverted and Uncontroverted Material Facts and Conclusions of Law Re: Motion of Defendant for Summary Judgment, <i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , 2:16-cv-09353-SVW-AFM (C.D. Cal. Sept. 1, 2017), ECF No. 44	11a
Teacher Employment Agreement-Elementary, Non-Exempt, Department of Catholic Schools, Archdiocese of Los Angeles, Our Lady of Guadalupe School, Deidre Morrissey-Berru, 2014-2015	32a
Philosophy & History, Our Lady of Guadalupe School (Apr. 14, 2017)	43a
Rev. Richard N. Fragomeni, <i>Blest Are We, Faith & Word Edition</i> , Title Page and Table of Contents (2010)	45a
<i>Our Lady of Guadalupe Faculty Handbook</i> , Statement of Commitment to Core Values, 303-04 (2014-2015).....	52a

Excerpts from Transcript of Deposition of April L. Beuder, Volume I, <i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , No. 2:16-cv- 09353 (C.D. Cal. May 4, 2017)	56a
Excerpts from Transcript of Deposition of April L. Beuder, Volume II, <i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , No. 2:16-cv- 09353 (C.D. Cal. May 11, 2017)	73a
Excerpts from Transcript of Deposition of Agnes Deirdre Morrissey-Berru, <i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , No. 2:16- cv-09353 (C.D. Cal. Apr. 26, 2017)	80a

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Alicea v. New Brunswick Theological Seminary,</i> 608 A.2d 218 (N.J. 1992)	16, 29
<i>Archdiocese of Washington v. Moersen,</i> 925 A.2d 659 (Md. 2007)	16
<i>Biel v. St. James School,</i> 911 F.3d 603 (9th Cir. 2018)	<i>passim</i>
<i>Biel v. St. James School,</i> 926 F.3d 1238 (9th Cir. 2019)	<i>passim</i>
<i>Cannata v. Catholic Diocese of Austin,</i> 700 F.3d 169 (5th Cir. 2012)	19, 25
<i>Conlon v. InterVarsity Christian Fellowship,</i> 777 F.3d 829 (6th Cir. 2015)	20, 23, 29
<i>Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos,</i> 483 U.S. 327 (1987)	31
<i>Coulee Catholic Sch. v. Labor & Indus. Review Comm’n,</i> 768 N.W.2d 868 (Wisc. 2009)	15-16
<i>Dayner v. Archdiocese of Hartford,</i> 23 A.3d 1192 (Conn. 2011)	15
<i>EEOC v. Catholic Univ. of America,</i> 83 F.3d 455 (D.C. Cir. 1996)	15
<i>El-Farra v. Sayyed,</i> 226 S.W.3d 792 (Ark. 2006)	29

<i>Fratello v. Archdiocese of New York</i> , 863 F.3d 190 (2d Cir. 2017).....	<i>passim</i>
<i>Grussgott v. Milwaukee Jewish Day School, Inc.</i> , 882 F.3d 655 (7th Cir. 2018)	<i>passim</i>
<i>Hollins v. Methodist Healthcare, Inc.</i> , 474 F.3d 223 (6th Cir. 2007)	15
<i>Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC</i> , 565 U.S. 171 (2012)	<i>passim</i>
<i>Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.</i> , 344 U.S. 94 (1952)	17
<i>Kirby v. Lexington Theological Seminary</i> , 426 S.W.3d 597 (Ky. 2014).....	21, 29
<i>Larson v. Valente</i> , 456 U.S. 228, 244 (1982)	31
<i>Lee v. Sixth Mount Zion Baptist Church</i> , 903 F.3d 113 (3d Cir. 2018).....	20, 29
<i>McClure v. Salvation Army</i> , 460 F.2d 553 (5th Cir. 1972)	14
<i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , 769 F. App'x 460 (9th Cir. 2019).....	2, 3
<i>Morrissey-Berru v. Our Lady of Guadalupe School</i> , No. 2:16-cv-093532017, WL 6527336 (C.D. Cal. Sept. 27, 2017).....	4
<i>New York v. Cathedral Academy</i> , 434 U.S. 125 (1977)	30

<i>NLRB v. Catholic Bishop</i> , 440 U.S. 490 (1979)	30
<i>Pardue v. Center City Consortium Sch. of Archdiocese of Washington, Inc.</i> , 875 A.2d 669 (D.C. 2005)	16
<i>Penn v. New York Methodist Hospital</i> , 884 F.3d 416 (2d Cir. 2018).....	29
<i>Petruska v. Gannon Univ.</i> , 462 F.3d 294 (3d Cir. 2006).....	15, 20
<i>Puri v. Khalsa</i> , 844 F.3d 1152 (9th Cir. 2017)	29
<i>Rayburn v. General Conference of Seventh-Day Adventists</i> , 772 F.2d 1164 (4th Cir. 1985)	15, 29, 30, 31
<i>Shaliehsabou v. Hebrew Home of Greater Washington, Inc.</i> , 363 F.3d 299 (4th Cir. 2004)	29
<i>Sterlinski v. Catholic Bishop of Chicago</i> , No. 18-2844, 2019 WL 3729495 (7th Cir. 2019)	3, 25, 26, 30
<i>Su v. Stephen Wise Temple</i> , 32 Cal. App. 5th 1159 (2019)	24, 25
<i>Su v. Stephen Wise Temple</i> , No. B275246, Cal. Ct. App., 2d Dist. (June 25, 2019)	25
<i>Temple Emanuel of Newton v. Massachusetts Comm’n Against Discrimination</i> , 975 N.E.2d 433 (Mass. 2012)	21, 29
<i>Watson v. Jones</i> , 80 U.S. (13 Wall.) 679 (1872)	17

<i>Yin v. Columbia Int’l Univ.</i> , 335 F. Supp. 3d 803 (D.S.C. 2018).....	29
--	----

STATUTES

28 U.S.C. 1254(1)	4
29 U.S.C. 621, <i>et seq.</i>	4, 11

OTHER AUTHORITIES

Council for American Private Education, <i>FAQs About Private Schools</i> , “Schools and Students”	29
<i>Our Lady of Guadalupe students perform holiday pageant</i> , Easy Reader News (Dec. 18, 2014)	9
J. Gregory Grisham and Daniel Blomberg, <i>The Ministerial Exception After Hosanna-Tabor: Firmly Founded, Increasingly Refined</i> , 20 Federalist Soc’y Rev. 80 (2019).....	28
<i>The Top 5 Reasons Churches Went to Court in 2015</i> , Church Law & Tax Report (Nov./Dec. 2016).....	28
<i>The Top 5 Reasons Churches Went to Court in 2018</i> , Church Law & Tax Report (July 31, 2019)	28

INTRODUCTION

In 2012, the Court decided *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, recognizing the ministerial exception, a bedrock First Amendment doctrine that bars civil courts from adjudicating employment-related cases brought by “ministerial” employees against their religious employers. 565 U.S. 171 (2012). The Court’s decision was unanimous.

In deciding that the Lutheran schoolteacher plaintiff had a ministerial position, the *Hosanna-Tabor* Court described four “considerations” that supported its conclusion: (1) the schoolteacher’s “formal title,” (2) “the substance reflected in that title,” (3) her “use of th[e] title,” and (4) “the important religious functions she performed.” 565 U.S. at 192. But these “considerations” were not exclusive elements or requirements of a new test. Instead, the Court expressly held that there was no need to “adopt a rigid formula” to determine ministerial status. *Id.* at 190.

Both before and after *Hosanna-Tabor*, the lower courts have with remarkable consistency put their primary focus on one of the four considerations—the “important religious functions” assessment—in deciding whether a particular position is ministerial or not. Indeed, seven federal Courts of Appeals and seven state supreme courts, in cases involving Catholic, Protestant, and Jewish employers and many different kinds of roles, have all concluded that the presence or absence of religious function is the touchstone of the ministerial exception inquiry. This is not an exclusive inquiry—there is no need for a “function-only” test—but function is paramount.

In the face of that united approach among its sister courts, the Ninth Circuit decided to flout the consensus. In this case and in *Biel v. St. James School*, separate panels of the Ninth Circuit concluded that important religious functions could never be enough, by themselves, to prove up an employee’s ministerial status. See App. 1a; 911 F.3d 603 (9th Cir. 2018). Here, it was undisputed that Respondent had “significant religious responsibilities as a teacher” at Our Lady of Guadalupe School. App. 3a. She taught daily religion classes covering core Catholic doctrine, the sacraments, and how to read the Bible; she led daily and spontaneous prayers with and for her students; she planned and participated with her students in liturgies and Easter celebrations; and she served as a model of Catholic faith and worship both in her life and in all of the other academic subjects she taught. Yet the panel concluded that these admittedly core religious functions were insufficient because “an employee’s duties alone are not dispositive under *Hosanna-Tabor*’s framework.” App. 3a.

Nine judges on the Ninth Circuit dissented from the Ninth Circuit’s new approach, criticizing both *Biel* and the decision below in *Morrissey-Berru v. Our Lady of Guadalupe School*, 769 F. App’x 460 (9th Cir. 2019) (App. 1a). Indeed, the dissenters concluded that “[t]he case for the ministerial exception in *Morrissey-Berru* is even stronger than in *Biel*.” *Biel v. St. James School*, 926 F.3d 1238, 1251 (9th Cir. 2019) (R. Nelson, J., joined by Judges Bybee, Callahan, Bea, M. Smith, Ikuta, Bennett, Bade, and Collins, dissenting from denial of rehearing en banc). The dissenting judges called for this Court to step in and correct the Ninth Circuit’s anomalous standard, which they identified

as splitting with numerous post-*Hosanna-Tabor* cases. *Id.* at 1248, 1251. And a few weeks later, the Seventh Circuit, in an opinion written by Judge Easterbrook, confirmed that the Ninth Circuit was going its own way. *Sterlinski v. Catholic Bishop of Chicago*, No. 18-2844, 2019 WL 3729495, at *2 (7th Cir. 2019) (describing split and specifically rejecting *Biel*'s reasoning). The split of authority is thus deep, acknowledged, and—absent this Court's intervention—irreconcilable.

Moreover, as the *Biel* dissenters recognized, the stakes are high, both for Our Lady of Guadalupe and for the thousands of schools and other religious employers across the eleven states and territories of the Ninth Circuit. Under the Ninth Circuit's new "resemblance-to-Perich test," *Biel*, 926 F.3d at 1243 (R. Nelson, J., dissenting), those religious institutions now must choose between giving up control of who passes on their faith to the schoolchildren in their charge or conforming themselves to the specific Lutheran religious employment practices upheld in *Hosanna-Tabor*. Either outcome would be deeply unfair to schools, parents, and students.

Without correction, the Ninth Circuit's rule promises to turn up the heat on church-state conflict across the western United States and leaves religious institutions subject to two starkly different First Amendment standards depending on the accident of geography. The question presented is thus one of nationwide importance that only this Court can resolve.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 769 F. App'x 460 (9th Cir. 2019) and reproduced at App. 1a.

The district court’s opinion granting summary judgment to Our Lady of Guadalupe School is reported at 2017 WL 6527336 (C.D. Cal. 2017) and reproduced at App. 4a.

JURISDICTION

The court of appeals entered its judgment on April 30, 2019. Justice Kagan extended the time in which to file a petition for a writ of certiorari to August 28, 2019. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]” U.S. Const. amend. I.

The relevant portions of the Age Discrimination in Employment Act, 29 U.S.C. 621, *et seq.* (“ADEA”), are reprinted in the Appendix. App. 10a.

STATEMENT OF THE CASE

I. Factual Background

A. Petitioner Our Lady of Guadalupe School

Our Lady of Guadalupe School (“Our Lady”) is a Catholic parish school located in Hermosa Beach, California. The school is a ministry of, and is operated by, the parish of Our Lady of Guadalupe under the jurisdiction of the Archdiocese of Los Angeles. App. 12a-13a, 43a-44a. The Archdiocese is a constituent entity

of the Roman Catholic Church and is the largest archdiocese in the United States. It is headed by an Archbishop, currently Archbishop José H. Gomez.

Our Lady was founded almost sixty years ago, in 1961, and was staffed by Carmelite Sisters for its first 13 years. App. 43a. While all children are welcome to enroll, Our Lady was established specifically to serve the educational needs of the children of the parish. App. 43a. The mission of Our Lady is to develop and promote a Catholic faith community that reflects both a Catholic philosophy of education and the doctrines and norms of the Catholic Church. App. 32a, 43a.

The parish pastor is the ex-officio chief administrative officer of Our Lady and is responsible to both carry out Archdiocesan policy and, where necessary, to set policy that effectuates the mission of the Catholic Church at the school. App. 14a, 44a.

B. The role of teachers at Our Lady

Our Lady's staff join with the pastor in "service to the Church" to "work together in a collaborative way to carry out the mission of the Church." App. 53a. For staff at Our Lady, "[m]odeling, teaching of and commitment to Catholic religious and moral values are considered essential job duties." App. 55a.

Teachers have a particularly important role. Teachers must agree to perform "all" of their "duties and responsibilities" in a manner consistent with Catholic doctrine and educational philosophy. App. 32a. Teachers must conduct their professional efforts in alignment with "the values of Christian charity, temperance, and tolerance," and in both their pro-

professional and private life must “model and promote behavior in conformity to the teaching of the Roman Catholic Church in matters of faith and morals.” App. 33a. Teachers are also expected to participate in Our Lady’s liturgical activities, App. 33a, including faculty-wide prayer services, App. 87a. As part of this responsibility, Catholic teachers hired by Our Lady must be in good standing with the Church. App. 56a. And teachers who teach religion are required to be Catholic. App. 57a.

To ensure these expectations are met, they are written into each employment contract, which itself must be signed by the pastor and renewed annually. App. 36a, 42a. Teachers are also evaluated on whether their teaching “includes Catholic values infused through all subject areas” and whether their classrooms visibly reflect the “sacramental traditions of the Roman Catholic Church.” App. 23a.

C. Respondent Morrissey-Berru’s role at Our Lady

Respondent Agnes Morrissey-Berru began teaching full-time at Our Lady in 1999. App. 80a. She started as the sixth-grade teacher and, ten years later, transitioned to teaching the fifth grade. App. 80a.

She understood that Our Lady’s mission was to impart Catholic faith and values to its students. App. 82a. She also understood that, as the only teacher for her fifth-grade class, she had a special role in teaching and modeling Catholic doctrine and values for her students. App. 82a-83a, 93a. She testified that she was “committed” to fulfilling that special role by “teaching children Catholic values” and providing a “faith-based education.” App. 82a.

Morrissey-Berru fulfilled this commitment in several ways. Most prominently, she taught daily religion classes every year of her employment. App. 81a, 90a. Her religion classes “introduce[d] students to Catholicism” and “gave them a groundwork for their religious doctrine.” App. 93a. In just her last year of teaching the religion class alone, she testified that she taught students:

- to “learn and express [the] belief that Jesus is the son of God and the Word made flesh”;
- the Catholic doctrines of creation and original sin;
- the names, meanings, and signs of the seven Catholic sacraments: Baptism, Confirmation, the Eucharist, Penance (also known as Reconciliation), the Anointing of the Sick, Marriage, and Holy Orders;
- to locate, read, and understand passages from the Bible that relate to the sacraments;
- to celebrate the sacraments, including how to celebrate the sacrament of Reconciliation;
- to recognize the physical presence of Christ in the Eucharist;
- to recognize and understand the signs and symbols of the Church’s liturgy: water, bread, wine, oil, and light;
- “to pray the Apostles’ Creed and the Nicene Creed,” including the “four marks of the church” embodied in the Nicene Creed (that there is “one, holy, catholic, and apostolic Church”);
- the liturgical calendar, including the “Sacred Triduum” of Holy Thursday, Good Friday, and Easter Sunday;

- to identify the ways that the Church carries out the mission of Jesus.

App. 91a-94a; see also App. 16a-21a. Her instruction was not merely academic, but rather devotional: she taught the students Catholic doctrine through prayer, worship, and the reading of Scripture. App. 45a-51a.

Morrissey-Berru also modeled and practiced the Catholic faith with her students. She testified that she personally showed the “children how to go to mass, the parts of the mass, communion, prayer, and confession.” App. 81a. She used her role as a teacher at Our Lady to demonstrate “the importance of prayer and worship.” App. 96a. She prepared her students to proclaim readings from Scripture during the weekly school Masses and the monthly family Masses, and then took her students to attend and participate in those Masses. App. 82a-84a, 87a-88a. Her class was in charge of one Mass per month, and she helped plan the liturgy for that Mass. App. 40a, 83a-84a. She took her students to specific Holy Days of Obligation and other religious observances, such as Lenten Services, the Feast of Our Lady of Guadalupe, the Stations of the Cross, All Saints Day, and Christmas. App. 88a. She led daily prayer with the students at the beginning or end of class, and would also lead spontaneous prayer as appropriate, such as praying for a student’s ill mother. App. 86a-87a. She included visible Catholic symbols in her classroom. App. 95a. And, as required by Our Lady’s policies, she infused Catholic faith and values into all other academic subjects that she taught. App. 86a, 95a.

Beyond regular classroom and school religious observances and training, Morrissey-Berru also led

other important religious activities for her students. For instance, she annually directed her students in a play of the Passion of the Christ, depicting Christ's final hours and crucifixion. App. 69a. As a part of the play, she would explain the Scriptural significance of the Passion, would help students prepare dialogue from Scriptural passages, and would rehearse the play with them. App. 69a. The play was then performed before the entire school as a part of its celebration of Easter. App. 69a; see also *Our Lady of Guadalupe students perform holiday pageant*, Easy Reader News (Dec. 18, 2014), <https://perma.cc/8B3N-DUYQ> (reporting Feast of Our Lady of Guadalupe play directed by Morrissey-Berru and performed by her fifth-grade class in the parish sanctuary after the Mass). Morrissey-Berru also annually took her class to the Cathedral of Our Lady of the Angels to give them the opportunity to serve at the altar there. App. 95a-96a. She believed it was an "important event" and "a big honor" for the students. App. 96a.

