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August 27, 2021

Dr. Keith P. Posley, Superintendent  
Milwaukee Public Schools  
5225 W. Vliet Street  
Milwaukee, WI 53028

*Via email only to:* posleykp@milwaukee.k12.wi.us

Principal Phyllis Anderson  
Rufus King High School  
1801 W. Olive Street  
Milwaukee, WI 53208

*Via email only to:* anderspp@milwaukee.k12.wi.us

RE: Vaccination Question by Geometry Teacher at Rufus King High School

Dear Dr. Posley and Principal Anderson:

I am an attorney with the Wisconsin Institute for Law & Liberty (WILL), which is a non-profit law firm dedicated to enforcing the rule of law and protecting constitutional rights.

It has been brought to our attention that a geometry teacher at Rufus King High School, Kara Grier, issued a survey on the first day of classes asking students about their vaccination status and demanding that those who were not vaccinated provide the teacher with reasons why they are not. The teacher specifically designated this as a “required” question using a red asterisk, meaning that the survey would not be considered “completed” unless the question was answered:

Although we are meeting face to face at this time, Covid is still very much a thing people worry about. Have you been vaccinated? If no, please give a brief reason why. No judgement. \*

Your answer

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This question is not only highly inappropriate for a math class, but is also a violation of federal statute. Federal law protects students from being required to participate in any sort of “survey, analysis, or evaluation” that divulges information concerning, among other things, political affiliations or beliefs of the student or the student’s parent; legally recognized privileged relationships, such as that between a physician and a patient; and religious practices, affiliations, or beliefs of the student or student’s parent. 20 U.S.C. § 1232h(b)(1), (6), (7). Depending upon the circumstances, any or all of these reasons could be implicated, and students should not be coerced into providing information that the teacher has no right to obtain under the auspices of a “getting to know you” survey. A student may have a personal objection to the vaccine, the student may have a private health reason why he or she cannot or will not receive the vaccine, or the student may wish to get the vaccine but his or her parents have not given parental consent. Whatever the student’s or the parents’ reasons, these circumstances have no relevance whatsoever to the student’s proficiency in geometry, and the teacher has no right to solicit this information.

Furthermore, even if the school or teacher believed this question was permissible, any such survey on these otherwise-prohibited subjects required prior parental notice and consent. 20 U.S.C. § 1232h(c)(2)(C)(ii). Neither the teacher nor the school made any effort to obtain such consent here before posing this as a “required” question. Congress intended that these laws concerning protection of pupil rights be taken seriously by schools. Schools that do not protect the privacy rights of students and parents under these statutes may be subject to investigation and enforcement actions, including the withholding of federal funding in some cases.

In addition to federal law, the vaccination question violates Milwaukee Public Schools’ own policies on these matters. MPS’s “Parent/Guardian Bill of Rights” contained in the MPS handbook specifically provides that parents have the right to “ready surveys and questionnaires that may be used with your child.” As noted, that process was not honored here. MPS’s handbook also reflects the right to privacy in one’s medical records. The narrow exception to the expectation of privacy—namely that the MPS employee has a “legitimate education interest” in “fufill[ing] his or her professional responsibility” (MPS 2021-22 Handbook at 48)—does not apply to a teacher whose responsibility is to teach math and who is simply curious about vaccination status and the reasons therefor. Further, the COVID-19 vaccine is not among the inoculations required by the Milwaukee Public Schools. MPS Handbook at 37 (listing required vaccinations). Even if it were, it would not be the geometry teacher’s place to police parental compliance with the district’s requirement—and certainly not in a manner that risks exposing private health information to the prying eyes of other students, faculty, or staff who likewise have no right to this information. Parents have reported to us that bullying over vaccination status is already taking place among students who have differing views. Incorporating questions like this into the classroom environment is counterproductive to developing a healthy student

environment, particularly for those students who have been learning virtually for much of the last eighteen months.

Moreover, the fact that the teacher claimed the answers would result in “no judgement” [sic] on her part rings hollow and raises more questions than it answers. What possible interest can this question serve if not to form a judgment about the individual answering the question (or that student’s family)? There can be no genuine dispute that whether a student is vaccinated has no bearing on the student’s aptitude for calculating angles, successfully completing a geometric proof, or demonstrating other skills necessary to pass a geometry class. Vaccination status should not be used to calculate a student’s grade—and the only way to ensure that such bias does not occur is not to ask such invasive questions in the first instance.

We are hopeful that this breach of student privacy was a one-time mistake and will not be repeated by this teacher or by any other educator in the district. To ensure that similar incidents like this one do not occur in the future, I ask that you notify every teacher in the district via email that surveys and questions of this nature violate the law and are unacceptable, and that you send me a copy of said email so that we need not pursue further legal action.

Thank you for your prompt attention to this matter.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

*/s Katherine D. Spitz*

Katherine D. Spitz  
Associate Counsel  
Wisconsin Institute for Law & Liberty, Inc.