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330 E. Kilbourn Ave., Suite 725, Milwaukee, WI 53202-3141
414-727-WILL
Fax 414-727-6385
www.will-law.org

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Dr. Mark Hansen
Superintendent of Schools
Elmbrook Schools
3555 North Calhoun Road
Brookfield, WI 53005

Dear Dr. Hansen:

We have recently become aware that it is the official position of Elmbrook Schools that race discrimination laws do not apply to white students. Not only is this both legally and factually wrong, but it is frankly shocking that a public educational institution could hold such a view.

A few months ago, a concerned parent lodged a complaint with Elmbrook Schools alleging race discrimination (among other things). Assistant Superintendent Tanya Fredrich investigated the complaint and then prepared a written report. In her report, Dr. Fredrich included this outrageous statement:

> Although there is no evidence that the student's race (White), sexual orientation (Heterosexual) and socio-economic status (middle-upper middle-class) were a consideration in any decision made by the District regarding the student, it must also be noted that the student is not a member of any class that is legally protected from discrimination by state or federal law. To the contrary, the student's race, sexual orientation and socio-economic status are what are considered to be the majority status and thus do not form a basis for claiming that the student is being treated or has been treated less favorably than persons not in the protected class.

This is patently false. *All people* are protected by federal and state nondiscrimination laws. There is no such thing as a "protected class" in the sense that some races are protected while others are not. Black and brown students do not have different rights; they have identical rights to white students and must be treated identically to white students. And there is certainly nothing in the law concerning a diminished set of rights for those with "majority status." If a white student or teacher used a racial slur against a black student in a majority-minority district such as the Milwaukee Public Schools, for example, it would be no defense that there are more black students enrolled at MPS than those of any other race.

Put differently, all racial groups are protected "classes." It is the very act of racial classification that is subject to non-discrimination laws. Because Elmbrook

Schools' mistake is so fundamental, and frankly so dangerous to the legal rights of parents and your students, it is important to explain the law in more detail.

The U.S. Constitution, which applies to Elmbrook Schools through the 14th Amendment, guarantees "equal protection of the laws." In the case of *Regents of the University of California v. Bakke,* the United States Supreme Court confirmed that a white student could bring a claim for race discrimination under the U.S. Constitution. In rejecting the argument that white students should be treated differently than minority students, the Court twice remarked that the U.S. Constitution has "never" been interpreted as protecting only minorities from race discrimination. And since that time, we are aware of no case anywhere suggesting that white students cannot bring a claim for race discrimination because they are white. In fact, the opposite is true.

Federal law mirrors the U.S. Constitution's protection of *all* people, whatever their race. Elmbrook Schools receive federal funds; therefore, it must follow Title VI of the Civil Rights Act of 1964. This Act guarantees that "no person" may be "subject to discrimination" "on the ground of race." 42 U.S.C. § 2000d. The Supreme Court, again in *Bakke*, explained that Title VI protects white students in the same way it protects minority students. Other similar federal laws, such as Title VII and the Civil Rights Act of 1866, likewise protect "whites as well as nonwhites." *See McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 286 (1976).

This principle carries over into state law. Our Wisconsin Constitution similarly guarantees equality under law, mandating that governments, including school district employees, treat all students "equally," regardless of race. And Wisconsin Statutes, Section 118.13, prohibits all discrimination "on account of . . . race." The Wisconsin Department of Public Instruction is emphatic: "*no pupil*" may be "treated in a different manner because of . . . race" (emphasis supplied). So just as in federal law, nothing in state law exempts a so-called "majority class" from the protection of civil rights laws.

To summarize, *all* race discrimination is *illegal* race discrimination under federal and state law. This has been settled law for decades.

To illustrate our point a bit more, consider two landmark cases. Nearly 20 years ago, the United States Supreme Court decided *Grutter v. Bollinger* and *Gratz v. Bollinger*. In both of those cases, white students brought claims of race discrimination to the U.S. Supreme Court. Although white students won in *Gratz* and different white students lost in *Grutter*, these cases are notable because not a single Supreme Court justice questioned, even slightly, the right of a white student to assert a claim of race discrimination under the Constitution or federal law. And as Dr. Fredrich might say, some of the plaintiffs in those cases could be described as "white" "heterosexual" and "middle-upper middle class," but they unquestionably had the right to petition the courts for violations of the law.

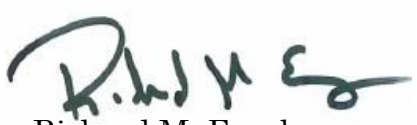
Given the grave nature of Elmbrook's mistake, we are asking that you take immediate steps to instruct your staff that *all students* are protected from

nondiscrimination laws. Elmbrook families need to know that their school district does not countenance any type of discrimination based upon race. While we appreciate public schools are under considerable pressure to embrace progressive concepts such as "equity," "social emotional learning," and "culturally responsive teaching," nondiscrimination laws still apply to all teachers and staff. These laws mandate, quite simply, the following: *all students* must be treated equally. Teachers may not make distinctions based on color, provide additional support for students based on race, attempt "racial balancing" or "proportionality" in programs or classrooms, or grant special treatment or privileges to support certain racial "identities." What's more, the law requires Elmbrook to treat students as *individuals*. As the Supreme Court explained in a case where a public school attempted to divide students into groups of "white" and "nonwhite," the Court explained that the Constitution's mandate for equality "protects *persons*, not *groups*." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (emphasis in original).

In sum, the law's mandate is that your teachers and staff are *colorblind*, and we hope you do the work necessary to have your staff embrace this non-negotiable principle.

Sincerely,

THE WISCONSIN INSTITUTE FOR LAW AND LIBERTY



Richard M. Esenberg
President & General Counsel

Daniel P. Lennington
Deputy Counsel