To ensure her students properly understood the religious beliefs which she taught, Morrissey-Berru administered religious education tests. App. 87a. And to ensure that she was properly teaching Catholic beliefs, Our Lady regularly evaluated her teaching of the Catholic faith. App. 94a-95a. Our Lady also required her to take catechist courses to become a certified Catechist. App. 85a. The courses were provided by the Archdiocese of Los Angeles's religious education department. App. 85a.

D. Our Lady decides not to renew Morrissey-Berru's contract

The catechist certification requirement was first implemented in 2012, as a part of sweeping reforms at Our Lady to save it from closure. App. 59a-61a. The school's attendance had steadily dwindled to the point that the eighth-grade class in 2011 had only one graduate, and Our Lady remained afloat solely due to a heavy subsidy from the parish. App. 27a. A Catholic school accreditation team report in 2012 identified the reason for decline as negative parental perception about the school, which was attributed to factors such as a perceived lack of academic rigor and a need for catechetical training of teachers. App. 59a.

The parish brought in a new principal, April Beuder, to address these problems. App. 57a-59a. She immediately began requiring all faculty to obtain catechist certification based on guidelines set by the United States Conference of Catholic Bishops. App. 61a. The catechist courses trained teachers to "provide a Catholic education to students." App. 61a. Beuder also required teachers to implement a new reading program to address concerns about academic rigor. App. 27a-27a, 66a-67a. Morrissey-Berru failed to fully implement the program in the 2012-2013 school year. App. 69a-70a, 73a. Beuder offered her a new contract for the 2013-2014 school year, which was explicitly conditioned on fully implementing the program. App. 68a. But Morrissey-Berru again failed to meet expectations with the program, despite attempts to help her succeed. App. 28a, 73a. So Beuder created a part-time position for Morrissey-Berru that removed duties related to the program while allowing her to teach fifth-grade religion and fifth-through-seventh-

grade social studies for 2014-2015. App. 29a. That experiment was unsuccessful, in part due to budgetary issues, and so Beuder informed Morrissey-Berru in May 2015 that she would not offer her a new contract. App. 30a-31a.

II. The proceedings below

A. Morrissey-Berru's complaint

One month later, on June 2, 2015, Morrissey-Berru filed a charge with the Equal Employment Opportunity Commission, alleging, as relevant here, age discrimination in violation of the ADEA. She filed a complaint in federal district court in December 2016.

After discovery, Our Lady filed a motion for summary judgment in August 2017. The district court granted the motion, ruling that Morrissey-Berru's claim was barred by the First Amendment's ministerial exception. App. 4a. It found that Our Lady was undisputedly a religious organization protected by the exception, and that Morrissey-Berru's claim was of the kind prohibited by the exception. App. 7a. So the "main question" remaining was whether Morrissey-Berru was a "minister" for purposes of the exception. App. 7a. The court found that she was, because she "expressly admitted that her job duties involved conveying the church's message," and that she fulfilled those duties by "integrating Catholic values and teachings into all of her lessons," "leading the students in religious plays," and teaching "her students the tenets of the Catholic religion, how to pray, and * * * a host of other religious topics." App. 7a-8a. The court rejected as "irrelevant" Morrissey-Berru's argument that she "did not feel formally 'called' to the ministry," courts must "consider [her] actual duties, not whether

she personally felt called to the ministry.” App. 8a (citing *Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017)).

Morrissey-Berru appealed.

B. Ninth Circuit proceedings

On appeal, Morrissey-Berru argued that her actual duties were not “determinative of whether or not the exception applied.” Opening Br. 46, ECF No. 8. Rather, she asserted that the rule from *Hosanna-Tabor* required that she also have a religious title, be ordained, or hold herself out to the community as a minister—none of which, she claimed, were true of her. *Ibid.* Further, she argued that her duties were insufficiently religious to be “ministerial” because that designation pertained “only” to those who “perform a leadership role,” whereas she merely “t[ought] religion out of a textbook.” *Id.* at 47-48.

After the close of briefing in Morrissey-Berru’s appeal, and before oral argument, a divided panel of the Ninth Circuit accepted very similar arguments in *Biel v. St. James School*. See 911 F.3d at 605. *Biel* was an appeal by another fifth-grade teacher, Kristen Biel, against another Archdiocese of Los Angeles elementary school in a neighboring parish. The panel majority held that Biel’s religious duties were, taken alone, insufficient to invoke the ministerial exception, and that the exception was ordinarily applied to those with “religious leadership” roles while “Biel’s role in Catholic religious education” was “limited to teaching religion from a book.” *Id.* at 609-610. Judge D. Michael Fisher, sitting by designation, dissented, opining that “Biel’s duties as the fifth grade teacher and religion

teacher are strikingly similar to those in *Hosanna-Tabor*,” and that the panel majority’s conclusions were also in clear conflict with a recent decision of the Seventh Circuit. *Id.* at 617-618 (citing *Grussgott v. Milwaukee Jewish Day School, Inc.*, 882 F.3d 655, 661 (7th Cir.), *cert. denied*, 139 S. Ct. 456 (2018)).

While a petition for rehearing en banc was still pending in *Biel*, a different panel of the Ninth Circuit followed *Biel*’s analysis to rule against Our Lady. App. 1a. The panel agreed that Morrissey-Berru’s “significant” religious duties included that she had “committed to incorporate Catholic values and teachings into her curriculum,” and that she “led her students in daily prayer, was in charge of the liturgy planning for a monthly Mass, and directed and produced a performance by her student’s during the School’s Easter celebration every year.” App. 3a. But, in the panel’s view, all of this was insufficient because *Biel* instructs that “an employee’s duties alone are not dispositive.” App. 3a.

Two months later, on June 25, 2019, the Ninth Circuit denied the petition for rehearing en banc in *Biel*. Nine judges dissented, stating that *Biel*’s analysis “poses grave consequences for religious minorities” and “conflicts with *Hosanna-Tabor*, decisions from our court and sister courts, decisions from state supreme courts, and First Amendment principles.” *Biel*, 926 F.3d at 1239-1240 (R. Nelson, J., dissenting). The dissent also criticized the decision in this appeal, stating that the argument “for the ministerial exception in *Morrissey-Berru* is even stronger than in *Biel*” given the undisputed and robust factual record of Morrissey-Berru’s religious functions. *Id.* at 1251. “In each suc-

cessive case, we have excised the ministerial exception, slicing through constitutional muscle and now cutting deep into core constitutional bone.” *Id.* at 1240.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit and the California Court of Appeal are in a square, deep, and acknowledged split with the “functional consensus” approach to ministerial exception analysis adopted by seven other federal circuits and seven state courts of last resort.

The Ninth Circuit’s rule “embraces the narrowest construction” of the Religion Clauses’ protection for religious autonomy, which “splits from the consensus of our sister circuits” and “decisions from state supreme courts” that “[an] employee’s ministerial function should be the key focus.” *Biel*, 926 F.3d at 1239 (R. Nelson, J., dissenting). Under the Ninth Circuit’s standard, a religious organization’s employee can hold a ministerial role only if he has a religious title, training, or tax status, regardless of the religiously important functions of his position. That rigid approach, now also adopted by a California intermediate appellate court, conflicts with this Court’s decision in *Hosanna-Tabor* and splits with the precedent of the Second, Third, Fourth, Fifth, Sixth, Seventh, and D.C. Circuits and courts of last resort in Connecticut, Kentucky, Maryland, Massachusetts, New Jersey, Wisconsin, and the District of Columbia.

A. Prior to *Hosanna-Tabor*, the lower courts consistently focused on function in determining ministerial status.

The ministerial exception was first applied in *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972). The Fifth Circuit held that “the application of the provisions of Title VII to the employment relationship existing between * * * a church and its minister would result in an encroachment by the State into an area of religious freedom which it is forbidden to enter * * *.” *Id.* at 560.

In the four decades between the ministerial exception’s inception in 1972 and the Court’s first application of it in 2012 (in *Hosanna-Tabor*), the overwhelming majority of Circuits and state supreme courts “ha[d] concluded that the focus should be on the ‘function of the position’ in ‘evaluating whether a particular employee is subject to the ministerial exception.’” *Petruska v. Gannon Univ.*, 462 F.3d 294, 304 n.6 (3d Cir. 2006) (quoting *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985) (Wilkinson, J.), and collecting cases from the D.C., Fourth, Fifth, and Seventh Circuits). See also *Hollins v. Methodist Healthcare, Inc.*, 474 F.3d 223, 226 (6th Cir. 2007) (identifying function-focused analysis as the “general rule”); *EEOC v. Catholic Univ. of America*, 83 F.3d 455, 463 (D.C. Cir. 1996) (employee was minister where her “primary functions serve [the religious employer’s] spiritual and pastoral mission”); *Dayner v. Archdiocese of Hartford*, 23 A.3d 1192, 1204 (Conn. 2011) (courts must “objectively examine an employee’s actual job function, not her title, in determining” ministerial status), overruled on other grounds in *Hosanna-Tabor*, 565 U.S. at 195 n.4; *Coulee Catholic*

Sch. v. Labor & Indus. Review Comm’n, 768 N.W.2d 868, 881 n.16 (Wisc. 2009) (“The focus * * * should be on the function of the position, not the title or a categorization of job duties”); *Pardue v. Center City Consortium Sch. of Archdiocese of Washington, Inc.*, 875 A.2d 669, 675 (D.C. 2005) (inquiry focuses on “function of the position” and “not on categorical notions of who is or is not a ‘minister’”); *Archdiocese of Washington v. Moersen*, 925 A.2d 659, 672 (Md. 2007) (emphasizing “the function of the position”); *Alicea v. New Brunswick Theological Seminary*, 608 A.2d 218, 222 (N.J. 1992) (ministerial exception protects decisions “regarding employees who perform ministerial functions”).

B. In *Hosanna-Tabor*, this Court acted consistently with the “functional consensus” identified by Justices Alito and Kagan as the governing ministerial exception standard in the lower courts.

In *Hosanna-Tabor*, the Court addressed the ministerial exception for the first time, confirming that the First Amendment protects the relationship between religious ministries and their ministers from government interference. See *Hosanna-Tabor*, 565 U.S. at 187-188 & n.2 (collecting cases). This protection is rooted in both Religion Clauses: “The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.” *Id.* at 184.

The ministerial exception is a component of the Religion Clauses’ broader religious autonomy protections, which trace their roots back over 140 years of

Supreme Court precedent, *Hosanna-Tabor*, 565 U.S. at 185-186 (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1872)), and before that to Magna Carta, *id.* at 182. These protections benefit both church and state by preventing government entanglement in internal religious affairs. Together, the Religion Clauses ensure religious groups’ “independence from secular control or manipulation” by reserving to them the “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Id.* at 186 (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

Hosanna-Tabor affirmed that this independence includes the selection of ministers. As the Court explained, the Religion Clauses ensure “that the authority to select and control who will minister to the faithful—a matter strictly ecclesiastical, *Kedroff*, 344 U.S. at 119—is the church’s alone.” *Hosanna-Tabor*, 565 U.S. at 194-195 (internal quotation marks omitted). Even over “undoubtedly important” societal interests, such as employment discrimination statutes, “the First Amendment has struck the balance” in favor of allowing each religious group autonomy to “be free to choose those who will guide it on its way.” *Id.* at 196; accord *id.* at 201 (Alito, J., concurring) (“A religious body’s control over [ministers] is an essential component of its freedom to speak in its own voice[.]”).

For its first foray into the ministerial exception, this Court declined to “adopt a rigid formula” to determine ministerial status. *Hosanna-Tabor*, 565 U.S. at 190. Rather, it was sufficient to resolve the case at hand that “all the circumstances” of respondent Cheryl Perich’s employment as a fourth-grade teacher

at a Lutheran school showed that she was a minister. *Ibid.* The Court identified four “considerations” supporting its conclusion: Perich’s (1) “formal title,” (2) “the substance reflected in that title,” (3) her “use of th[e] title,” and (4) “the important religious functions she performed.” *Id.* at 192. These considerations were enough to achieve the ministerial exception’s core purpose: protecting “religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.” *Id.* at 196. The Court left other questions for another day, holding that “[t]here will be time enough to address the applicability of the exception to other circumstances if and when they arise.” *Ibid.*

Justice Thomas concurred, cautioning against misbegotten “[j]udicial attempts to fashion a civil definition of ‘minister’” through a “bright-line test or multi-factor analysis” that would be insensitive to our nation’s robust “religious landscape.” *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring). Likewise, and in light of that religious diversity, Justices Alito and Kagan warned that “the important issue of religious autonomy” would be harmed if courts made the “mistake” of focusing on such religiously variable factors as an employee’s title. *Id.* at 198 (Alito, J., concurring). Rather, the Justices emphasized that the Court’s unanimous decision was consistent with the pre-existing “functional consensus” in the lower courts that the focus of ministerial exception analysis should be “on the function performed by persons who work for religious bodies.” *Id.* at 198, 203. And under that consensus, “religious authorities must be free to determine who is qualified to serve in positions of substan-

tial religious importance,” such as “those who are entrusted with teaching and conveying the tenets of the faith.” *Id.* at 200.

C. After *Hosanna-Tabor* and before *Biel*, the lower courts consistently focused on function to determine ministerial status.

After *Hosanna-Tabor* was decided, the Second, Third, Fifth, and Sixth Circuits, along with Massachusetts and Kentucky, continued to follow the “functional consensus” identified by Justices Alito and Kagan.

The Fifth Circuit decided the first post-*Hosanna-Tabor* ministerial exception appeal. In *Cannata v. Catholic Diocese of Austin*, Judge Dennis, joined by Judges Davis and Haynes, explained that “[a]pplication of the exception * * * does not depend on a finding that [the employee] satisfies the same considerations that motivated the [Supreme] Court to find that Perich was a minister.” 700 F.3d 169, 177 (5th Cir. 2012). Rather, it was “enough” to conclude that an employee “played an integral role” in worship services and thereby “furthered the mission of the church and helped convey its message.” *Ibid.* That is, the employee was a minister “because [he] performed an important *function* during the service.” *Id.* at 180 (emphasis added).

The Second Circuit took the same tack. In *Fratello v. Archdiocese of New York*, Judge Sack, joined by Judges Lohier and Woods, explained that “‘courts should focus’ primarily ‘on the *function*[s] performed by persons who work for religious bodies.’” 863 F.3d at 205 (quoting *Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., concurring)) (emphasis added). The court stressed

that this kind of objective approach was necessary to avoid judicial entanglement in deciding religious questions:

Judges are not well positioned to determine whether ministerial employment decisions rest on practical and secular considerations or fundamentally different ones that may lead to results that, though perhaps difficult for a person not intimately familiar with the religion to understand, are perfectly sensible—and perhaps even necessary—in the eyes of the faithful. In the Abrahamic religious traditions, for instance, a stammering Moses was chosen to lead the people, and a scrawny David to slay a giant.

Id. at 203.

In *Lee v. Sixth Mount Zion Baptist Church*, the Third Circuit likewise focused on functions, with Judges Shwartz, Rendell, and Roth confirming that “the ministerial exception ‘applies to any claim, the resolution of which would limit a religious institution’s right to choose who will perform particular spiritual functions.’” 903 F.3d 113, 122 n.7 (3d Cir. 2018) (quoting *Petruska*, 462 F.3d at 299) (emphasis added).

And Judge Batchelder explained for the Sixth Circuit that “the ministerial exception *clearly* applies” where (a) the religious group “identifies an individual as a minister” in “good-faith”—which the court understood as the basic equivalent of the “title” consideration—and (b) the individual engages in important religious functions. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 835 (6th Cir. 2015) (emphasis added). Given the presence of both a good-faith ministerial designation and “important religious functions,”

Conlon found that it did not need to reach the question of whether function alone would demonstrate ministerial status. *Ibid.*

State supreme courts applying *Hosanna-Tabor* also joined the “functional consensus.” The Massachusetts Supreme Judicial Court was first, confirming that function alone can suffice to prove ministerial status in certain cases. *Temple Emanuel of Newton v. Massachusetts Comm’n Against Discrimination*, 975 N.E.2d 433, 443 (Mass. 2012). In that case, “[a]ll that [wa]s plain from the record [wa]s that [the plaintiff] taught religious subjects at a school that functioned solely as a religious school[.]” *Id.* at 486. The court said there was no evidence with respect to the other three *Hosanna-Tabor* considerations, but nevertheless held that the ministerial exception barred the plaintiff’s claim. *Ibid.*

The Kentucky Supreme Court later agreed that in considering the totality of the circumstances, courts should give “more” focus to the “actual acts or functions conducted by the employee,” and avoid the “danger of hyper-focusing” on considerations such as title. *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 613 & n.61 (Ky. 2014).

D. The Ninth Circuit rejected the functional consensus, first in *Biel* and then in *Morrissey-Berru*.

This chorus of agreement among the lower courts was brought to a screeching halt by the two-judge majority in *Biel v. St. James School*. *Biel* was an appeal by another fifth-grade teacher, represented by the same counsel, against another Archdiocese of Los Angeles elementary school. See 911 F.3d at 605. The

panel majority held that Biel’s religious duties were insufficient alone to invoke the ministerial exception, and that the exception was ordinarily applied to those with “religious leadership” roles while “Biel’s role in Catholic religious education” was “limited to teaching religion from a book.” *Id.* at 609-610. The panel majority also parted ways with *Grussgott*. *Grussgott*, like *Hosanna-Tabor*, found that an elementary-level teacher who taught religion was a minister. 882 F.3d at 656. The *Biel* majority expressly questioned the validity of the Seventh Circuit’s unanimous panel decision before trying to distinguish it based on some specific training that *Grussgott* had received. 911 F.3d at 609. Judge D. Michael Fisher, sitting by designation, dissented, opining that “Biel’s duties as the fifth grade teacher and religion teacher are strikingly similar to those in *Hosanna-Tabor*,” and that “this case is not distinguishable from *Grussgott*[.]” 911 F.3d at 617-618 (Fisher, J., dissenting).

