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June 12, 2024

VIA ELECTRONIC MAIL: **boardofeducation@sdb.k12.wi.us**
School District of Beloit
Board of Education
1500 Fourth Street
Beloit, WI 53511

RE: Racially discriminatory policies & practices in violation of federal and state law.

Dear Members on the Board of Education in the School District of Beloit:

The Equality Under the Law Project is a nationwide litigation and policy initiative of the Wisconsin Institute for Law & Liberty, Inc. ("WILL"). Through this project, WILL engages frequently with parents, students, taxpayers, and other concerned citizens who oppose discriminatory diversity, equity, and inclusion programs and other race-conscious policies. Through our work, a number of concerned citizens in the School District of Beloit (the "District") have come forward with complaints of race discrimination against the District. Although there are a number of examples, this letter focuses on one specific example of race discrimination in the District: the Grow Your Own Multicultural Teacher Scholarship Program.

We write to provide the District an opportunity to respond to these allegations of race discrimination, and to either clarify and affirm that this scholarship program does not employ race-conscious criteria, or to immediately terminate the race-based component of the program in compliance with the United States Constitution, the Wisconsin Constitution, and varied federal and state laws.

As the District explains through numerous documents, videos, and other materials, the District "sponsors" the Grow Your Own Multicultural Teacher Scholarship Program for minority students and staff who are pursuing a career in education

("GYO").[1,2] "The goal of this scholarship is to encourage minorities to pursue teaching as a career and return back to teach in Beloit."[3] By "minority," the District means that it favors certain individuals who are not from a "white" racial classification for purposes of the GYO scholarship.[4] Scholarship recipients are awarded up to $20,000 ($5,000 per year for four years while in pursuit of an education degree) in addition to mentoring services.[5]

To be eligible for the GYO scholarship, a student must meet three criteria: (1) be a graduating senior or recent graduate of Beloit Memorial High School; (2) be pursuing a degree in education; and (3) be a minority.[6] Similarly, a District employee is eligible for the scholarship if the employee: (1) currently has an associates degree, or enough credits to obtain a teaching license within two years; (2) is a racial minority; and (3) has a desire to apply for professional educator positions in the District.[7]

The District proudly and prominently promotes the GYO program on its website, including District "campaign[ing]" and "fundrais[ing]" efforts.[8] As the program's "sponsor," the District explains that it created and "launched" this scholarship program because the composition of minority educators in the District at 16.56% is "not reflective of our current student population."[9] As the District puts it: "We value diversity and believe our workforce should be reflective of the students and community we proudly serve. We understand and know the importance of our students seeing and being taught by a teacher who looks like them."[10]

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[1] The District's general website features the "Grow Your Own Multicultural Teacher Scholarship Program" under the "Programs" tab. The landing page for the scholarship details various categories of information regarding the scholarship, including a "flyer" summarizing the program. *See* Flyer, available at https://www.sdb.k12.wi.us/Page/4956. *See also* "2022 Grow Your Own Video" available at https://www.sdb.k12.wi.us/Page/4829 & "Grow Your Own Initiative | School District of Beloit" video available at https://statelinecf.org/scholarship/grow-your-own/#.

[2] The District describes its GYO program as a "scholarship pass through fund," that is managed by Stateline Community Foundation. *See* "Financial Update," "Statement of Activity for the period ending December 31, 2023" available at https://www.sdb.k12.wi.us/Page/4958.

[3] *E.g.*, "Flyer," available at https://www.sdb.k12.wi.us/Page/4956.

[4] *E.g.*, 2021 Board of Education Presentation, slides 2 & 3, available at https://www.sdb.k12.wi.us/Page/5562 (characterizing 15.8% of the District's non-white educators as "minorities"); Flyer," available at https://www.sdb.k12.wi.us/Page/4956.

[5] "2021 Board of Education Presentation," slides 4 & 10, available at https://www.sdb.k12.wi.us/Page/5562.

[6] *E.g.*, https://statelinecf.org/scholarship/grow-your-own/#.

[7] *E.g.*, *id.*

[8] The "Donate Today" tab on the scholarship's landing page directs to the "Grow Your Own Multicultural Teacher Scholarship 2023–2024" fundraising website, available at: https://www.classmunity.com/sdbwi/view-fundraiser.php?fundraiser_id=2239.

[9] *Id.*

[10] *E.g.*, "Flyer," available at https://www.sdb.k12.wi.us/Page/4956.

