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February 28, 2023

***VIA ELECTRONIC MAIL:***

Eau Claire Area School District  
Board of Education  
Dr. Tim Nordin, President  
500 Main Street  
Eau Claire, WI 54701-3770  
*tnordin@ecasd.us*

**RE: Chippewa Valley Montessori Charter School  
Re-Authorization**

Dear School Board Members:

A school board's most basic obligation is to provide safe and high-quality educational opportunities to all students on an equal basis without regard to race. Constitutional law, federal law, and state law each impose upon you the duty of nondiscrimination. In short, your policies and decisions must be colorblind.

In light of these fundamental legal and moral standards, it is with profound disappointment that we must object to your anticipated decision to change your legal relationship with the Chippewa Valley Montessori Charter School (CVM) simply because of the race of the students within that school. As explained below, the United States Supreme Court has held that public schools may not take steps to racially balance schools within a school district, and your plans to implement a racial-equity policy altering the racial makeup of CVM is therefore unconstitutional.

CVM is a free public charter school authorized by the Eau Claire Area School District. Approximately 300 students and 45 staff members make up the 4K–5<sup>th</sup> grade school. As indicated by its name, CVM uses the Montessori method of education, which focuses on hands-on learning in a mixed-age setting.

Students attending CVM receive a high-quality education. The Department of Public Instruction awarded CVM four stars and the designation of “exceeds expectations.” Over 85% of students at CVM perform at grade level for math and language arts. CVM scores are significantly higher than the district average.

CVM is free and open to all students, but because demand outpaces available seats, CVM holds a blind lottery each February as required by state law. Because of this blind lottery, CVM's demographic makeup is entirely random, based on the pool of those families applying for spots. Preference is given only to residents of Eau Claire, siblings of admitted students, and children of CVM staff. There are currently 108 children on CVM's waitlist.

On February 20, 2023, you considered the renewal of the CVM charter, which has been consistently renewed by EACSD for over twenty years. As stated above, you are the authorizer of CVM, and without an authorizer, CVM can no longer operate as a charter school.

During this meeting, every board member present expressed concerns about the racial makeup of CVM. In the words of Board Member Dr. Lori Bica, CVM's current enrollment is at an "all-time high for white students." Much of your discussion revolved around how EACSD could "fix" CVM's "whiteness." Board Member Dr. Stephanie Farrar stated that the racial makeup of CVM is a "significant issue" and "does not align with our equity commitment of the district." She then lamented CVM's "concentration of whiteness and wealth" and said, "I just don't like that it's primarily available to white students—that's just not right." Board President, Dr. Tim Nordin, implied that CVM is hampering the district's ability to achieve its equity goals because it only serves "the white and wealthy."

Some comments were overtly racist against minority parents. Board member Joshua Clements explained his theory as to why CVM was not as diverse as he would have hoped: the lottery is a "barrier" that benefits only those "people who are prepared, who are paying attention" and this "allows self-segregation to happen." The suggestion by these remarks, and by several other board members' remarks specifically related to the blind lottery, is that non-white parents are not "prepared" or are not "paying attention." Such negative stereotypes about minority parents in the district imply that these parents are either incapable of following basic developments related to their children's education or that they don't care enough to do so. These assumptions are both completely baseless and insulting to the very community the Board purportedly wishes to help.

We could go on. But it is perfectly clear ECASD board members believe that CVM is too white. And ECASD board members further believe that the charter and its lottery system are the "barriers" preventing a proper racial balance.

Some Board members have even suggested the possibility of revoking the school's charter on this basis. Board Member Erica Zerr suggested setting "seats aside and giv[ing] preference to specific categories to guarantee diversity" and stated that she believed this can only be accomplished if "we take away the charter." Ms. Zerr, who includes in her website bio that at least one of her children attends CVM, admitted "objectively ... there is no reason to say 'no' to a charter renewal because

they are meeting the criteria of their charter contract to us.” But then she followed up by saying, “subjectively, I would like it to be more diverse,” but then questioned whether the district can “even legally guarantee diversity—can we discriminate? I even don’t know the answer to that.”

We can answer that question, and it is an unequivocal “no.” In 2007, the United States Supreme Court considered a plan by the Seattle School District employing a lottery system that classified some students based on race. And in a consolidated case, the Court also considered a school district in Kentucky that required all schools to maintain a minimum black enrollment of 15 percent. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

In defense of these plans, the school districts asserted some of the same arguments you made on February 20: curing a “racial imbalance” and ensuring student-body “racial diversity.” But the Court rejected these arguments, explaining that “racial balancing” is “patently unconstitutional.” The Constitution commands that you treat students “as individuals, not simply as components of a racial” group. *Miller v. Johnson*, 515 U.S. 900, 911 (1995). “Allowing racial balancing as a compelling end in itself would effectively assure that race will always be relevant in American life, and that the ‘ultimate goal’ of eliminating entirely from governmental decision-making such irrelevant factors as a human being’s race will never be achieved.” *Parents Involved*, 551 U.S. at 730 (citations omitted). In short, “racial balancing is not permitted.” *Id.* at 732.

It is notable that in response to this decision (now over 15 years ago), the Wisconsin Attorney General ruled that racial-imbalance provisions in state law were invalid, and the Department of Public Instruction announced that it would “reverse any decision made by a school district relying on the racial imbalance” provision in state law. Also, the Madison Metropolitan School District abandoned policies that racially balance school buildings within the district. *See N.N. v. MMSD*, 670 F. Supp. 2d 927 (W.D. Wis. 2009).

Apart from ruling afoul of the U.S. Constitution (and the corollary principles in the Wisconsin Constitution, Title VI, and Chapter 120 of the Wisconsin Statutes), your attempt to inject race into your contract with CVM likely violates Section 1981 of the Civil Rights Act of 1866. This law offers relief “when racial discrimination blocks the creation of a contractual relationship,” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006), or even prevents individuals “who sought to enter into a contractual relationship from doing so,” *Runyon v. McCrary*, 427 U.S. 160, 168 (1976). This is an exceedingly broad statute that offers plaintiffs compensatory and punitive damages, along with attorney fees. Section 1985 of the Civil Rights Act also provides a cause of action against two or more people who conspire to violate civil rights. All these specific actions could be brought against each of you in your individual capacities.

With these clear and unequivocal legal authorities in mind, we call upon you to renew your contract with CVM without any racial classifications, race-based “equity” policies, or other requirements that would prevent the colorblind fulfillment of your duties as an authorizer under state law. Given this country’s tragic history of mixing race with education, we urge you to steer clear of your charted course.

Racial balancing—no matter what the justification—will never lead to equal rights for all.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY INC.



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