Five months later, while a petition for en banc review of *Biel* was still pending, the Ninth Circuit applied *Biel* here. The court reversed the district court’s grant of summary judgment to Our Lady, finding it legally insufficient that Morrissey-Berru had “significant religious responsibilities as a teacher at the School.” App. 3a. The court squarely acknowledged that Morrissey Berru:

committed to incorporate Catholic values and teachings into her curriculum, as evinced by several of the employment agreements she signed, led her students in daily prayer, was in charge of liturgy planning for a monthly Mass, and directed and produced a performance by

her students during the School’s Easter celebration every year.

App. 3a (noting further that she had taken a “course on the history of the Catholic church”). But all of that was legally inadequate, the court explained, because the Ninth Circuit rule provides that “an employee’s duties are not dispositive under *Hosanna-Tabor*’s framework.” App. 3a.

Two months after the ruling in this appeal, nine judges dissented from denial of rehearing en banc in *Biel*. They explained that review was urgently necessary because the Ninth Circuit’s new rule not only “conflicts with *Hosanna-Tabor*, decisions from our court and sister courts, decisions from state supreme courts, and First Amendment principles,” but it also “poses grave consequences for religious minorities * * * whose practices don’t perfectly resemble the Lutheran tradition at issue in *Hosanna-Tabor*.” *Biel*, 926 F.3d at 1239-1240 (R. Nelson, J., dissenting). They explained that the rule conflicts with *Hosanna-Tabor* because it puts this Court’s flexible analysis into a “resemblance-to-Perich” straitjacket that “[i]gnor[es] the warnings of Justices Alito and Kagan (and Justice Thomas)” against making matters that “relate to [an employee’s] title” dispositive. *Id.* at 1243, 1245. Similarly, the rule “diverged from the function-focused approach taken by our court previously, our sister courts, and numerous state supreme courts,” instead “embrac[ing] the narrowest reading of the ministerial exception.” *Id.* at 1244; see also *id.* at 1249 (noting that other Circuits “pay closer attention to function, particularly in religious educational settings,” and citing to *Grussgott*, *Fratello*, and *Conlon*).

The dissenting judges warned that the panel’s narrow interpretation “threatens the autonomy of minority groups” that do not use Lutheran-sounding titles but for whom religious education is a “critical means of propagating the faith, instructing the rising generation, and instilling a sense of religious identity.” 926 F.3d at 1240 (quoting religious minorities’ amicus brief). “Indeed,” the dissenting judges explained, “requiring a religious group to adopt a formal title or hold out its ministers in a specific way” is blatantly unfaithful to First Amendment values: it “inherently violates the Establishment Clause” and “is the very encroachment into religious autonomy the Free Exercise Clause prohibits.” *Id.* at 1245.

A California appellate court recently adopted *Biel*’s reasoning in *Su v. Stephen Wise Temple*, 32 Cal. App. 5th 1159 (2019), rehearing denied, Apr. 2, 2019, review denied, June 19, 2019. There, the court acknowledged that the Temple’s preschool teachers “play an important role in the life of the Temple” and “in transmitting Jewish religion and practice to the next generation,” because they are “responsible for implementing the school’s Judaic curriculum by teaching Jewish rituals, values, and holidays, leading children in prayers, celebrating Jewish holidays, and participating in weekly Shabbat services.” *Id.* at 1168. But, tracking the Ninth Circuit’s new rule, the court denied the ministerial exception to the Temple because the clear

showing of religious function failed absent proof of religious title or training. *Ibid.*¹

E. The Seventh Circuit has recognized the split with the Ninth Circuit.

In *Sterlinski v. Catholic Bishop of Chicago*, the Seventh Circuit reaffirmed the functional consensus, sharply rejected the Ninth Circuit’s new rule, and recognized the extant split of authority. See 2019 WL 3729495, at *2. Writing for a unanimous panel, Judge Easterbrook explained that the Ninth Circuit’s approach “asks how much like Perich a given plaintiff is, rather than whether the employee served a religious function.” *Id.* at *2; see also *Biel*, 926 F.3d at 1243 (R. Nelson, J., dissenting) (new Ninth Circuit standard is a “resemblance-to-Perich test”). Judge Easterbrook noted that the dissenting judges in *Biel* “disagreed with that approach—as do we.” *Sterlinski*, 2019 WL 3729495, at *2. Instead, the Seventh Circuit had already “adopted a different approach” in *Grussgott*, and “[m]any judges, not just our panel in *Grussgott* (and the nine dissenters in *Biel*)” rejected a Perich-comparison analysis in favor of maintaining the focus on religious functions. *Ibid.* (citing *Fratello* and *Cannata* as supporting examples).

Sterlinski identifies that last point as the place where the Ninth Circuit parts ways from all others. Keeping the focus on whether an “employee served a religious function” advances the “two goals” of the

¹ The California Court of Appeal is holding the appeal in abeyance while the Temple prepares to seek certiorari. Order, *Su v. Stephen Wise Temple*, No. B275246 (Cal. Ct. App., 2d Dist. June 25, 2019) (recalling and staying remittitur pending the filing and disposition of petition for certiorari).

ministerial exception: protecting “a religious body’s ‘right to shape its own faith and mission through its appointments,’” and prohibiting “government involvement in such ecclesiastical decisions.” *Ibid.* (quoting *Hosanna-Tabor*, 565 U.S. at 188-189). And where religious functions are fairly shown, civil judges cannot turn to other considerations in an effort to second-guess how “vital” the functions are “to advance [the] faith.” *Ibid.* It was “precisely to avoid such judicial entanglement in, and second-guessing of, religious matters that the Justices established the rule of *Hosanna-Tabor*.” *Ibid.* (also noting that the Ninth Circuit’s rule impermissibly “embraced” requiring “independent judicial resolution of ecclesiastical issues”).

F. Only this Court can resolve the split.

As *Sterlinski* and the *Biel* dissenters recognize, the Ninth Circuit’s rigid formula is at war with the more sensitive approach of this Court and every other Circuit and state supreme court to decide the issue. Thumbing its nose at the functional consensus, the Ninth Circuit’s approach flatly finds that it is *never* enough to show an employee carried out core religious functions such as “teaching and conveying the tenets of the faith to the next generation.” *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring). Rather, at least one of the other three specific *Hosanna-Tabor* considerations must obtain. That strict “function-plus-one” test is inconsistent both with this Court’s explicit refusal to adopt a “rigid formula” and with its command that the purpose of the exception is to serve “the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.” *Id.* at 190, 196. As the Second Circuit explained, “*Hosanna-Tabor* instructs only as to what we *might*

take into account as relevant, including the four considerations on which it relied; it neither limits the inquiry to those considerations nor requires their application in every case.” *Fratello*, 863 F.3d at 204-205.

* * *

Tallying the precedents puts the Ninth Circuit and the California Court of Appeal at odds with seven other Circuits and seven state supreme courts over the importance of function to ministerial exception analysis. Given the failed en banc vote in *Biel*, there is no prospect that the split on this important First Amendment issue will be resolved without this Court’s intervention.

II. The scope of the ministerial exception is a vital and recurring question of nationwide importance for thousands of religious organizations and individuals.

Review is especially warranted because of the sweeping practical significance and nationwide importance of the First Amendment question presented. That question is not only frequently recurring and vital to the daily operations of religious organizations, but getting it right is crucial in protecting church-state relations.

1. One reason the issue is of nationwide importance is its frequency of occurrence. Conflicts over the scope of the ministerial exception arise regularly in the lower courts. As shown above, lower appellate courts have repeatedly had occasion to apply the ministerial exception since this Court’s 2012 decision in *Hosanna-Tabor*. If anything, the number of conflicts is increas-

ing: in 2018, for the first time since at least 2011, litigation over clergy firings became one of the top five annual reasons that houses of worship end up in court.²

One reason for this increase may be that this Court left many of the exact contours of the ministerial exception for a later day. See *Hosanna-Tabor*, 565 U.S. at 196. Lower courts have sometimes found this “limited direction” difficult, noting that *Hosanna-Tabor* “is not without its Delphic qualities.” *Fratello*, 863 F.3d at 204-205; see also J. Gregory Grisham and Daniel Blomberg, *The Ministerial Exception After Hosanna-Tabor: Firmly Founded, Increasingly Refined*, 20 *Federalist Soc’y Rev.* 80, 84 (2019) (survey of post-*Hosanna-Tabor* rulings finding that “courts have sometimes struggled analytically to determine what to do with the Supreme Court’s four ‘considerations’ for determining ministerial status”). But, until the Ninth Circuit’s detour, that confusion has not resulted in a deep and acknowledged split requiring review.

2. Another reason that the scope of the ministerial exception is of nationwide importance is the sheer number and variety of religious groups that are affected. A robust ministerial exception is a crucial protection for religious organizations of all sorts.

² Compare *The Top 5 Reasons Churches Went to Court in 2018*, Church Law & Tax Report (July 31, 2019) (showing the top five reasons from 2014 to 2018, listing “clergy removal” as in the top five for 2018), with *The Top 5 Reasons Churches went to Court in 2015*, Church Law & Tax Report (November/December 2016) (showing top five reasons from 2011 to 2015, none of which included clergy removal).

For example, the ministerial exception protects religious groups of many different faith traditions. See, e.g., *Hosanna-Tabor* (Lutheran); *Grussgott* (pluralistic Jewish); *Conlon* (non-denominational Protestant); *Temple Emanuel* (Conservative Jewish); *Fratello* (Catholic); *El-Farra v. Sayyed*, 226 S.W.3d 792, 795-796 (Ark. 2006) (Muslim); *Sixth Mount Zion* (Missionary Baptist); *Kirby* (Disciples of Christ); *Su* (Reform Jewish); *Rayburn* (Seventh-day Adventist); *Alicea* (Reformed Christian); *Puri v. Khalsa*, 844 F.3d 1152 (9th Cir. 2017) (Sikh).

And it protects many different kinds of religious employers beyond houses of worship. See, e.g., *Yin v. Columbia Int’l Univ.*, 335 F. Supp. 3d 803 (D.S.C. 2018) (religious university); *Shaliehsabou v. Hebrew Home of Greater Washington, Inc.*, 363 F.3d 299 (4th Cir. 2004) (nursing home); *Penn v. New York Methodist Hospital*, 884 F.3d 416 (2d Cir.), *cert. denied*, 139 S. Ct. 424 (2018) (hospital); *Grussgott* (day school); *Conlon* (campus student organization). As a heuristic for the large number of institutions affected, over three-quarters of the nation’s PK-12 students attending private schools do so at religiously-affiliated institutions, meaning one in thirteen American schoolchildren attends a religious school. See Council for American Private Education, *FAQs About Private Schools*, “Schools and Students,” <https://perma.cc/PG5M-TV7K>.

The need to resolve the conflict is particularly pressing for the large number of religious organizations and schools—not to mention parents and schoolchildren—within the Ninth Circuit. As a result of the Ninth Circuit’s rule, and its subsequent adoption in *Su*, “thousands” of Catholic, Jewish, and other reli-

gious schools in the Ninth Circuit “now have less control over employing [their] elementary school teachers of religion than in any other area of the country” and “less religious freedom than their Lutheran counterparts nationally.” *Biel*, 926 F.3d at 1251 (R. Nelson, J., dissenting).

3. A third reason that the question presented is of nationwide importance is that properly calibrating the scope of the ministerial exception is vital to sensitive church-state relations. Courts have long warned that ministerial exception cases must be handled in a way that avoids “entanglement [that] might * * * result from a protracted legal process pitting church and state as adversaries.” *Rayburn*, 772 F.2d at 1171. But as *Sterlinski* and the nine *Biel* dissenters explained, the Ninth Circuit’s approach inevitably leads to “judicial resolution of ecclesiastical issues” that “subject[s] religious doctrine to discovery and, if necessary, jury trial.” *Sterlinski*, 2019 WL 3729495, at *2; see also *Biel*, 926 F.3d at 1239 (R. Nelson, J., dissenting). Even “the mere adjudication of such questions would pose grave problems for religious autonomy.” *Hosanna-Tabor*, 565 U.S. at 205-206 (Alito, J., concurring). “It is not only the conclusions that may be reached by the [government agency] which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry.” *NLRB v. Catholic Bishop*, 440 U.S. 490, 502 (1979). Thus, this Court has long forbidden that sort of second-guessing: “church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment.” *New York v. Cathedral Academy*, 434 U.S. 125, 133 (1977).

The Ninth Circuit's rule will also have perverse effects. It will interfere in religious governance by pressuring religious groups, "with an eye to avoiding litigation or bureaucratic entanglement rather than upon their own * * * doctrinal assessments," to slap religious-sounding (or at least religious-sounding to a court) titles onto positions that already include important religious functions. *Rayburn*, 772 F.2d at 1171; see also *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987) ("[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious."). It would also "in effect penalize religious groups for allowing laypersons to participate in their ministries" and thus incentivize "bar[ring] laity from substantial 'roles in conveying the [group's] message and carrying out its mission.'" *Fratello*, 863 F.3d at 207 (quoting *Hosanna-Tabor*, 565 U.S. at 192).

Finally, left uncorrected, the Ninth Circuit's rule will impermissibly discriminate among religions. It will particularly discriminate against religious minority groups that do not use titles such as "minister" and thus would always be at a disadvantage. See *Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., concurring). Similarly, it will enable religious discrimination by allowing some titles to be deemed religious ("rabbi") and others secular ("teacher"), based on common secular understandings rather than religious ones. *Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another"); see also *Biel*, 926 F.3d at 1245 (R. Nelson,

J., dissenting) (“a demand for ecclesiastical titles inherently violates the Establishment Clause”). Indeed, in *Biel*, the plaintiff argued that the title of “teacher” in a *Catholic* school was nonreligious, but that “if Biel’s position was in the Mormon faith,” then “the title of ‘teacher’” would have judicially cognizable “religious significance.” See Appellant’s Reply Brief, *Biel v. St. James School*, 926 F.3d 1238 (9th Cir. 2019) (No. 17-55180) at 12 & n.2.

* * *

The ministerial exception is a fundamental part of the architecture of church-state relations in this country. The Ninth Circuit’s aberrant rulings have severely weakened this critical constitutional protection across a wide swath of the nation, while creating a deep and acknowledged split of authority that can be resolved only by this Court.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

JOHN J. MANIER
LINDA MILLER SAVITT
STEPHANIE KANTOR
BALLARD ROSENBERG
GOLPER & SAVITT, LLP
15760 Ventura Blvd.
18th Floor
Encino, CA 91436

MARGARET G. GRAF
ROMAN CATHOLIC
ARCHDIOCESE OF
LOS ANGELES
3424 Wilshire Blvd.
Los Angeles, CA 90010

ERIC C. RASSBACH
Counsel of Record
DANIEL H. BLOMBERG
DIANA M. VERM
ADÈLE AUXIER KEIM
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1200 New Hampshire
Ave. NW, Suite 700
Washington, D.C. 20036
(202) 955-0095
erassbach@becketlaw.org

Counsel for Petitioner

AUGUST 2019

APPENDIX

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AGNES DEIRDRE MORRISSEY-BERRU, an individual, Plaintiff-Appellant, v. OUR LADY OF GUADALUPE SCHOOL, a California non-profit corporation, Defendant-Appellee.	No. 17-56624 D.C. No. 2:16-cv-09353-SVW- AFM MEMORANDUM ¹
---	--

Appeal from the United States District Court
for the Central District of California

Stephen V. Wilson, District Judge, Presiding

Argued and Submitted April 11, 2019
Pasadena, California

Before: RAWLINSON and MURGUIA, Circuit Judges,
and GILSTRAP,^{**} District Judge.

Agnes Deirdre Morrissey-Berru brought a claim under the Age Discrimination in Employment Act (“ADEA”) against her former employer, Our Lady of Guadalupe School (the “School”). The only issue reached by this Court is whether the district court

¹ This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

^{**} The Honorable James Rodney Gilstrap, United States District Judge for the Eastern District of Texas, sitting by designation.

properly granted summary judgment in favor of the School on the basis that Morrissey-Berru was a “minister” for purposes of the ministerial exception. We have jurisdiction under 28 U.S.C. § 1291, and we reverse.¹

This Court reviews a grant of summary judgment *de novo* and views the evidence in the light most favorable to the non-moving party. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004).

In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the Supreme Court recognized the ministerial exception for the first time, 565 U.S. 171, 188 (2012), and considered the following four factors in analyzing whether the exception applied: (1) whether the employer held the employee out as a minister by bestowing a formal religious title; (2) whether the employee’s title reflected ministerial substance and training; (3) whether the employee held herself out as a minister; and (4) whether the employee’s job duties included “important religious functions,” *id.* at 191-92. *Hosanna* expressly declined to adopt “a rigid formula for deciding when an employee qualifies as a minister,” and instead considered “all the circumstances of [the employee’s] employment.” *Id.* at 190.

Considering the totality of the circumstances in this case, we conclude that the district court erred in concluding that Morrissey-Berru was a “minister” for purposes of the ministerial exception. Unlike the employee in *Hosanna-Tabor*, Morrissey-Berru’s formal title of “Teacher” was secular. Aside from

¹ We assume the parties’ familiarity with the facts and procedural history of this case.

taking a single course on the history of the Catholic church, Morrissey-Berru did not have any religious credential, training, or ministerial background. Morrissey-Berru also did not hold herself out to the public as a religious leader or minister.