Accordingly, the scholarship reflects the District's commitment "to ensure a diverse professional teaching workforce."[11] The following racial groups are as acknowledged as "diverse": "Black / African American," "Native American / Alaskan," "Asian," and "Hispanic / Latinx."[12]

The District identifies at least two District employees as "campaign manag[ers] and committee chairs, among various other staff members serving on the scholarship committee.[13] In addition, the District "challenge[s]" its employees and Board members to commit annual contributions to the GYO scholarship fund through direct payroll deductions.[14] Contributions can also be made through "Classmunity," "the [D]istrict's version of a 'Go Fund Me' type of electronic platform."[15] In fact, the District reports inducing staff contributions through incentive initiatives, such as the "Free Day Raffle," in which contributing staff members could "earn" a day off for donating to the District's race-based scholarship campaign.[16] Concerns reported to WILL from individuals in the District similarly indicated that staff were "strongly encouraged" to fund the District's race-based scholarship.

In 2021, the District noted that a total of three scholarships had been awarded.[17] Since then, the District has continued making scholarship awards, including awards for the currently posted 2023 recipients.[18] Likewise, 2023 financial statements detail contributions totaling $25,500.00 with an end of the year balance of $41,453.54.[19]

According to the District's current fundraising efforts on the "Classmunity" platform, the funding goal for the 2023–2024 GYO scholarship remains in progress.[20] Contributions made through this platform are posted each month, including lump sum "payroll deductions" that reflect the District's success in convincing its employees to donate directly from their paychecks.[21]

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[11] *E.g.*, *id.*

[12] *Id.*; https://www.classmunity.com/sdbwi/view-fundraiser.php?fundraiser_id=2239.

[13] The District indicates two employees as the scholarship's "campaign manag[ers]"—Michelle Hendrix-Nora and Jennifer Paepke. *Id.* These two individuals also appear to serve as committee chairs for the scholarship program, among various other staff members serving on the committee. *See* "Committee Members," available here: https://www.sdb.k12.wi.us/Page/4959.

[14] "2021 Board of Education Presentation," slides 9, 15–16 available at https://www.sdb.k12.wi.us/Page/5562.

[15] "2021 Board of Education Presentation," slide 5, available at https://www.sdb.k12.wi.us/Page/5562.

[16] "2021 Board of Education Presentation," slide 6, available at https://www.sdb.k12.wi.us/Page/5562.

[17] "2021 Board of Education Presentation," slide 4, available at https://www.sdb.k12.wi.us/Page/5562.

[18] "Scholarship Recipients," available at https://www.sdb.k12.wi.us/Page/5682.

[19] "Financial Update," available at https://www.sdb.k12.wi.us/Page/4958.

[20] https://www.classmunity.com/sdbwi/view-fundraiser.php?fundraiser_id=2239.

[21] *Id.*

While the idea of a public school district "growing" new teachers may be quite laudable, what is **not** laudable—or even legal—is the GYO program's race-based animus and eligibility criteria, to say nothing of the use of public resources, time, and employees to operate, support, promote, and otherwise advance such a program.[22]

The District is a public entity, receives federal and state government funding, and is accordingly subject to numerous, longstanding anti-discrimination prohibitions that forbid the District from engaging in discrimination on the basis of race, color, ethnicity, and national origin. Among the panoply of prohibitions barring the District from implementing this race-based scholarship is the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964.

As the United States Supreme Court recently reiterated in a case applying the anti-discrimination standards of the Fourteenth Amendment and Title VI: "We have time and again forcefully rejected the notion that government actors may intentionally allocate preference to those 'who may have little in common with one another but the color of their skin.'"[23]

Consequently, a public school may **not** implement race-based preferences or establish racial quotas in any form.[24] For example, a school may not "insulate applicants who belong to certain racial or ethnic groups from the competition."[25] Nor may a school "use race to foreclose an individual 'from all consideration ... simply because he was not the right color.'"[26] Neither still may a school desire "some specified percentage of a particular group merely because of its race or ethnic origin."[27]

Ultimately, the GYO program rests on an impermissible interest "in race for race's sake."[28] Indeed, the District asserts an interest in a racially diverse workforce and seeks to ground its racially discriminatory scholarship program in a desire to remedy what it

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[22] Further, even beyond the discrimination the District exacts through the scholarship's racial eligibility requirement, the GYO scholarship may further implicate unlawful race-based hiring and employment practices, considering the District's expectation that "[t]hese new teachers will return to Beloit and our community of learners to begin their career." https://www.classmunity.com/sdbwi/view-fundraiser.php?fundraiser_id=2239. Indeed, the District boasts of hiring "our first teacher ... this year as a scholarship recipient now working at Todd Elementary!" *Id.*

[23] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. ("SFFA")*, 600 U.S. 181, 220 (2023).

