



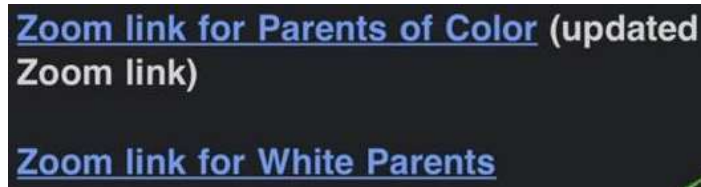
WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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April 26, 2021

Dr. Carlton D. Jenkins, Ph.D
Superintendent of Schools
Madison Metropolitan School District
545 W Dayton St.
Madison, WI 53703

Dear Dr. Jenkins:

The Wisconsin Institute for Law & Liberty (WILL) is a non-profit public-interest law firm dedicated to the rule of law, individual liberty, constitutional government, and a robust civil society. On April 23, 2021, we became aware of an email originating from the Madison Metropolitan School District (MMSD) directed to families of Madison West High School. The email invites parents to a conversation related to “all the police brutality and violence that is going on.” After asserting that it is “very necessary to have space for our families to discuss and process,” the email concludes with the following information:



This is at least the second time Madison West High School has employed racial segregation in the past ten months. In July 2020, and just before your time in the role of Superintendent, Madison West hosted “virtual discussion spaces” for students to discuss “the pain our community is feeling at this present moment.” For that discussion, Madison West segregated students by establishing two separate Zoom calls: one for “white students” and one for “students of color.”

In a letter dated July 23, 2020 to Principal Karen Boran, we explained that racial segregation in education is illegal under federal law, specifically Title VI. Such discrimination in education is prohibited under state law as well. See Wis. Stat. § 106.58. We hoped that MMSD would have at least paused to consider whether such noncompliance would jeopardize future federal and state aid.

But today we would like to appeal to a higher principle. This country has a painful, tragic, and violent history of racial segregation. In 1896, the United States Supreme Court established the infamous “separate but equal” doctrine. That

doctrine, which permitted and endorsed racial segregation, ultimately relied upon the belief that racial segregation was needed for “comfort,” “public peace,” and “good order.” *Plessy v. Ferguson*, 163 U.S. 537, 550 (1896).

More than two generations later, defending school segregation, the proponents of “separate but equal” were still touting the supposed “benefits” of separating the races. For example, they argued that racial segregation benefitted Blacks because it afforded them a better “opportunity to participate,” made Blacks feel “inwardly more secure,” and actually “promote[d] cross-racial understanding.” See generally *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 323-24 (2013) (Thomas, J., concurring). Segregationists even argued that segregation was necessary to protect “black children from racist white students and teachers.” *Id.* at 329.

Madison West’s justifications for racial segregation are indistinguishable from the segregationists of the 1950s. In that July 2020 email, Madison West justified separation of the participants by race because it supposedly provided a “level of emotional safety and security,” space for students and staff to “process the pain our community is feeling,” and an opportunity to “develop individual and group plans of action to make our physical and virtual spaces safe.” These arguments are no different from those advanced by the proponents of Jim Crow.

Happily, the U.S. Supreme Court rejected this poisonous belief system nearly 70 years ago in *Brown v. Board of Education*, concluding “that in the field of public education the doctrine of ‘separate but equal’ has no place.” Explaining this holding decades later, Justice Clarence Thomas wrote that the “Constitution does not pander to faddish theories about whether race mixing is in the public interest. The Equal Protection Clause strips States of all authority to use race as a factor in providing education.” *Fisher*, 570 U.S. at 327.

Obviously, there is nothing improper about discussing racial issues and societal unrest. But segregation is never beneficial and never benign. MMSD’s professed good intentions do not justify tactics that are plainly harmful, unconstitutional, and, by definition, racist.

Our Nation rests upon certain foundational principles; chief among these is the principle of equality. Our Wisconsin Constitution begins with the solemn declaration that “[a]ll people are born equally free and independent, and have certain inherent rights.” We know MMSD teaches this foundational principle of equality when it teaches students about the Greensboro sit-ins, the Montgomery bus boycott, the Freedom Riders, Bloody Sunday, and the March on Washington. What were these Civil Rights heroes fighting for? It is no mystery: the plain and simple hope that one day our children “will be judged not by the color of their skin, but by the content of their character.”

In your new role as superintendent, which began just a few short months ago, we hope you will take this opportunity to re-dedicate MMSD to the principle of equality and to end all forms of racial segregation immediately.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
Rick Esenberg, President & General Counsel

A handwritten signature in black ink, appearing to read "Dan P. Lennington", written over a horizontal line.

Daniel P. Lennington
Deputy Counsel