Morrissey-Berru did have significant religious responsibilities as a teacher at the School. She committed to incorporate Catholic values and teachings into her curriculum, as evidenced by several of the employment agreements she signed, led her students in daily prayer, was in charge of liturgy planning for a monthly Mass, and directed and produced a performance by her students during the School's Easter celebration every year. However, an employee's duties alone are not dispositive under *Hosanna-Tabor's* framework. *See Biel v. St. James Sch.*, 911 F.3d 603, 609 (9th Cir. 2018). Therefore, on balance, we conclude that the ministerial exception does not bar Morrissey-Berru's ADEA claim.² *See id.* at 608-11 (holding that the ministerial exception did not apply under similar circumstances).

REVERSED.

² As the district court indicated, Morrissey-Berru's ADEA claim, based on her demotion, appears to be time barred. However, we leave it to the district court to resolve this issue in the first instance on remand.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:16-cv-09353-SVW-AFM

Date: September 27, 2017

Title: *Agnes Deirdre Morrissey-Berru v. Our Lady of
Guadalupe School*

Present: The Honorable Stephen V. Wilson,
U.S. District Judge

Deputy Clerk: Paul M. Cruz

Court Reporter/Recorder: N/A

Attorneys Present for Plaintiffs: N/A

Attorneys Present for Defendants: N/A

Proceedings: IN CHAMBERS ORDER GRANTING
SUMMARY JUDGMENT [27]

Plaintiff Agnes Deirdre Morrissey-Berru filed the Complaint on December 19, 2016. Defendant Our Lady of Guadalupe School (“Guadalupe”) filed a motion for summary judgment on August 18, 2017. Plaintiff filed an opposition to the motion on August 28, 2017. For the following reasons, the motion for summary judgment is GRANTED. The prevailing shall submit a proposed judgment consistent with this order. All previously set dates are vacated.

I. Factual Background

This is an employment lawsuit, brought pursuant to 29 U.S.C. § 621 et. seq. to remedy alleged violations of the Age Discrimination in Employment Act (“ADEA”). Plaintiff alleges that she was moved from a full-time contract to a part-time contract because of her age.

Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles. Declaration of April Beuder (“Beuder Decl.”) ¶3. In 1998, Morrissey-Berru began working at Our Lady of Guadalupe as a substitute teacher. Deposition of Agnes Morrissey-Berru 19:4-19:10.) When she began working for the school, Morrissey-Berru was forty-seven years old. (Deposition of Agnes Morrissey-Berru 12:19-12:20; 19:4-19:10). She began as a full-time 6th grade teacher in the fall of 1999. She taught 6th grade for 10 years, after which she switched to teaching 5th grade. The intervening period is unimportant for the purposes of the instant motion. The next significant event occurred in 2014. Plaintiff signed the part-time contract for the 2014-2015 school year on May 19, 2014. (Dkt. 38 at 2).

II. Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and material facts are those “that might affect the outcome of the suit under the

governing law.” *Id.* at 248. However, no genuine issue of fact exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. Discussion

A. *Plaintiff’s Claim Is Barred by the Ministerial Exception*¹

The ministerial exception is an exception to Title VII of the Civil Rights Act, and its supplemental legislation, the ADEA. The exception is “grounded in the First Amendment,” and “precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers.” *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, 704 (2012); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169 (5th Cir. 2012) (ministerial exception bars claims under the ADEA). The ministerial exception is “intended to protect the relationship between a religious organization and its clergy from constitutionally impermissible interference by the government.” *Werft v. Desert Sw. Annual Conf. of United Methodist Church*, 377 F.3d 1099, 1101 (9th

¹ The Court notes that part of Plaintiff’s claim may also be time barred. Here, the presentation of the part-time contract is the alleged discriminatory act. Although the effects would not become “most painful” until Plaintiff actually started drawing her reduced salary, she was clearly notified of the consequences when she signed the contract in May of 2014. Plaintiff alleges that “at the time” she signed the contract in May 2014, she was asked if she wanted to retire (Plaintiffs Undisputed Material Facts “PUMF” 113), and believed she was being replaced by an individual “who was in his 30’s”. (PUMF 117).

Cir. 2004); *Bollard v. Cal. Province of the Soc'y of Jesus*, 196 F.3d 940, 945-94 (9th Cir. 1999)

Our Lady of Guadalupe School is clearly a religious institution, and Plaintiff does not seriously contest this fact in its pleadings. Instead, the main question here is if Plaintiff qualifies as a “minister” for purposes of the exception. “[N]either the Supreme Court nor [the Ninth Circuit] has ever expressly limited the ministerial exception to particular types of positions, and both courts have expressly declined to adopt any bright line rule defining the scope of the exception.” *Puri v. Khalsa*, 844 F.3d 1152, 1159 (9th Cir. 2017). Indeed, there is no “particular test for determining whether a particular church employee ... should be considered a ‘minister’ for First Amendment purposes.” *Id.* (internal quotations and citations omitted).

That being said, the Supreme Court has offered some guidance on how to make this determination. First, Courts should consider the formal ordainment and title at issue. *Hosanna-Tabor*, 132 S. Ct. at 707. Here, Plaintiff does not have an official religious title, so this factor does not weigh in favor of a finding that the ministerial exception applies. Despite this, “an employee whose job duties reflect [] a role in conveying the Church’s message and carrying out its mission is likely to be covered by the exception, even if the employee devotes only a small portion of the workday to strictly religious duties and spends the balance of her time performing secular functions.” *Puri*, 844 F.3d at 1160 (internal quotations omitted) (alterations in original). Plaintiff has expressly admitted that her job duties involved conveying the Church’s message.

Here, it is clear that every factor cuts in favor of the ministerial exception applying, except for Plaintiff's lack of formal membership in the Catholic clergy. The faculty and staff of Our Lady of Guadalupe School "are committed to faith-based education, providing a quality Catholic education for the students and striving to create a spiritually enriched learning environment, grounded in Catholic social teachings, values, and traditions." (PUMF 4). Plaintiff does not seriously dispute this, contending only that Plaintiff did not feel formally "called" to the ministry. This is irrelevant. The Court must consider Plaintiff's actual duties, not whether she personally felt called to the ministry. In fact, the Second Circuit recently held that employees of Catholic schools who are not formally ordained members of the clergy can be covered by the exception. *See Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017).

Plaintiff clearly sought to carry out the School's mission by, for example, integrating Catholic values and teachings into all of her lessons, leading the students in religious plays, and attending regular catechist certifications. She also taught her students the tenets of the Catholic religion, how to pray, and instructed them on a host of other religious topics. Plaintiff also administered the yearly assessment of the children religious education test. (UF 10-28). While she also had secular duties, that does not place her outside the scope of the ministerial exception. Accordingly, Plaintiff is covered by the ministerial exception.²

² It is undisputed that Plaintiff continued to engage in religion-related activities even during her part-time status. The analysis

IV. Conclusion

Defendant's motion for summary judgment is
GRANTED.

IT IS SO ORDERED.

Initials of Preparer: PMC

therefore does not meaningfully differ between her part-time role
and her full-time role.

29 U.S.C. § 623 provides:

§ 623. Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

* * *

29 U.S.C. § 631 provides:

§ 631. Age limits

(a) Individuals at least 40 years of age

The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.

* * *

**EXCERPTS FROM
DEFENDANT'S REPLY TO PLAINTIFF'S
STATEMENT OF CONTROVERTED AND
UNCONTROVERTED MATERIAL FACTS AND
CONCLUSIONS OF LAW RE: MOTION OF
DEFENDANT FOR SUMMARY JUDGMENT,
ECF NO. 44**

[ER 57]

LINDA MILLER SAVITT, SBN 94164
lsavitt@brgslaw.com
STEPHANIE KANTOR, SBN 272421
skantor@brgslaw.com
BALLARD ROSENBERG GOLPER & SAVITT, LLP
15760 Ventura Boulevard, Eighteenth Floor
Encino, CA 91436
Telephone: (818) 508-3700
Facsimile: (818) 506-4827

Attorneys for Defendant
OUR LADY OF GUADALUPE SCHOOL

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AGNES DEIRDRE
MORRISSEY-BERRU,
an individual

Plaintiff,

CASE NO. 2:16-CV-
09353-SVW-AFM

vs.

OUR LADY OF GUA-
DALUPE SCHOOL, a
California non-profit

CASE NO. 2:16-CV-
09353-SVW-AFM

[Assigned to Hon
Stephen V. Wilson]

DEFENDANT'S RE-
PLY TO PLAINTIFF'S
STATEMENT OF
CONTROVERTED
AND UNCONTRO-
VERTED MATERIAL

corporation and DOES
1 through 50, inclusive
Defendants.

FACTS AND CON-
CLUSIONS OF LAW
RE: MOTION OF DE-
FENDANT FOR SUM-
MARY JUDGMENT

[Fed. R. Civ. P. 56]

Date: September 18,
2017

Time: 1:30 p.m.

Ctrm: 10A

(Filed concurrently
with Objections to
Plaintiffs Evidence;
Kantor Reply Declara-
tion; Reply MPA; Reply
Statement of Uncontro-
verted Facts)

Action Filed:
December 19, 2016

* * *

[ER 58]

I. Statement of Uncontroverted Facts

Defendant's Uncontroverted Facts

1. Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles.

Supporting Evidence:

Plaintiff Deirdre Morrissey-Berru Deposition Transcript "Plaintiff Depo." 27:10-16; Declaration of April Beuder "Beuder Decl." ¶3; Declaration of Sister Mary

Elizabeth Galt “Galt Decl.” ¶1-5; Exh. [ER 59] 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us; Exh. 26 -Catholic School Communities Faith Formation guidelines from the Los Angeles Archdioceses Administrative Handbook

Plaintiff’s Response and Supporting Evidence
UNCONTROVERTED

2. Our Lady of Guadalupe School is a non-profit religious entity.

Supporting Evidence:

Beuder Decl. ¶3; Galt Decl. ¶1-5; Plaintiff Depo. 27:10-19; Exh. 27 - IRS letters recognizing non-profit, tax exempt status of Our Lady of Guadalupe parish and school; Exh. 28 - State of California Franchise Tax Board Entity Status Letter; Exh. 29 - Certificates of Amendment of Articles of Incorporation of Archdiocese of Los Angeles Education & Welfare Corporation; Exh. 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us; Exh. 26 - Catholic School Communities Faith Formation guidelines from the Los Angeles Archdioceses Administrative Handbook

Plaintiff’s Response and Supporting Evidence
UNCONTROVERTED

[ER 59-60]

3. Our Lady of Guadalupe School was established to serve the educational needs of the children of the Our Lady of Guadalupe parish.

Supporting Evidence:

Beuder Decl. ¶3; Galt Decl. ¶1-5; Plaintiff Depo. 27:10-16; Exh. 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us

Plaintiff's Response and Supporting Evidence
CONTROVERTED

In practice, the school does not limit its enrollment to children of the Our Lady of Guadalupe parish. In fact, the current principal testified that students are not required to be Catholic in order to attend the school. [Deposition of April Beuder, Volume I, 50:9-50:17; 71:17-71:19]

[DEFENDANT'S] REPLY: Plaintiff raises no genuine, material dispute. Her assertions are non-responsive to this fact, as they do not pertain to why the School was established. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

4. The pastor is the ex-officio chief administrative officer of the school who carries out the policies of the Archdiocesan Advisory Board.

Supporting Evidence:

Beuder Decl. ¶3; Beuder Depo. 26:24-28:11, 29:5-8, 100:6-8; Exh. 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us; Exh. 26 - Catholic School Communities Faith Formation guidelines from the Los Angeles Archdioceses Administrative Handbook

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

[ER 64-65]

10. Plaintiff understood that the mission of the School is to provide its students with a Catholic education, including instructing them in the tenets of the faith and instilling in them Catholic values. Plaintiff felt that her duties and responsibilities as a teacher should be performed within the overriding commitment of this school mission.

Supporting Evidence:

Plaintiff Depo. 26:8-27:7, 28:1-3, 40:18-41:13; Beuder Decl. ¶1;4-5, 8-17; Beuder Depo. 53:24-54:9; Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 -2013-2014 Employment Agreement (OLG 008-0012)

Plaintiff's Response and Supporting Evidence
CONTROVERTED

Even though the mission of the School is to provide its students with a Catholic education, Morrissey-Berru testified that at no time did she believe[] her employment at Our Lady of Guadalupe was “called” or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her into the ministry.

Declaration of Agnes Morrissey-Berru ¶8

[DEFENDANT'S] REPLY: Plaintiff raises no genuine, material dispute. Instead she concedes that “the mission of the School is to provide its students with a Catholic education.” She does not address, let alone

deny, that the mission of the school included “instructing [students] in the tenets of the faith and instilling in them Catholic values,” and that “Plaintiff felt that her duties and responsibilities as a teacher should be performed within the overriding commitment of this school mission.” Plaintiff’s purported dispute presents only argumentative, irrelevant surplusage which is non-responsive to the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

* * *

[ER 67]

13. Plaintiff taught a daily religion class every year at the School.

Supporting Evidence:

Plaintiff Depo. 20:7-14, 36: 18-20; Beuder Decl. ¶8

Plaintiff’s Response and Supporting Evidence
UNCONTROVERTED

* * *

[ER 68-76]

15. Plaintiff was responsible for introducing her students to Catholicism and giving students a groundwork for their religious doctrine.

Supporting Evidence:

Plaintiff Depo. 40: 12-17; Beuder Depo. 53:24-54:9; Beuder Decl. ¶8

Plaintiff’s Response and Supporting Evidence
CONTROVERTED

Even though Morrissey-Berru admitted that she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine, Morrissey-Berru testified that at no time did she believe[] her employment at Our Lady of Guadalupe was “called” or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her into the ministry.

Declaration of Agnes Morrissey-Berru ¶8

[DEFENDANT’S] REPLY: Plaintiff raises no genuine, material dispute. Instead she concedes that “Morrissey-Berru admitted that she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine.” Plaintiff’s purported dispute presents only argumentative, irrelevant surplusage which is non-responsive to the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

16. As part of Plaintiffs instruction, students were expected to learn and express the belief that Jesus is the son of God the Word made flesh.

Supporting Evidence:

Plaintiff Depo. 38:12-16; Exh. 6 - Blest are We (OLG 0577-0596); Beuder Decl. ¶15

Plaintiff’s Response and Supporting Evidence
CONTROVERTED

The instruction the students received and from Plaintiff was taken from a **textbook** entitled “Blest Are We” which provided guided teachings.

Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5

[DEFENDANT’S] REPLY: Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a teaching guide, Plaintiff used a Catholic textbook, entitled “Blest are We.” Plaintiff does not address, let alone dispute that as part of her instruction, students were expected to learn and express the belief that Jesus is the son of God and the word made flesh. (Plaintiff Depo. 38:12-16 [Q. “So would you say as part of your teaching, students were expected to learn and express believe[sic] that Jesus is the son of God and the Word made flesh? A. Yes.”].) Plaintiff’s purported dispute presents only irrelevant surplusage, which is non-responsive to the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

17. The lessons Plaintiff was responsible for teaching students included lessons on Creation, The Seven Sacraments, Sacramentals, Baptism, Confirmation, The Eucharist, Reconciliation, Holy Orders and Matrimony.

Supporting Evidence:

Plaintiff Depo. 36: 18-38:10; Beuder Decl. ¶16; Exh. 6 - Blest are We (OLG 0577-0596)

Plaintiff’s Response and Supporting Evidence
CONTROVERTED

The instruction the students received from Plaintiff was taken from a **textbook** entitled “Blest Are We” which provided guided teachings.

Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5

[DEFENDANT’S] REPLY: Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a teaching guide, Plaintiff used a Catholic textbook, entitled “Blest are We.” Plaintiff does not address, let alone dispute that the lessons Plaintiff was responsible for teaching students included lessons on Creation, The Seven Sacraments, Sacramentals, Baptism, Confirmation, The Eucharist, Reconciliation, Holy Orders and Matrimony. (Plaintiff Depo. 38:6-10 [“Creation, The Seven Sacraments, Sacramentals, Baptism, Confirmation, The Eucharist, Reconciliation, Holy Orders and Matrimony.”].) Plaintiff’s purported dispute presents only irrelevant surplusage which is non-responsive to the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

18. Plaintiff would teach students to be able to identify the ways that the church carries on the mission of Jesus, understand the communion of saints, recognize the presence of Christ in the Eucharist, locate and understand stories from the Bible, and understand original sin.

Supporting Evidence:

Plaintiff Depo. 38:2-40: 11 Exh. 6 - Blest are We (OLG 0577-0596); Beuder Decl. ¶16

Plaintiff’s Response and Supporting Evidence
CONTROVERTED

The instruction the students received from Plaintiff was taken from a **textbook** entitled “Blest Are We” which provided guided teachings.

Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5

[DEFENDANT’S] REPLY: Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a teaching guide, Plaintiff used a Catholic textbook, entitled “Blest are We.” Plaintiff does not dispute that Plaintiff would teach students to be able to identify the ways that the church carries on the mission of Jesus, understand the communion of saints, recognize the presence of Christ in the Eucharist, locate and understand stories from the Bible, and understand original sin. Plaintiff’s purported dispute presents only irrelevant surplusage which is non-responsive to the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

19. Students also received instruction from Plaintiff for taking part in a prayer service of reconciliation, praying the Apostles’ Creed and the Nicene Creed, celebrating the sacraments, and recognizing the liturgical calendar and the celebration of the sacred triduum, among numerous other religious topics.

Supporting Evidence:

Plaintiff Depo. 38:2-40: 11; Exh. 6 - Blest are We (OLG 0577-0596); Beuder Decl. ¶¶15-16

Plaintiff’s Response and Supporting Evidence
CONTROVERTED

The instruction the students received from Plaintiff was taken from a **textbook** entitled “Blest Are We” which provided guided teachings.