[24] *Id.* at 211.

[25] *Id.*

[26] *Id.* at 209.

[27] *Id.* at 211.

[28] *Id.* at 220.

claims is an "unacceptable" disparity in order to obtain closer proportional representation between teaching staff and students.[29]

But the District is **not** authorized to sort individuals, and bestow benefits, on the basis of race according to whatever rationale it believes is appropriate however well-intentioned its misguided notions may be. It is well-established that public entities, like the District, may not rely on general disparities in society to justify racial requirements or preferences.[30] And the "outright racial balancing" the District seeks has been long held to be "patently unconstitutional."[31]

Moreover, the United States Supreme Court has specifically considered, and rejected, the District's notion that a school board's race-based preferences can justify a school board's interest in providing minority teachers for its minority students.[32] Indeed, "[c]arried to its logical extreme, the idea that black students are better off with black teachers could lead to the very system the Court rejected in *Brown v. Board of Education*" when it struck down the dark ages of the "separate but equal" regime.[33]

For these reasons (and *many* more, which we will not detail here), the District's creation and implementation of a racially discriminatory scholarship program violates the United States Constitution and Title VI.[34]

As if all this were not enough, the concerns with racial discrimination in the District do not end with the GYO program. Unfortunately, WILL has received reports of other practices and policies in the District that may be similarly based on race or ethnicity in violation of federal and state law. Among other concerns relayed to WILL, several reports indicate that a race-based, physical segregation of black and non-black students was created and allowed to persist in language arts classes at the then-open McNeel middle school prior to its more recent closure/absorption. If these particular allegations are true, and any such class was allowed to proceed in this manner (whether Board-authorized or not), this pre-1950s style of racial segregation in the District would be not only deeply disturbing but also highly illegal and unconstitutional.

It is black letter law that public entities must comply with the Constitution and other applicable federal and state laws. The Equal Protection Clause of the Fourteenth Amendment and Title VI have long since forbid discrimination on the basis of race, and

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[29] *E.g.*, "Flyer," available at https://www.sdb.k12.wi.us/Page/4956.

[30] *SFFA*, 600 U.S. at 226.

[31] *Id.* at 223.

[32] *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 274–75 (1986).

[33] *Id.* at 276.

[34] Moreover, the GYO scholarship implicates other applicable state and federal anti-discrimination prohibitions with attendant liability. For example, the GYO program's contracting arrangement involves a scholarship recipient, the District, and Stateline Community Foundation and accordingly implicates 42 U.S.C. §§ 1981 & 1985. These federal laws prohibit discrimination on the basis of race in contracting and prevent parties from conspiring to interfere with the civil rights of others.

so the District is without excuse. The District is charged with educating students, not enacting discriminatory and unlawful political policies and ideologies against its students and staff. Furthermore, given the teacher shortage crisis ongoing in Wisconsin and across America, the District's race-based GYO program defies all logic. The District ought to be *eager to welcome all qualified scholarship candidates*. But instead, its leadership opts to embrace racial animus, foreclosing teaching incentives on the irrelevant and unlawful basis of a human being's skin pigmentation or ethnic make-up.

All this considered, the District would be well-served to take a hard look at its policies, practices, and programs to ensure that they are in accordance with the United States Constitution, Title VI, and other federal and state anti-discrimination provisions.

However, as to the GYO scholarship program, WILL will take action against the District—including, at a minimum, the initiation of the federal Title VI process—if the District fails to return, by **June 21, 2024**, a response to this letter announcing the immediate termination of any race-based eligibility requirement or preference in compliance with the Constitution and statutory law.

Request for Public Records: Additionally, given the District's creation, support, and maintenance of the GYO scholarship program, we hereby request any donor records relating to the District's GYO program that indicate: the identity of donors, contribution amounts, dates of contributions, the means by which donations were collected (*e.g.*, via payroll deduction, the Classmunity platform, or Stateline Community Foundation, etc), and payment methods. Finally, we are in receipt of records from the District confirming the existence of a middle school language arts class called "African American ELA" at the then-open McNeel middle school. We further request any records describing: the de-identified student roster for this class; the race of those students participating in this class; how students were selected for this class; the District's reasons for using any race-based considerations in student selection for this class; and the names, titles, and descriptions of any administrative, faculty, or support staff that provided authorization, instruction, or support regarding this class.

We hope to hear from you by the deadline indicated herein.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

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