Deposition of Agnes Morrissey-Berru 36:18-37:12, Exhibit 5

[DEFENDANT’S] REPLY: Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a

teaching guide, Plaintiff used a Catholic textbook, entitled “Blest are We.” Plaintiff does not dispute that students “received instruction from Plaintiff for taking part in a prayer service of reconciliation, praying the Apostles’ Creed and the Nicene Creed, celebrating the sacraments, and recognizing the liturgical calendar and the celebration of the sacred triduum, among numerous other religious topics.” Plaintiff’s purported dispute presents only irrelevant surplusage which is non-responsive to the fact proffered.

20. Plaintiff also led the class in daily prayer, including Hail Mary’s, as well as spontaneous prayer.

Supporting Evidence:

Plaintiff Depo. 32:18-33:17, 198:23-199:3; Beuder Decl. ¶11

Plaintiff’s Response and Supporting Evidence
UNCONTROVERTED

21. As a teacher at the School, Plaintiff was expected to participate in school liturgical activities.

Supporting Evidence:

Plaintiff Depo. 42:11-13; Beuder Decl. ¶12

Plaintiff’s Response and Supporting Evidence
UNCONTROVERTED

22. Plaintiff took her class to weekly Mass and monthly school-wide Masses, prepared her students to read during Mass, planned the liturgy for monthly Masses, and escorted her students to a variety of religious services, including for the Feast of our Lady, the

Stations of the Cross and Lenten Services. She was also expected to attend faculty masses and monthly family masses.

Supporting Evidence:

Plaintiff Depo. 34:9-35:9, 35:25-36:3, 28 :25-29:21;
Beuder Depo. 107:13-108:10, 108:25-110:16, 182:2-18;
Beuder Decl. ¶¶11-12

Plaintiff's Response and Supporting Evidence
CONTROVERTED

Morrissey-Berru testified that she did not personally lead schoolwide religious services, did not select hymns when her class was responsible for mass, did not personally deliver messages during mass, and did not have the [sic] prepare her students to alter serve during weekly mass.

[Deposition of Agnes Morrissey-Berru 35: 10-35:24]

[DEFENDANT'S] REPLY: Plaintiff raises no genuine, material dispute. Plaintiff does not dispute that Plaintiff took her class to weekly Mass and monthly school-wide Masses, prepared her students to read during Mass, planned the liturgy for monthly Masses, and escorted her students to a variety of religious services, including for the Feast of our Lady, the Stations of the Cross and Lenten Services. She does not dispute that she was expected to attend faculty masses and monthly family masses. Plaintiff proffers no evidence to dispute her verbatim testimony:

Q. Were you expected to take your class to weekly mass? A. Yes. Q. . . . how about monthly school-wide masses? A. Yes. Q. How about like for All Saints Day? A. That was my 5th grade mass. Q. Oh, you were responsible for that? A.

Yes. Q. Were you responsible for taking the students to mass for the Feast of Our Lady? A. Yes. Q. How about for Reconciliation? A. Yes. Q. Stations of the cross? A. Yes. Q. Lenten services? A. Yes. Q. Am I forgetting any? A. Christmas maybe. . . . Q. Did you have to prepare your students to. . . read during weekly mass? A. Yes. Q. And also for the school mass? A. Yes. . . . Q. Did you—were you responsible for attending monthly family masses? A. Yes. . . . Q. Were you a part of the liturgy planning for school masses? A. At my particular school mass, yes.”

(Plaintiff Depo. 34:9-35 :9, 35 :25-36:3, 28:25-29:21.)

Plaintiff’s purported dispute presents only irrelevant, argumentative surplusage which is non-responsive to and does not controvert the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

23. Plaintiff’s performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of the sacramental traditions of the Roman Catholic Church in the classroom and whether the curriculum included Catholic values infused through all subject areas.

Supporting Evidence:

Plaintiff Depo. 163:24-165:3; Beuder Decl. ¶17; Exh. 11 - June 2013 Catholic Identity and Professional Conduct Review Form (OLG 162-163); Exh. 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196)

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

24. Plaintiff was responsible for administering the yearly assessment of children religious education test - a test on Catholic teachings for the 5th grade.

Supporting Evidence:

Plaintiff Depo. 33:18-24; Beuder Decl. ¶10

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

25. All of the courses that Plaintiff taught were expected to be informed by faith-based education. Plaintiff was committed to faith-based education.

Supporting Evidence:

Plaintiff Depo. 28:4-6; Beuder Decl. ¶8; Exh. 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us; Exh. 6 - Blest are We (OLG 0577-0596); Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 - 2013-2014 Employment Agreement (OLG 008-0012)

Plaintiff's Response and Supporting Evidence
CONTROVERTED

Even though Morrissey-Berru admitted that she was committed to faith-based education, Morrissey-Berru testified that at no time did she believed her employment at Our Lady of Guadalupe was "called" or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her

into the ministry. [Declaration of Agnes Morrissey-Berru ¶8]

[DEFENDANT’S] REPLY: Plaintiff raises no genuine, material dispute. Plaintiff concedes that she “admitted that she was committed to faith-based education.” Plaintiff’s purported dispute presents only irrelevant surplusage which is non-responsive to and does not controvert the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

26. Plaintiff was responsible for integrating Catholic teachings and values into all of her classes. Plaintiff tried to integrate religious attitudes and values into all of her curricular areas, and to instruct her students in a manner consistent with the teachings of the Church.

Supporting Evidence:

Plaintiff Depo. 26:8-24, 28:1-3, 32:18-25, 40:18-42:10, 163:24-165:3, 199:5-16; Beuder Decl. ¶8, 17; Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 - 2013-2014 Employment Agreement (OLG 008-0012)

**Plaintiff’s Response and Supporting Evidence
CONTROVERTED**

Morrissey-Berru testified that at no time during her employment with Our Lady of Guadalupe did she believe she was “called” or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did

she feel God was leading her into the ministry.
[Declaration of Agnes Morrissey-Berru ¶8]

[DEFENDANT’S] REPLY: Plaintiff raises no genuine, material dispute. Plaintiff’s purported dispute presents only irrelevant surplusage which is non-responsive to and does not controvert the fact proffered. Neither Plaintiff’s purported dispute nor her cited evidence in support thereof (Plaintiff’s declaration ¶8) pertains to Fact 26. Further, Plaintiff cannot materially dispute Fact 26, given she does not controvert Fact 23 that she was evaluated on whether the curriculum included Catholic values infused through all subject areas. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

27. Plaintiff directed and produced a performance by the students of the Passion of the Christ as part of the School’s Easter celebrations.

Supporting Evidence:

Beuder Decl. ¶13; Beuder Depo. 108:25-110:16, 182:2-18

Plaintiff’s Response and Supporting Evidence
UNCONTROVERTED

28. Plaintiff took her students to Our Lady of Angels Cathedral in downtown Los Angeles every year for a tour of the cathedral so they could experience serving at the cathedral altar.

Supporting Evidence:

Plaintiff Depo. 198:4-22; Beuder Decl. ¶13

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

* * *

30. When Mrs. Beuder was hired, the School was on the verge of closing and needed drastic changes to turn around declining enrollment. In 2012, there was just one graduate in the eighth grade class. The parish was having to heavily subsidize the 20 school to keep the doors open.

Supporting Evidence:

Beuder Decl. ¶18; Beuder Depo. 58:15-61:25, 68:13-71:13, 72:14-73:23; Exh. 9 - Report of Findings

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

* * *

[ER 77]

32. Plaintiff understood that Mrs. Beuder made improvement of the school's Reading and Writing Program a top priority and acknowledged that it was something that really needed improvement at the school.

Supporting Evidence:

Plaintiff Depo. 68:2-10; Bender Decl. ¶20; Beuder Depo. 58:15-61:25, 68:13-71:13, 72:14-73:23; Exh. 9 - Report of Findings

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

[ER 79]

37. Mrs. Bender immediately adopted a comprehensive reading and writing curriculum and approach for the school, called Readers and Writer's Workshop.

Supporting Evidence:

Beuder Decl. ¶22; Exh. 9 - Report of Findings; Plaintiff Depo. 68:2-10; Beuder Depo. 75:4-76:5

**Plaintiff's Response and Supporting Evidence
UNCONTROVERTED****[ER 89-90]**

45. During the 2013-2014 school year, Dr. Kersey provided extra support for Plaintiff with the implementation of the Workshop. Plaintiff understood that Mrs. Beuder was trying to provide her with help in implementing the Workshop.

Supporting Evidence:

Beuder Decl. ¶26; Kersey Decl. ¶¶3-5, 9; Plaintiff Depo. 78:25-82:18, 83:4-6, 117:7-14, 118:24-119:25, 123:11-25, 86:24-87:5; Beuder Depo. 134:23-135:22; Exh. 15 - January 15, 2014 Dr. Kersey Writing Workshop Feedback Template (OLG 430); Exh. 10 - February 12, 2013 Email from Beuder to Plaintiff "I want to touch base with you regarding Reader's Workshop to see if I can help you in any way" (OLG 708); Exh. 13 - October 17, 2013 Emails between Beuder and Plaintiff re. "full implementation of RW is the school-wide expectation at this point." (Morrissey-Berru 90)

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

* * *

[ER 110-111]

67. Mrs. Beuder came up with the solution of offering Plaintiff a part-time role for one year that would allow Plaintiff to keep teaching, but avoid involvement with the Workshop.

Supporting Evidence:

Beuder Decl. ¶38; Plaintiff Depo. 131:14-133:9; 138:6-10 Beuder Depo 209:11-20; 252:4-257:24, 269:2-22

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

[ER 111]

68. Mrs. Beuder shuffled schedules and the budget around and created a new part time position in which Plaintiff would teach 5th grade Religion, and 5th-7th Grade Social Studies.

Supporting Evidence:

Plaintiff Depo 138:6-10; Beuder Decl. ¶39, Beuder Depo 209:11-20, 210:6-14; 252:4-257:24, 269:2-22

Plaintiff's Response and Supporting Evidence
UNCONTROVERTED

* * *

[ER 116]

76. Mrs. Beuder determined that the School could not continue to financially sustain Plaintiff's extra part time position for the 2015-2016 school year.

Supporting Evidence:

Plaintiff Depo. 138:6-10; Beuder Decl. ¶43; Beuder Depo. 269:2-15; 283:1-22; Exh. 24 - Nonrenewal letter (Morrissey-Berru 269)

**Plaintiff's Response and Supporting Evidence
UNCONTROVERTED**

77. Mrs. Beuder wanted someone teaching social studies who would be willing and able to incorporate the Reader's and Writer's Workshop so that these lessons could be reinforced across the curriculum as the students learning needs had changed.

Supporting Evidence:

[ER 117] Beuder Decl. ¶43; Beuder Depo. 269:2-15; Plaintiff Depo. 140:7-8; Kersey Decl. ¶15; Mitchell Decl. ¶¶10-11

**Plaintiff's Response and Supporting Evidence
UNCONTROVERTED**

78. In May of 2015, Mrs. Beuder advised Plaintiff that she did not have a position for Plaintiff for the 2015-2016 school year because her position had been eliminated due to the budget and the changing needs of the students.

Supporting Evidence:

Beuder Decl. ¶44; Plaintiff Depo. 143:25-144:12, 146:1-4; Beuder Depo 206:20-207:19, 269:2-15, 272:23-273:1, 283:1-22, Exh. 24 - Nonrenewal letter (Morrissey-Berru 269)

Plaintiff's Response and Supporting Evidence

UNCONTROVERTED to the extent that that is what Ms. Beuder informed Plaintiff as the reason for her termination.

* * *

[ER 118]

80. No teacher has held Plaintiff's part-time position since the 2014-2015 school year. All of Plaintiff's classes were absorbed by the existing staff.

Supporting Evidence:

Plaintiff Depo. 145:20-25; Beuder Decl. ¶44; Exh. 24 - Nonrenewal letter (Morrissey-Berru 269)

Plaintiff's Response and Supporting Evidence

UNCONTROVERTED

[ER 308]

**TEACHER EMPLOYMENT AGREEMENT-
ELEMENTARY**

Non-Exempt

Department of Catholic Schools
Archdiocese of Los Angeles

Name of School: Our Lady of Guadalupe School

Name of Teacher: Deirdre Morrissey-Berru

Academic Year: 2014-2015

Term. The School ("School") and you (the "Teacher") make this employment agreement ("Agreement") for the period shown above (the "Term") for you to serve as a member of our faculty.

Philosophy. The mission of the School is to develop and promote a Catholic School Faith Community within the philosophy of Catholic education as implemented at the School, and the doctrines, laws and norms of the Roman Catholic Church. All your duties and responsibilities as a teacher shall be performed with this overriding commitment.

Duties. Your position will be that of a Teacher. You shall use your best professional efforts and skills to perform your duties in a diligent, energetic, competent, and ethical manner, consistent with the School's established policies, directives and expected practices. You acknowledge that the School operates within the philosophy of Catholic education and retains the right to employ individuals that the values of Christian charity, temperance and tolerance apply to your interactions with your supervisors, colleagues, students, parents, staff and all others with whom you come in contact at or on behalf of the School. In both

your professional and private life you are expected to model and promote behavior in conformity to the teaching of the Roman Catholic Church in matters of faith and morals. Your duties shall include careful preparation and planning for each class consistent with School and departmental curriculum; diligent review and evaluation of student work and related communication to students and parents; and, as needed, conferring with students, the administration, and parents regarding each student's progress and development. You also shall attend faculty/staff meetings and conferences, including those prior to and following the School's regular academic year, participate in School activities including School liturgical activities, as requested, and complete other duties as assigned. You agree to maintain the levels of competency in subject matter, teaching methods, classroom management, and student supervision required by the School whether on your own initiative or at the direction of the School. Your duties and job assignment may be revised during the Term to meet the School's needs. In the event the School's operations are extended by reason of fire, disaster, act of God, act of public authority or any other necessity or emergency cause, your service may be suspended for the time period and rescheduled as needed to complete the full School year

Policies. You shall be familiar with, and comply with the School's personnel policies and procedures as they may be adopted or amended from time-to-time, including policies in the faculty handbook. You should refer to such documents for information relating to your employment, duties and benefits. You shall be familiar with, abide by, and assist and cooperate with School administration in enforcing the School's

policies for students and families whether outlined in our handbooks(s), our School policies, or other directives and expected practices (together “Policies”). You acknowledge that a copy of the faculty handbook has been made available to you. You understand and acknowledge that the policies do not constitute a contractual agreement with you.

[ER 309]

Introductory Period. The first six (6) months of your employment as a new teacher at this School are considered your Introductory Period. You may be terminated at any point, with or without notice, with or without reason, during the Introductory Period. The Principal shall complete a performance appraisal at the end of your Introductory Period. Upon satisfactory completion of the Introductory Period, your employment will be continued through the Term of this Agreement except as noted under “Termination.”

Termination. Your employment, and this Agreement, may be terminated during the Term without payment of salary or benefits beyond such date of termination, for any of the following reason:

- I. The School may terminate for “cause,” without any prior notice. Such “cause” shall be determined by the School within its reasonable judgement and shall include but not be limited to:
 - a) Failure to meet any of your duties as described in Paragraphs 3 and 4 above.
 - b) Inappropriate physical or social contact with students during school or otherwise.
 - c) Unprofessional or unethical conduct, insubordination, unauthorized disclosure of

confidential information, or habitual or unreasonable tardiness or absence from duties.

- d) Any criminal, immoral or unethical conduct that brings discredit upon the School or the Roman Catholic Church.
 - e) Unauthorized possession, sale or working under the influence of controlled substances (except prescription medications take as prescribed), intoxicants, or alcohol.
 - f) Threatening or causing bodily harm to others or other coercive and or intimidating acts, or any verbal or physical harassment.
 - g) Having a diploma, credential, permit, license or certificate denied, revoked or suspended.
 - h) Falsification of documents, false or misleading information on an application, resume, personnel record, professional or character reference, academic transcript, degree, or credential.
 - i) Any other breach of the terms of this Agreement.
- II. Either you or the School may terminate this Agreement without cause, for any reason within the sole discretion of the terminating party, upon 30 calendar days' prior written notice to the other party in a manner that is consistent with applicable law and on a time frame that is mutually agreeable to you and the Principal. However you may not terminate employment under this Agreement if the termination is effective during the 30 days immediately prior to the beginning of the school year except by mutual agreement with the Principal. You acknowledge that a breach by

you of this provision is a grave ethical violation, may harm the educational program for the students and may cause the expenses and damages to the School.

III. The School may terminate your employment if you are unable to perform the essential functions of your position and reasonable accommodation is not available or required under applicable laws.

[ER 310]

The School's failure to invoke its right of termination on one occasion for the occurrence of a matter constituting a basis for discharge shall not affect the right of the School to invoke discharge with the same or a different basis for termination arises at a later date.

Renewal. Future employment will be determined on a year-to-year basis. You agree to give written notice to the School, on or before April 1, 2015, stating whether or not you wish to renew the Agreement. The School will give you written notice, on or before May 15, 2015, stating whether or not it intends to renew the Agreement for the following year or enter into any other type of employment relationship. In the absence of a notice by either party, this Agreement will lapse under its own terms. The Principal alone, with the approval of the Pastor, has the final and sole authority with respect to offering agreements. This Agreement is contingent upon sufficient School enrollment and the School's financial condition. If the enrollment or the School's financial condition does not justify the staffing, the Principal has discretionary power to make decisions regarding personnel reduction including but not limited to, modification or

cancellation of this Agreement. If the School closes for any reason, this Agreement will be considered terminated on the date of the closure. If this Agreement is cancelled due to lack of enrollment or the School's financial condition or is terminated because of School closure, you will be paid through the date of cancellation or closure; no further payments will be due to you. You understand that tenure is not granted by Archdiocesan Schools and upon expiration or termination of the Agreement for any reason you shall have no right to employment or preferential treatment regarding employment at any other Archdiocesan School. There is no implied duty by you or the School to renew this Agreement, and no cause whatsoever is required by either party for non-renewal. Any other arrangement with respect to renewal, extension or duration of employment is valid only if in writing, executed by you and the Principal, with the approval of the Pastor.

Severability. If, for any reason, any one or more of the provisions of this Agreement shall be held or deemed to be legally invalid or unenforceable, that shall not have any effect on any of the other provisions of this Agreement, all of which shall remain in full force and effect.

Entire Agreement. This Agreement contains the complete and entire agreement between you and the School, and supersedes all prior offers, agreements, commitments, understandings, whether oral or written. No changes to this Agreement may be made except by a document signed by you and the Principal, with approval of the Pastor.

Applicable Law. This Agreement is entered into under, and governed by, the laws of the State of California.

Dispute Resolution and Grievances. You and the School agree to attempt to resolve any disputes in good faith. Any unresolved disputes between you and the School arising out of or in any way related to your employment or termination, shall be subject to the Grievance Procedures promulgated by the Archdiocesan Department of Catholic Schools and no legal actions may be taken until all procedures have been fully discharged. This clause is intended to provide a speedy, economical and exclusive forum for resolving claims; its existence shall not imply any limitations upon the School's right to manage its affairs or terminated any employment.

Condition Precedent. You understand and agree that condition precedents of this Agreement are the receipt of the Criminal Record Summary report from the California Department of Justice and the Federal Bureau of Investigation, the completion of the I-9 Form from the Immigration and Naturalization Service, and the completion of the other relevant health and documents requirements of the School.

[ER 311]

School Day and Work Schedule

Full Time Teacher

As a full time teacher, you understand that your duties consist of work during the regular class day which includes instructional and non-instructional time, other assigned school responsibilities, and preparation and assessment activities outside the classroom. The

School's regular instructional time is from ____ a.m. to ____ p.m. You will be informed of required non-instructional duties according to schedules provided to you by the principal. The Academic Year consists of ____ class days, ____ paid holidays, and ____ hours worked.

The School understands that you may need to devote a reasonable amount of time to other school responsibilities and in preparation and assessment activities at hours not during the regular class day ("Additional Hours Worked"). The School will compensate you for the Additional Hours Worked if they exceed 8 in a day or 40 in a week. You hereby agree to comply with all the School's policies and procedures for permission to work beyond 8 hours in any day or 40 hours in any week.

Part Time Teacher

As a part-time teacher, you understand that your hours of work will be provided to you as scheduled. ("Regular Days Worked").

The School understands that you may need to devote a reasonable amount of time to other school responsibilities and in preparation and assessment activities at hours not during the regular class day ("Additional Hours Worked"). The School will compensate you for the Additional Hours Worked up to 0 hours in a day and 0 hours worked in a week. You hereby agree to comply with all the School's policies and procedures for permission to work beyond 0 hours in any day or 0 hours in any week.

Base Compensation

Total Compensation for Regular Hours Worked (not including compensation for Additional Hours Worked): \$28,000.00 annually (based on 25 total number of Regular Hours Worked in the Term, at the rate of \$ n/a per hour).

Full Time Teacher

Total budgeted (but not guaranteed) compensation for Additional Hours Worked: \$_____ (actual amount will vary depending on actual hours worked over 8 in a day or 40 in a week).

Part time Teacher

Total budgeted (but not guaranteed) compensation for Additional Hours Worked: \$ 0 _____ (actual amount will vary depending on actual hours worked over 0 in a day or 0 in a week).

[ER 312]**Additional Compensation for Designated Responsibility (If Any):**

In addition, for this Term only, you will assume the additional assignment(s) listed below. Your hours of work for the additional assignment(s) are as stated on the attached schedule. To compensate you for the additional assignment(s), your compensation for this Term will be increased for this Term only. The School does not guarantee that you will receive this or any other additional assignment(s) at any future time; therefore your total compensation for this Term should not be considered a promise that any future compensation will be for a similar amount.

41a

Note: Calculations and Additional Compensation for Designated Responsibility are based on anticipated time commitment and skills.

<u>Responsibility</u>	<u>Additional Compensation</u>
_____ \$__x_____	\$_____
_____ \$__x_____	\$_____
_____ \$__x_____	\$_____
_____ \$__x_____	\$_____

Total Additional Compensation: \$_____

Payment Schedule

Compensation for all teachers will be distributed on a
[☒] semi-monthly [☐] bi-weekly schedule

Date of first payday: 8/30/14

Date of last payday: 6/30/15

(See payroll schedule)

Available Benefits

**See Archdiocese of Los Angeles Lay
Employees Benefit Guide**

Sick Days: number of days per school year
(if any): 5

Education and Professional Growth Requirements:

In accordance with the regulations for salary placement and professional growth requirements, you agree that you will complete the following requirements to be eligible to be offered an employment agreement for the next school year.

[☐] Enroll in California Teaching Credential Program.

42a

- [] Complete at least __ units towards a California Teaching Credential
- [] California Teaching Credential program must be completed by July 1, 20__ for an Elementary School Faculty Employment Agreement to be offered for the 20__-20__ academic year.
- [] Other Requirements: assist with Liturgy Planning for school masses

[ER 313]

By: /s/ April Beuder April Beuder 5/19/14
Principal's Signature Print Name Date

I accept a Position as Teacher at Gr5 Homerm/Rel/SocStudies and Gr6-7 SocStudies at OLG School on each and all of the terms and conditions set forth in the above Agreement.

By: /s/ A. Deirdre Morrisey-Berru
Teacher's Signature Print Name Date

Approval by Pastor required (this Agreement is not binding until executed by Pastor)

By: /s/ Fr. Marco Solis
Pastor's Signature Print Name Date

Give copy to teacher and file the original in his/her personnel file.

[ER 608]

**Philosophy & History
Our Lady of Guadalupe School
April 14, 2017**

Philosophy & History

We, the faculty and staff of Our Lady of Guadalupe School, are committed to providing a quality Catholic education for our students. Recognizing the role of parents as the primary educators, we strive to create a spiritually enriched learning environment. We utilize our educational training, skills, talents, and model our faith so that students are taught the fundamentals of a spiritual life, academic achievement, appreciation of the arts, healthy lifestyle choices, and multi-cultural awareness. Each student is regarded as a unique individual - a blessing to our school community from the Lord. Through this reverence for all forms of life, we reflect the profound revelations of Jesus Christ.

History of Our Lady of Guadalupe Catholic School

Our Lady of Guadalupe School was established in 1961 to serve the educational needs of the children of the parish. The Carmelite Sisters of Oklahoma staffed the school during the next thirteen years as the school grew and flourished. The first lay principal was appointed in 1972, and since 1974, the school has been staffed entirely by dedicated lay employees.

A kindergarten was opened in the fall of 1985 and was held in a small house near the main school. Extensive renovation and building during 1991-1992 provided the school with a new kindergarten

classroom and computer lab.

In the fall of 2012, a preschool was opened to serve the needs of the community and in the fall of 2013, a transitional kindergarten class was added to the school, also in response to the growing needs of the community.

Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles. The pastor is the ex-officio chief administrative officer of the school who carries out the policies of the Archdiocesan Advisory Board and, on points not covered by Archdiocesan policy, determines policies appropriate to the needs of the school. The principal is responsible for the immediate direction.

[ER 618]

BLEST ARE WE ®
Faith & Word Edition
ROMAN MISSAL

* * *

CONTENTS

Let Us Pray	9
The Bible	17
Program Song “Blest Are We”	22
Unit 1 – The Sacraments: God’s Gifts of Life	23
Unit 1 Song “Sing Out Earth and Skies”	24
Chapter	
1. God’s Wonderful Creation	25
<i>God is the Creator of all life.</i>	
Scripture Story: The Story of Creation	28
A Meditation Prayer	34
2. The Seven Sacraments	37
<i>We celebrate the Paschal Mystery in the</i>	
<i>Sacraments.</i>	
Worship: The Paschal Mystery	40
A Prayer of Thanksgiving	46
3. Living the Beatitudes	49
<i>The Beatitudes show us how to live</i>	
<i>like Jesus.</i>	
Scripture Story: The Beatitudes	52
A Prayer of Blessing	58
4. Sacramentals: Signs of God’s Love	61
<i>Sacramentals help us to become closer</i>	
<i>to God.</i>	

Scripture Story: The Triumph of the Faithful	64
A Prayer Before the Crucifix	70

Faith in Action

Respect Life Ministry	73
Parish Priests	74
Ministry to the Poor	75
Catholic School Fundraisers	76
Unit Wrap-up and Review	77

[ER 619]

Unit 2 – Baptism and Confirmation	81
Unit 2 Song “Who Calls You by Name”	82

Chapter

5. We Are Baptized into the Body of Christ....	83
<i>Through Baptism, we are freed from Original Sin.</i>	
Scripture Story: The Baptism of Jesus	86
A Prayer for the Body of Christ.....	92
6. Baptism and Confirmation.....	95
<i>Baptism and Confirmation welcome us into the Church.</i>	
Worship: Baptism and Confirmation	98
A Renewal of Baptismal Promises	104
7. Grace: A Gift of Strength and Support	109
<i>Through the Sacraments, we receive God’s grace.</i>	
Scripture Story: Saul’s Conversion	110
A Prayer for the Seven Gifts of the Holy Spirit.....	116
8. We Profess Our Faith	119
<i>The Apostles’ Creed contains the central truths of the Catholic Faith.</i>	

Scripture Story: Teach All Nations	122
The Apostles' Creed	128
<i>Faith in Action</i>	
Godparents	131
RCIA Catechists	132
Confirmation Sponsors	133
Catholic School Teachers	134
Unit Wrap-up and Review	135
[ER 620]	
Unit 3 – The Eucharist.....	139
Unit 3 Song “I Am the Bread of Life”	140
Chapter	
9. God’s Word Feeds Us	141
<i>God speaks to us through Scripture and Tradition.</i>	
Scripture Story: The Boy Jesus in Jerusalem.....	144
A Prayer by Saint Jerome	150
10. The Eucharist	153
<i>In the Eucharist, we receive the Body and Blood of Jesus Christ.</i>	
Worship: The Last Supper.....	156
A Prayer Before the Blessed Sacrament...	162
11. The Communion of Saints	165
<i>The Communion of Saints is made up of all the followers of Jesus.</i>	
Scripture Story: The Light of the World...	168
The Litany of the Saints	174
12. We Pray the Lord’s Prayer	177
<i>The Lord’s Prayer is the most perfect of prayers.</i>	
Scripture Story: Your Heavenly Father....	180

The Lord's Prayer	186
<i>Faith In Action</i>	
Lectors	189
Eucharist Adoration Society	190
World Missions	191
School Retreats.....	192
Unit Wrap-up and Review	193
[ER 621]	
Unit 4 – Reconciliation and Anointing of the Sick	197
Unit 4 Song “The Hand of God”	198
Chapter	
13. God Saves Us	199
<i>God sent his only Son, Jesus Christ, to save us from sin and death.</i>	
Scripture Story: The Fall of Man	202
A Psalm Prayer	208
14. Reconciliation and Anointing of the Sick..	211
<i>The Sacraments of Healing are Reconciliation and Anointing of the Sick.</i>	
Worship: The Sacrament of Penance and Reconciliation.....	214
A Scripture Meditation.....	220
15. Living God's Commandments	223
<i>The Ten Commandments show us how to live as God's children.</i>	
Scripture Story: The Ten Commandments	226
A Reconciliation Service	232
16. God is Merciful.....	235
<i>We receive God's mercy in the Sacrament of Reconciliation.</i>	

Scripture Story: The Parable of the Pharisee and the Tax Collector	238
A Prayer of Sorrow from the Mass	244

Faith in Action

The Rosary Society	247
Pastoral Care of the Sick	248
Knights of Columbus	249
Catholic Youth Organization	250
Unit Wrap-up and Review	251

[ER 622]

Unit 5 – Holy Orders and Matrimony	255
Unit 5 Song “The Summons”	256

Chapter

17. Jesus Establishes His Church	257
<i>Jesus founds his Church on Saint Peter and the Apostles.</i>	
Scripture Story: Jesus Chooses Peter	260
A Prayer for the Leaders of Our Church ..	266
18. Holy Orders and Matrimony	269
<i>The Sacraments at the Service of Communion are Holy Orders and Matrimony.</i>	
Worship: Holy Orders	272
A Vocation Prayer	278
19. Living as Christians	281
<i>We grow closer to God by growing in virtue.</i>	
Scripture Story: The Way of Love	284
The Litany of Saint Joseph	290
20. We Pray for Guidance	293
<i>Through prayer, we can discover our vocation.</i>	
Scripture Story: The Lord Comes to Elijah in a Tiny Whisper	296
A Prayer for Guidance	302

Faith in Action

Peter's Pence	305
Marriage Preparation	306
Vacation Bible School.....	307
Religious Vocations	308
Unit Wrap-up and Review	309

[623]**Feasts and Seasons**

The Liturgical Year	314
Advent.....	318
Christmas	326
Ordinary Time	332
Lent	334
Holy Week.....	344
Easter.....	350
Holy Days.....	358
Mary	364
Saints	372
Holy People	382
Feasts and Seasons Wrap-Up	390

Our Catholic Heritage

*Organized according to the four pillars
of the Catechism*

I. What Catholics Believe.....	392
II. How Catholics Worship	395
III. How Catholics Live	

IV. How Catholics Pray	408
Celebrating Catholic Schools Week	411
Grade 5 Favorites	420
End-of-Year Prayer.....	422
Glossary	424
Index	428

**OUR LADY OF GUADALUPE SCHOOL
STATEMENT OF COMMITMENT TO
CORE VALUES**

[ER 646]

Dedicated to our mission and recognizing the special pastoral administrative roles we fulfill in the service of the people of God, we, the lay employees, priests and religious of OLG commit ourselves to live and reflect core values that emanate from and further that mission. These values are:

- Service to other
- Christian dignity and respect
- Commitment to community
- Collaboration in ministry

The essence of our work is service to each other and to our students, their parents, and the parishioners of OLG. That service is rooted in the gospel model of servant leadership.

Christian dignity and mutual respect are the values that characterize our personal relationships and working environment. Our professional relationships must reflect our belief that we are called to love one another.

*I give you a new commandment: Love on another.
As I have loved you, so you also should love one another.*

Jn. 13:35.

Our ministry is blessed and strengthened by a community and personal prayer life as well as social activities that promote unity and morale among us. A dedication to continuous development of Christian

community requires that the overall good of the community takes precedence over the personal goals and ambitions of individuals.

We serve in an environment that requires and promotes good interpersonal relations and collaboration with other employees within OLG as well as organizations throughout the archdiocese. Such a cooperative environment breaks down the barriers that divide individuals and encourages a unity of purpose throughout the organization.

[ER 647]

INTRODUCTION

Welcome to Our Lady of Guadalupe School

We are pleased to have you join us in service to the Church. In accord with our respect for the dignity and worth of each individual, we recognize that our co-workers, whether priests, religious or laity, work in a collaborative way to carry out the mission of the Church. Those who work within the Church are called, in a special way, to develop that family spirit which motivates a person to render loyal, generous and efficient service for the honor and glory of God.

Aware that all persons have been endowed with God-given gifts, which contribute to the mission of the Church, we try to affirm each person's dignity through personal recognition and through appropriate compensation for services performed. We strive to treat everyone according to Christian principles of justice and charity. To this end, we encourage personal and professional growth, open communication, teamwork, and a respectful and supportive attitude toward all.

In turn, we expect all priests, religious, and lay persons who serve in the school to strive for excellence in performance and to adhere to professional standards. We wish you to join us in fostering a spirit of teamwork and a feeling of participation to balance the goals of meeting school objectives and enhancing individual potential.

This handbook is a general guide, providing brief explanations of various policies and procedures that apply to you. The policies and procedures in this handbook are subject to change by the archdiocese. Further information is available through the person in charge.

We hope that you will enjoy serving others in the Christian spirit of love and generosity. We will be able to achieve our mission and goals only through your cooperation and quality of service.

NOTE:

Throughout this Handbook the term "person in charge" refers to:

- (1) the principal of an elementary school;
- (2) the principal where the preschool is operated as part of an elementary or high school in the Archdiocese; or
- (3) the preschool director for preschools that are operated through the parish or as an independent program at a parish or other location.

* * *

[ER 649]

* * *

Schools reserve the right to be the sole judge of merit, competence and qualifications, and can favor Catholic applicants and Catholic co-workers in all employment decisions. **Modeling, teaching of and commitment to Catholic religious and moral values are considered essential job duties; therefore, Schools may make employment decisions based upon the nature and effectiveness of an employee's performance of these duties.**

* * *

**Excerpts from Transcript of Deposition of
April L. Beuder
Volume I**

Morrissey-Berru v. Our Lady of Guadalupe School,
No. 2:16-cv-09353 (C.D. Cal. May 4, 2017)

[ER 719]

[BY MS. FUND:]

Guadalupe School is to provide our families with opportunities to grow in their faith and to live their faith through service to others.

Q. And how does the faith formation mission how does that involve the teachers? In what way?

MS. KANTOR: Vague.

THE WITNESS: Each teacher is considered a catechist and responsible for the faith formation of the students in their charge each day.

BY MS. FUND:

Q. Is it a requirement that a teacher be Catholic in order to teach at the school?

A. The ideal candidate is an actively practicing Catholic.

Q. Is it a requirement?

MS. KANTOR: Vague.

THE WITNESS: It is preferred.

BY MS. FUND:

Q. My question is whether it's required.

MS. KANTOR: Argumentative; asked and answered.

THE WITNESS: If you—to teach religion at the school, you need to be a Catholic.

BY MS. FUND:

Q. My question is just whether you need to be

[ER 720]

A. I heard several questions just now. So, yes, please, would you read the pending question.

(The previous question was read back by the court reporter as follows:

“QUESTION: Is it a requirement that a teacher be Catholic in order to teach at OLG School? Yes or no?”)

THE WITNESS: Yes.

BY MS. FUND:

Q. It's a requirement?

MS. KANTOR: Asked and answered.

THE WITNESS: Exceptions can be made, as I previously stated.

BY MS. FUND:

Q. I just need to lay a little bit of a foundation; so my first question is going to be a little bit overbroad. If you don't understand my question, please just let me know.

At the time of your hiring and you signed your contract in July of 2012, were you provided with any set of objectives from either the pastor or the Department of Catholic Schools that you were to accomplish as principal at the school?

A. Yes.

Q. Okay. And what were those objectives?

[ER 721]

A. I was asked to address the declining enrollment, the failure to respond to the recommendations from the 2006 accreditation visit to OLG School.

Q. Were those the only two objectives that you were given at that time?

A. There were a number of recommendations within the 2006 accreditation. There was a 2012—March 2012 accreditation team also provided the principal at that time with a list of recommendations which she gave to me.

Q. Was one of the recommendations within the—within any of the accreditations relating to a revised reading and writing program?

A. Yes.

Q. Was one of the recommendations within the accreditations related to a healthy food program?

A. I don't recall that specifically.

Q. Was the healthy food program something developed on your own?

A. Yes.

Q. But you don't recall specifically whether it was one of the accreditation recommendations?

A. One of the accreditation recommendations from 2012 was to address the negative parental **[ER 722]** perception of the school which was resulting in declining enrollment and dire fiscal situation.

Q. Do you have an understanding as to why there was a negative parental perception?

MS. KANTOR: Lacks foundation; calls for speculation; vague as to time.

THE WITNESS: Can you be more specific?

BY MS. FUND:

Q. Sure. Prior to your arrival at the school that's the timeframe I am referring to—an objective that you were hired to address? I'm just wondering what your understanding was as to why there was a negative parental perception at that time?

A. As it was explained to me and evidenced by the accreditation report, there were a number of noncredentialed teachers on staff, their academic rigor in terms of the extent to which students were being prepared for high school was a concern, there was one 8th grade student in the graduating class of June 2012, there was a need for school-like catechetical formation for the teachers, as well as questions raised by the current pastor to me about the way the school budget and finances were being **[ER 723]** managed.

Q. Is one of your responsibilities to run the budget or finances at the school?

A. Yes.

Q. And what did he communicate to you were the issues with the budget or finances prior to you starting?

MS. KANTOR: Lacks foundation; calls for speculation.

BY MS. FUND:

Q. I am just asking what he told you.

MS. KANTOR: Who is "he"?

60a

THE WITNESS: By “he,” are you referring to Father Ray?

BY MS. FUND:

Q. The pastor.

A. The current pastor—he expressed to me on a number of occasions that the school was unable to sustain itself and was receiving support from the parish and that wasn’t a sustainable model.

* * *

[ER 724]

Q. I just want to get a little bit of a clarification about one of the issues you just listed. You said “a need for catechismal formation with the teachers”?

A. Catechetical formation.

Q. What did you mean by that?

A. There is a requirement for all faculty and staff to undergo catechetical formation through recommended venues.

Q. And what is your understanding as to the term of—I will say it wrong.

A. Catechetical formation.

Q. Catechetical formation.

A. What are you asking?

Q. I don’t know what that is.

A. So it’s a big question.

Within the archdiocese in the Department of Catholic Schools, each teacher is called to be a catechist, which is a teacher of religions.

The USCCB, United States Catholic Conference of Bishops—I believe that’s the correct acronym—set forth specific guidelines for the type of formation that catechists should undergo in order to be adequately prepared to provide a **[ER 725]** Catholic education to students.

Q. What is an example of formation, catechetical formation?

MS. KANTOR: Was she done? Were you done responding?

THE WITNESS: Classes, retreats, spiritual reflections, curriculum provided by approved sources.

BY MS. FUND:

Q. Were any of these formations at OLG School?

A. Yes.

Q. Can you clarify the timeframe at any time?

A. Prior to my arrival, no. During my administration, yes.

Q. What type of formations were there at OLG School during your administration?

A. Can you repeat that question.

(The previous question was read back by the court reporter as follows:

“QUESTION: That type of formations were there at OLG School during your administration?”)

THE WITNESS: So to be clear, we’re referring to the formalized catechetical formation right now, which is separate from the—which is **[ER 726]** separate from the ongoing faith formation that provide for the teachers.

BY MS. FUND:

Q. Okay.

A. And the formal program was basic catechetical formation followed by specialization, the specialization of series of courses. So there I were two series of courses that were held at OLG.

Q. Did you each any of these courses?

A. I do not teach those. Those are taught by—those are taught by the religious education department within the archdiocese.

Q. Is this type of training and classes required by OLG School?

MS. KANTOR: Vague.

THE WITNESS: It is required by the Department of Catholic Schools because it is required by the USCCB, United States Conference of Bishops.

BY MS. FUND:

Q. Are teachers at OLG School required to go through any other types of training courses while employed at OLG School?

MS. KANTOR: Vague.

THE WITNESS: Can you expand on that? What

* * *

[ER 727]

professional development both on a personal—for spiritual formation and also for instructional purposes, and in some cases, in the summer.

MS. FUND: Let's go off the record for just a moment. Okay?

MS. KANTOR: Yes.

MS. FUND: The time is 11:56 p.m.

(Recess.)

MS. FUND: Back on the record. The time is 12:07 p.m.

BY MS. FUND:

Q. Ms. Beuder, you testified previously about certain objectives that you were asked to accomplish during your employment with OLG School; correct?

A. Yes.

Q. Are there any other objectives that you can think of that you haven't already told me about?

A. Can you read back to me what I said? I am sure there were more.

Q. Sure. I can go through the list that I have written down. Some of the objectives you testified to were to address the decline in enrollment, you were responding to recommendations from the 2006 accreditation, as well as the 2012 **[ER 728]** accreditation, you—and then part of those recommendations within the accreditation involved the reading and writing program.

A. Uh-huh.

Q. A negative parental perception.

A. Uh-huh.

Q. As well as the dire fiscal situation that the school was in. Is there any other objectives that you can think of?

MS. KANTOR: I'm going to object to the extent it misrepresents testimony.

MS. FUND:

Q. Did I in any way misrepresent what you said?

A. The last part there isn't quite—

Q. About the fiscal situation?

A. Yeah. So it's not clear to me. Can you read the last two that you just said from your notes?

Q. Sure.

I have written down that you testified about a negative parental perception.

A. Yes.

Q. As well as a dire fiscal situation.

[ER 729]

I am reading back what I have written down that you testified to. If it in any way mischaracterizes what your objectives are, please let me know.

A. The concern would be that “dire” could be misconstrued by others, but, yes, the —

Q. Fiscal situation of the school?

A. Yes, fiscal situation.

Q. Any other objectives that you can think of?

A. We—I was also asked to—I was also asked to provide the necessary resources and personnel to support our vision of becoming an inclusive learning community.

THE REPORTER: (Reporter clarification.)

THE WITNESS: Inclusive learning community.

BY MS. FUND:

Q. What is that?

A. As part of our mission as Catholic educators, we are called to provide an inclusive learning environment where students, regardless of their abilities, learning styles, any other factors are welcomed, and their needs are met on an individual basis.

Q. Before I ask you more about that, any other objectives?

[ER 730]

A. We also were opening a preschool. So I was charged with making sure that that rollout was successful.

Q. Was that at the physical OLG School?

A. Yes.

Q. Any other objectives?

A. That's all I recall at this time, but I had quite a few.

Q. Were these objectives that were asked of you when you started or that you proposed to the school?

A. They were given to me by the pastor and accreditation team via the current principal.

Q. And who was the principal at the time you were—just before you were hired?

A. Sheryl Hunt, H-u-n-t.

Q. Are students required to be Catholic to attend the school?

A. No.

Q. Are the majority of the students that attend the school Catholic?

A. Yes.

Q. And presently what grades does OLG School teach?

A. Transitional kindergarten through 8th **[ER 731]** grade. We also have a preschool for three and four-three-, four- and five-year-olds.

Q. Is that the preschool you opened up when you started?

A. It was in process, and it opened, yes, my first year.

Q. So since you started in 2012, has the school had transitional kindergarten through 8th grade and preschool?

A. Transitional kindergarten I introduced in 1 response to the needs of the community in two—this would be our 4th year. That would have been, I believe.

Q. We'll get into more of the details of the reading and writing program a little bit later.

My question to you is whether that was a specific recommendation from the accreditation or whether that sort of fell under the bubble of increasing academic rigor at the school?

MS. KANTOR: Vague.

THE WITNESS: The March 2012 report of findings from the accreditation team listed the school's failure to address the recommendation from 2006 which referenced a school-wide reading program that would be consistent, K through 8.

[ER 732]

BY MS. FUND:

Q. So they were recommending a consistent program from K to 8?

A. It was—yes.

Q. Reading and writing or just reading?

A. I believe, but I can clarify if I could review the document. I believe they referenced reading. The failure—these are more than recommendations. I use that word. But failure to follow those recommendations and achieve the goals—it's identified as a goal—resulted in less than a full year of accreditation for the school in March of 2012.

* * *

[ER 733]

Q. When you were hired in 2012 and one of your objectives was to address the issues with the reading and writing program, how did you determine what new program to implement?

MS. KANTOR: Lacks foundation.

THE WITNESS: To support the school's mission to become an inclusive learning community, the entire culture of the school needed to transition from a culture of teaching to a culture of learning. Part of that transition from a culture of teaching to a culture of learning requires an understanding of differentiated instruction and what that means to the individual learner.

In choosing a reading program, which is one aspect of a balanced literacy program, I evaluated those programs that would best support a differentiated learning experience for our students which supports

our larger mission to be inclusive and responsive to the individual.

* * *

[ER 740]

[BY MS. FUND:]

Q. Can you please turn to Page OLG 0011.

A. Uh-huh, yes.

Q. Is all of the handwriting on this page your handwriting?

A. Yes.

Q. Okay. And did you – can you please read to me the last line of handwriting on the bottom of the page?

A. “Fully implement Readers/Writers Workshop.”

Q. And can you tell me why you wrote that into this contract?

MS. KANTOR: Calls for a narrative.

THE WITNESS: To ensure that **[ER 741]** Mrs. Morrissey-Berru understood the expectations for the 2013/14 school year.

* * *

[ER 744]

A. Mrs. Morrissey-Berru was instrumental in preparing her classroom for weekly mass as well as preparing students for school-wide liturgy services. Sometimes they were masses, sometimes they were liturgical services that were performed for the entire school community, parents and students.

Specifically, Catholics have special feast days in addition to regular mass attendance. Juan Diego—Mrs. Morrissey-Berru planned that liturgy celebration. She enjoyed planning the Saint Patrick's Day celebrations that were in the church. And for us as Catholics, the most sacred time of our liturgical calendar year are the days and events leading up to Easter Sunday, the mass Triduum.

Part of that experience is reenacting the passion, which is known to some as the way of the cross but involves the journey of Jesus in his final hours and eventual crucifixion.

Mrs. Morrissey-Berru planned and organized that celebration each year that I served as her principal and, according to Ms. Morrissey-Berru, in years past.

Q. Do you know specifically what she did to **[ER 745]** plan or organize the celebrations?

A. She would work with the students to help them prepare the dialogue from the scripture that would be used. She would help them rehearse. She would explain the scriptural significance of the passion play to the students.

Q. So she helped them plan their reading for the events?

A. Yes.

* * *

[ER 749]

[BY MS. FUND]

Q. Okay. So during the 2012 to 2013 school **[ER 750]** year, what acts did Ms. Morrissey-Berru display that led to informal counseling, verbal informal counsels?

MS. KANTOR: Vague; overboard; lacks foundation.

THE WITNESS: The verbal counseling that I engaged with Ms. Morrissey-Berru pertained to the goals we set for her with respect to implementing Readers and Writers Workshop, differentiating her instruction, and those would be referenced in my recommendations when I would do lesson observations.

* * *

[ER 751]

A. I was working closely with Mrs. Morrissey-Berru during the 2012/13 school year to ensure that she was able to meet her job responsibilities specific to Readers and Writers Workshop to prevent her from failing. I was **[ER 752]** engaging in conversation and dialogue with her to determine how best to support her. So my concern – the act would have been a failure to meet job responsibilities.

* * *

[ER 761]

BY MS. FUND

Q. So I'm just taking a look at Exhibit 4, which is the employment agreement for the 2012/2013 school year which reflects a signature and date of the May 21, 2012.

Is it your testimony that you had concerns about Ms. Morrissey's implementation of the reading and writing program before May 2012?

A. I had concerns about her ability to differentiate instruction, which is essential to Readers and Writers Workshop.

Q. And, again, your contract was not effective until July 1st, 2012; correct?

MS. KANTOR: Asked and answered.

THE WITNESS: Yes.

BY MS. FUND:

Q. So how did your concerns develop regarding her ability to differentiate instruction prior to July 1st, 2012, or prior to May 2012?

MS.KANTOR: Argumentative.

THE WITNESS: As I stated earlier, the principal at the time, Ms. Sheryl Hunt, was told by the pastor that all employment decisions should be made by the incoming principal which then became me. I scheduled meetings with—one-on-one meetings **[ER 762]** with every teacher in the spring of 2012 to discuss the goals that I had for the school and their personal goals for their own professional growth.

Additionally, as I stated earlier, the declining enrollment was a grave concern to the pastor and the entire community. The one graduating eighth grader was an indication of something is not working effectively in the upper grades where there was high attrition.

There was an overstaffing, which I was charged with rectifying. Given the financial constraints and the fact that there were fewer students in the upper grades, a hiring team was formed, and teachers in Grade 5 through 8 were asked to re-interview for their position.

* * *

[ER 767]

Q. And prior to the break, we were discussing meetings you had with Ms. Morrissey-Berru prior to the contract signing in May 2012, and you got a little emotional.

Can you explain to me why?

A. Yes. I believe that I advocated for Mrs. Morrissey-Berru and provided ample opportunities for her to respond to the support and professional development that was given to her. So it's confusing and—it's confusing and disheartening that Mrs. Morrissey-Berru does not recognize that.

* * *

[ER 778]

Q. It's my understanding that, based on the new employment contract in 2014 to 2015, that Ms. Morrissey-Berru was no longer teaching reading and writing; is that accurate?

A. Yes.

Q. What were Jack Moor's complaints relating to her in 2014/2015?

A. There were concerns about, again, willingness to work on schedules, comments that were made by Ms. Morrissey-Berru regarding how she felt about reader's workshop and writer's workshop made other teachers uncomfortable.

There were concerns, questions, frustrations because Mrs. Morrissey-Berru was allowing and/or providing sugary snacks when we have a school-wide policy to promote healthy life-styles.

* * *

**Excerpts from Transcript of Deposition of
April L. Beuder
Volume II**

Morrissey-Berru v. Our Lady of Guadalupe School,
No. 2:16-cv-09353 (C.D. Cal. May 11, 2017)

[ER 792]

BY MS. FUND:

Q. Was this all during the same school year or different school years?

A. The entire time that I was serving as principal with Ms. Morrissey-Berru, I would receive complaints from parents.

Q. Relating to their implementation of the reading and writing program?

A. Relating to academic rigor. Some parents used the specific language of the reading program. Others used less specific words to share their concerns.

Q. Did you ever receive compliments from parents relating to Ms. Morrissey-Berru's teaching generally?

MS. KANTOR: Overbroad. Vague. Lacks foundation.

[ER 793]

Q. Okay. So that started in—for the 2014 to 2015 school year?

A. Yes.

Q. Okay. And why did you make the decision to offer her a part-time position?

MS. KANTOR: Lacks foundation. Asked and answered.

MS. FUND: Didn't we just lay a foundation? Go ahead.

MS. KANTOR: Calls for a narrative.

THE WITNESS: I notified Ms. Morrissey-Berru in a face-to-face conversation that I would not be renewing her employment agreement for 2014, '15. Because she wasn't implementing readers and writers workshop as we had agreed upon.

BY MS. FUND:

Q. And is that all the reasons why you offered her a part-time contract for the 2014 to 2015 school year?

MS. KANTOR: Lacks foundation. Argumentative. Calls for a narrative. Overbroad.

THE WITNESS: I did not initially offer her an agreement of any sort for 2014, '15.

[ER 794]

BY MS. FUND:

Q. And why is that? Other than—if there's any other reasons other than what you've already told me.

MS. KANTOR: Argumentative.

THE WITNESS: That was the primary reason.

BY MS. FUND:

Q. Were there other reasons?

A. Ongoing concerns regarding classroom management, ability to collaborate with other teachers, who had effectively implemented readers and writers workshop. Grading and assessment, her ability to differentiate specifically with students who had step maps. That's what I recall at this time.

Q. So initially you said you were not going to offer her a contract for 2014, 2015; correct?

MS. KANTOR: Objection to the extent it mischaracterizes testimony.

THE WITNESS: The conversation was, I am not renewing your employment agreement for 2014, '15.

BY MS. FUND:

Q. That was the initial conversation?

A. Yes.

[ER 795]

Q. Okay. And, but ultimately you offered her some form of a contract for 2014 to 2015; correct?

A. Yes.

Q. Okay. So how did we get from one point to the other? What happened in between there?

MS. KANTOR: Vague. Calls for a narrative.

THE WITNESS: In the initial conversation when I let Ms. Morrissey-Berru know that we would not be renewing her contract, her employment agreement, she implored me and begged for one more year and stated, "Can we please, is there anything we can do, I just want one more year, I'm going to retire."

BY MS. FUND:

Q. After that year?

A. During that conversation, that initial conversation, that is what—how she reacted to the news.

Q. I just want to clarify. She said, I just want one more year and then I'm—

A. I want to retire.

Q. And then I want to retire. Okay. And you said that was the initial conversation?

A. That was the same conversation where I—
[ER 796] yes.

Q. Okay. And how did you respond to her asking for one more year?

A I was surprised. And I reiterated, I can't—I can't have you not teaching readers and writers workshop when every other teacher is on board. And she said, Can you please, is there something, is there something you can do, along those lines.

Q. Okay. How did you respond to her at that time?

A. I said, "I don't know. I don't have anything. Let me think about it." And she said, "Thank you." And the conversation ended.

Q. And do you recall when about this took place?

A. Can you clarify when? Time of day or?

Q. Oh, sorry. What month?

A. It was May.

Q. May.

A. It was early May, I believe.

Q. Okay. When was the next time you two met to speak about a contract for the 2014, 2015 school year?

A. My best estimate it was two to three days. I asked her if she had a few minutes to talk.

[ER 797]

Q. Okay. And what did you say to her during that conversation?

MS. KANTOR: Calls for a narrative. Overbroad.

THE WITNESS: I said, "I reviewed the budget, I talked with the pastor, juggled some schedules and created a part-time position for you for just one year."

BY MS. FUND:

Q. And how did she respond to that?

A. She had tears of joy and thanked me profusely. During the conversation I clarified it was for religion and social studies, and the only word I can think of was she was thrilled and grateful.

Q. Did you present her with a 2014 to 2015 contract to sign[] during that meeting?

MS. KANTOR: Document speaks for itself.

THE WITNESS: I'm not clear if I had it ready because I may not have because I wasn't sure if she would agree to those terms. The document is dated.

BY MS. FUND:

Q. But you don't recall when this meeting was; correct?

[ER 798]

MS. KANTOR: Argumentative.

THE WITNESS: Not this time. I could probably dig through somewhere.

BY MS. FUND:

Q. What would you dig through?

A. Perhaps an appointment schedule, online appointment schedule.

Q. And—

A. If I—if it was there.

Q. If your appointment was in the calendar?

A. On my online calendar, yes. If it was there.

Q. And this is an electronic calendar, a G-mail calendar or something else?

A. Now it is. I don't—I'm not sure what format we were using back then. I don't recall at this time.

Q. Anything else you can recall that you two discussed during that second meeting?

A. I recall being happy that she was happy but felt compelled to ask her again if this was something she would be happy with and she said, "Absolutely, thank you so much. I'm"—I believe she used the word "thrilled." She was very happy.

* * *

[ER 799]

* * *

BY MS. FUND:

Q. Did you have any complaints about Ms. Morrissey-Berru's teaching during the 2014 to 2015 school year?

MS. KANTOR: Overbroad. Lacks foundation. Calls for speculation. Calls for a narrative.

THE WITNESS: Yes.

BY MS. FUND:

Q. Okay. What were those concerns?

A. Classroom management, lack of rigor in social studies.

THE REPORTER: Lack of?

THE WITNESS: Rigor. Academic rigor. Coloring. Too much coloring. Concerns about sweets being brought into and provided for the students despite school-wide policy against sweets.

BY MS. FUND:

Q. At any time did you consider renewing her part-time contract or offering her another part-time contract for the 2015, 2016 school year?

[ER 800]

A. No.

Q. And why is that?

A. I created a part-time position explicitly for one year for Ms. Morrissey-Berru and found a way to make it work in our budget but it was not a sustainable model for a number of reasons.

Q. And tell me about what those reasons are.

A. It's an additional part-time position that wasn't there before. We have very limited resources and the—having someone in teaching social studies, who is not able to collaborate and integrate the principles of reading and writing instruction that are probably throughout the school is problematic and not in the students' best interest.

Q. Ultimately, then, why did you decide to offer her the position, the part-time position for 2014, 2015?

MS. KANTOR: Asked and answered.

THE WITNESS: I was doing my best to preserve her dignity and treat her with compassion.

* * *

**Excerpts from Transcript of Deposition of
Agnes Deirdre Morrissey-Berru**

Morrissey-Berru v. Our Lady of Guadalupe School,
No. 2:16-cv-09353 (C.D. Cal. Apr. 26, 2017)

[ER 818]

[BY MS. KANTOR:]

* * *

Q. Sorry, I keep doing that. And then what year did you start at Our Lady of Guadalupe?

A. I started subbing in 1998 sporadically and in 1999 was offered a maternity leave position for approximately eight weeks.

Q. You said that was in '99?

A. Yes.

Q. All right. And then what came next?

A. In the fall of 1999 I was offered a 6th grade position.

Q. Full time?

A. Yes.

Q. And I know we're going way back here, but what did that position entail? What subjects did you teach?

A. I was a 6th grade teacher, self-contained. I taught reading, writing, grammar, vocabulary, science, social studies, religion.

Q. And how long did you hold that role?

A. Approximately 10 years.

Q. Okay. And then what was your next role?

A. My next role, I was the 5th grade teacher.

[ER 819]

Q. So are we looking at around 2009 here?

A. Approximately.

Q. Okay. And what did that role entail?

A. The 5th grade role entailed teaching math, science, social studies, reading, writing, grammar, vocabulary, and religion.

Q. I'm sorry if you already said this: When you were teaching the 6th grade role, were you teaching religion as well?

A. Yes.

Q. So your entire time at Our Lady of Guadalupe, from start to finish, you taught religion?

A. Yes.

Q. Okay. And so you held this 5th grade teacher role from 2009 until what date?

A. 2015, at a part-time capacity for that last year.

* * *

[ER 825]

* * *

A. Teaching Catholic values means that we follow religious instruction.

Q. And what does that mean?

A. It means we teach children how to go to mass, the parts of the mass, communion, prayer, and confession.

Q. Anything else?

A. No.

Q. So is Our Lady of Guadalupe School a Catholic parish school?

A. Yes.

Q. With a particular parish?

A. Yes.

Q. Which one?

A. Our Lady of Guadalupe Church.

Q. And do you know if Our Lady of Guadalupe is a nonprofit religious association?

A. I don't know for sure.

Q. And do you know essentially, and this is only to your understanding, do you know why Our Lady of Guadalupe was established?

MS. FUND: It calls for speculation.

THE WITNESS: No.

BY MS. KANTOR:

[ER 826]

Q. So were you committed to teaching children Catholic values?

A. Yes.

Q. Were you committed to faith-based education?

A. Yes.

Q. And I just want to understand a little bit more about that. Were you responsible for school mass?

A. Sometimes.

Q. What did that entail?

83a

A. I would choose students to participate in the mass by reading.

Q. So the students would read during the mass?

A. Yes.

Q. Would you select their readings?

A. The readings were already in the book.

Q. And would you guide them in any part of this process?

A. I would choose students to read and they would practice.

Q. Would they practice with you?

A. They would practice at home.

Q. Did you—were you responsible for **[ER 827]** attending monthly family masses?

A. Yes.

Q. And did you do so?

A. When possible.

Q. Were you a part of the liturgy planning for school masses?

A. At my particular school mass, yes, but otherwise, no.

Q. What does that mean, your particular school mass?

A. Each class would have a special monthly mass.

Q. So your 5th grade class was in charge of—

A. Yes.

Q. —a school mass a month? And what did that involve?

A. It involved choosing readers to read at the mass.

Q. What you had already told me about?

A. Yes.

Q. All right. And then I believe you already testified to this, but did you also teach religion class?

A. Yes.

[ER 828]

Q. And did you undergo any religious training in order to teach religion?

A. Yes.

Q. Can you describe that to me.

A. It was the history of the Catholic Church.

Q. And where did you learn about this?

A. It was at St. Catherine Laboure Church

Q. So you

A. in Torrance.

Q. Sorry. So you had to like go to a special separate class training on the history of the Catholic Church?

A. Yes.

Q. And how many courses did you take?

A. It was one course.

Q. And when did you take it?

A. I took it approximately in the year 2012.

Q. Any other years?

A. I'm not sure.

Q. Okay. So I'm going to mark as Exhibit 4 a document Bates stamped OLG 117 to 122.

(Whereupon, Deposition Exhibit 4 was marked for identification by the Court Reporter.)

[ER 829]

BY MS. KANTOR:

Q. Please take a look at this, and let me know if you recognize these documents.

A. Yes.

Q. Okay. Let's start with the first page Bates stamped OLG 117. What is this document?

A. This certified that I took the course.

Q. And is this the course you were just telling me about?

A. Yes.

Q. Sorry, like—excuse my lack of knowledge about this, but what is—what does a Catechist Certification mean?

A. Catechist? It means that I am knowledgeable in the Catholic religion.

Q. All right. And then if you look at the third page, it's Bates stamped OLG 119, what is this document?

A. This document is the VIRTUS training for abuse—

Q. Okay.

A. —of children.

Q. And then if you look at the next page Bates stamped OLG 120, what is this document?

A. This is the same course at a different [ER 830] location.

Q. So you took it another time, is that what it means?

A. The classes were not always held at St. Catherine Laboure, they were offered at different churches --

Q. Oh, so it—

A. —for schools.

Q. Sorry, I keep doing that. It was—

MS. FUND: Yes.

BY MS. KANTOR:

Q. It was multiple classes?

A. Yes.

Q. All right. And you said this was a course on the history of the Catholic Church. What kinds of things did you learn about, in brief?

A. We learned about the Bible.

Q. Were you responsible for integrating Catholic teachings and values into your other classes, not just religion?

A. I would say so.

Q. And can you give me an example of a way that you would try and do that?

A. I might say let's say a prayer for someone's mother who's ill.

[ER 831]

Q. Can you think of any other examples?

A. Oh, I would say a prayer at the end of class.

Q. Oh, is that something that you did regularly, daily prayer with the students?

A. Yes.

Q. And what did that entail?

A. Saying a Hail Mary.

Q. And when was this prayer usually done?

A. Usually in the beginning of the class or at the end of the class.

A. Was there also a prayer before meals?

A. It's possible. If the student went to lunch and said a prayer, I don't know.

Q. And you said that you also tried to incorporate spontaneous prayers where it came up?

A. If needed.

Q. Were you responsible for administering the yearly assessment of children religious education test?

A. Yes.

Q. What is that test?

A. It is a test on Catholic teachings for 5th grade.

Q. And so what was your responsibility with **[ER 832]** regard to the test?

A. My responsibility was to administer the test.

Q. Okay. Were you also expected to attend faculty prayer services?

A. Yes.

Q. What about faith formation classes?

A. I don't recall.

Q. Were you expected to take your class to weekly mass?

A. Yes.

Q. And I think you—sorry if I’m asking this again, but how about monthly school-wide masses?

A. Yes.

Q. What about additional prayer services throughout the year?

A. I can’t remember.

Q. How about like for All Saints Day?

A. That was my 5th grade mass.

Q. Oh, you were responsible for that?

A. Yes.

Q. Were you responsible for taking the students to mass for the Feast of Our Lady?

A. Yes.

[ER 833]

Q. How about for Reconciliation?

A. Yes.

Q. Stations of the cross?

A. Yes.

Q. Lenten services?

A. Yes.

Q. Am I forgetting any?

A. Christmas maybe.

Q. That's a big one. Okay. Did you ever personally lead school-wide religious service?

A. Not that I recall.

Q. When you were responsible for mass or your class was, did you have any input into selecting the hymns?

A. No.

Q. Did you ever personally deliver a message during the service?

A. Not that I recall.

Q. Did your students?

A. Not that I recall.

Q. Did you have to prepare your students to altar serve during weekly mass?

A. No.

Q. How about to read during weekly mass?

[ER 834]

A. Yes.

Q. And also for the school mass?

A. Yes.

Q. Did you lead your students in any devotional exercises?

A. Not that I can recall.

Q. Were you expected to provide students with an opportunity to prayerfully reflect on their faith and spiritual growth?

MS. FUND: I'm just going to object to the extent it's vague and ambiguous.

THE WITNESS: Not that I recall.

BY MS. KANTOR:

Q. So devotional exercises weren't part of your teaching?

A. I don't understand what that means.

Q. Okay. That's fine. Did you as a religion teacher, did you conduct daily religion—religion instruction?

A. Yes.

Q. All right. And what was the textbook you were responsible for using?

A. I believe it was "Blest Are We."

Q. Okay. So I'm going to mark as Exhibit 5 a document Bates stamped OLG 577 through 596.

[ER 835]

(Whereupon, Deposition Exhibit 5 was marked for identification by the Court Reporter.)

BY MS. KANTOR:

Q. And, Ms. Morrissey-Berru, I would just ask you to take a look at this and tell me if it looks familiar to you.

A. Yes.

Q. Can you tell me what this -- I mean, I know it's a xerox, but can you tell me what this is?

A. This is our religion book, "Blest Are We."

Q. So the textbook you were responsible for using; is that correct?

A. Yes.

Q. Okay. And I'll represent that in this exhibit it's the table of contents of the book. And how did you use this textbook in your religion course?

A. We would read the book every day.

Q. And so what kind of lessons were you teaching? Let's just focus on your last year at Our Lady of Guadalupe in your religion class. What were some of the lessons you were responsible for teaching students?

[ER 836]

A. I don't recall.

Q. Perhaps you can use this Exhibit 5 to refresh your memory. Take your time.

MS. FUND: And again, she's asking about the last year of your teaching.

THE WITNESS: Well, looking at the contents, it would be Creation, the seven sacraments, sacramentals, Baptism, Confirmation, the Eucharist, Reconciliation, Holy Orders and Matrimony.

BY MS. KANTOR:

Q. So would you say as part of your teaching, students were expected to learn and express belief that Jesus is the son of God and the Word made flesh?

A. Yes.

Q. Would you expect your students to be able to identify the ways that the church carries on the mission of Jesus?

A. Yes.

Q. Would you teach student to explain the communion of saints?

A. Yes.

Q. Would you teach students to recognize the presence of Christ in the Eucharist?

[ER 837]

A. Yes.

Q. Would you expect, through your teaching, that students would be able to locate, read and understand stories from the Bible that relate to the sacraments?

A. Yes.

Q. Would you teach students to know the names, meanings, signs and symbols of each of the seven sacraments?

A. Yes.

Q. Would any of your lessons entail the students experiencing the water, bread, wine, oil and light with the senses and participating in the prayer service related to that?

A. Yes.

Q. Would students learn to celebrate the sacrament?

A. Yes.

Q. Would they learn to celebrate a prayer service of Reconciliation?

A. Yes.

Q. Would you teach students how to pray the Apostles' Creed and the Nicene Creed?

A. Yes.

Q. Would students learn the four marks of the **[ER 838]** church?

A. Yes.

Q. Would you teach students to recognize the liturgical calendar?

A. Yes.

Q. Would you teach students to recognize the meaning and celebration of the Sacred Triduum?

A. Yes.

Q. Would you teach students to understand original sin?

A. Yes.

Q. So would you say that you had to introduce students to Catholicism?

A. Yes.

Q. And kind of gave them a groundwork for their religious doctrine?

A. Yes.

Q. Can I point you back to Exhibit 1, the first one we looked at, the 2014-2015 contract.

MS. FUND: Are you talking about Exhibit 2?

MS. KANTOR: Exhibit 2. Thank you.

Q. Can you read on the first page where it says "Philosophy." Do you mind just reading it out loud.

[ER 839]

A. "Philosophy: The mission of the school is to develop and promote a Catholic school faith community within the philosophy of Catholic education as implemented at the school and the doctrines, laws and norms of the Roman Catholic Church. All your duties and

responsibilities as a teacher shall be performed within this overriding commitment.”

Q. And, Ms. Morrissey-Berru, did you agree that your duties and responsibilities as a teacher should be performed within this overriding commitment?

A. Yes.

Q. Okay. If you can go just two sentences down, I’m looking at the second sentence in the “Duties” section, starting with “You acknowledge.” Do you mind reading there.

MS. FUND: I’m just going to object to the extent this document speaks for itself. You can continue to read in the document that everybody has in front of them.

THE WITNESS: “You acknowledge that the school operates within the philosophy of Catholic education and retains the right to employ individuals who demonstrate an ability to teach in

* * *

[ER 919]

it’s Bates stamped OLG 166 to 169. It’s entitled “Archdiocese of Los Angeles Elementary School Classroom Observation Report” dated March 15, 2014.

MS. FUND: Do you know if it was in the middle of the exhibits? Beginning?

MS. KANTOR: I can just give you—actually, I think it’s Exhibit 15.

MS. FUND: Okay.

MS. KANTOR: Exhibit 15.

MS. FUND: Is it—sorry, 15 or 16?

MS. KANTOR: OLG 166.

MS. FUND: I think I have it marked as 16.

MS. KANTOR: 15 or 16. It's fine either way.

Q. Mrs. Morrissey-Berru, are your Catholic identity factors in the classroom something you were evaluated on?

A. Apparently.

Q. So one of the things I was looked to was visible evidence of signs, sacramental tradition of the Roman Catholic Church in the classroom?

A. Yes.

Q. And also integrating school-wide learning expectations?

A. Yes.

[ER 920]

Q. And having the curriculum include Catholic values infused through all subject areas?

A. Yes.

* * *

[ER 921]

* * *

Q. Okay. What is Our Lady of Angels Cathedral?

A. It is the cathedral in downtown Los Angeles.

Q. And did you do a special altar service there or something?

A. I took my students for a tour of the cathedral and they could serve the altar. It was once a year.

Q. And what year did you do that?

A. Since 2006.

Q. Every year?

A. Yes.

Q. And is that, you think, an important experience?

A. Yes.

Q. How come?

A. Students can serve the altar. It is a big honor.

Q. Do you feel that as a teacher at OLG, you gave evidence to the importance of prayer and worship?

[ER 922]

MS. FUND: I'm just going to object to the extent it's vague and ambiguous.

THE WITNESS: Evidence, yes.

BY MS. KANTOR:

Q. Did you try and integrate religious attitudes and values into all of your curricular areas?

MS. FUND: Objection. It's vague and ambiguous.

You can answer.

THE WITNESS: If possible.

BY MS. KANTOR:

Q. And did you try and instruct your students in a manner consistent with the teachings of the Church?

A. Yes.