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October 22, 2024

Via e-mail (meansde@wauwatosa.k12.wi.us)

Demond Means
Superintendent
Wauwatosa School District
12121 West North Avenue
Wauwatosa, WI 53226

Re: Racial Balancing Practices in the Wauwatosa School District

To Superintendent Means:

Once again, on October 14, 2024, the Wauwatosa School District (WSD) Board of Education considered your plans to eliminate STEM-specific opportunities and programs across the district.¹ This plan would include closing the Wauwatosa STEM School, which is one of the highest-performing schools in the state. In part, your motivation for taking this action is to balance student populations based on race. Because of this improper racial motivation, which is nothing more than an overall policy to sort and balance students based on race, your plan is unconstitutional and illegal under Title VI of the Civil Rights Act of 1964, putting millions in federal funding at risk.

According to the WSD website, you have convened a task force to make recommendations to the Board that would address various items that you label as “challenges.” One such “challenge” relates to STEM and Montessori programming, which has a “student population [] not as diverse as the District's overall population.”² In another document, your task force’s memo rephrases this as a “concern” because “the racial demographic makeup of the student population is not

¹ See Mike Beiermeister, *Parents, students speak out as Wauwatosa School Board mulls ending certain STEM programs, school*, WTMJ-TV Milwaukee (Oct. 14, 2024) available [here](#); see also Megan Lee, *“Please do not cut our program”: Community begs Wauwatosa school board not to remove programs and schools*, WTMJ-TV Milwaukee (June 11, 2024), available [here](#); Alec Johnson and Bridget Fogarty, *Wauwatosa School District considering proposal to close middle school buildings*, Milwaukee Journal Sentinel (June 11, 2024) available [here](#).

² See Wauwatosa School District, *Tosa 2075 Task Force*, available [here](#) (last visited Oct. 15, 2024).

as diverse as the overall District.”³ Also, your task force employs a STEM evaluation rubric, which credits as positive certain programs with a higher racial minority population, and therefore a lower white population.⁴ To be sure, you view higher populations of white students in any given program or school as a negative factor that must be corrected.

Given these public documents alone, you are making recommendations on which programs to offer and which schools to operate based on the racial demographics of the students using those programs (at least in part). Race-based decision-making like this violates the constitutional guarantees of equal protection. You seem to be under the impression that you have the power to manage the racial composition of classrooms. You don’t. You should reverse this course immediately.

Under both Title VI and the United States Constitution, WSD has “no ... authority... to use race as a factor in affording educational opportunities among its citizens.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 204 (2023). Time and time again, the U.S. Supreme Court has emphasized that racial balancing for its own sake is automatically unconstitutional. *SFFA*, 600 U.S. at 223 (quoting *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013)); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (opinion of Powell, J.). The Court has also rejected the notion that some types of racial discrimination are “benign” or harmless. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 226–27 (1995). Policies are unconstitutional if race is a “motivating factor” in the decision. *See Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

The United States Supreme Court’s decision in *Parents Involved in Community Schools v. Seattle School District No. 1* is particularly instructive. In that case, public school districts employed plans to assign students to certain schools “so that the racial balance at the school falls within a predetermined range based on the racial composition of the school district as a whole.” 551 U.S. 701, 710 (2007). In striking down the plans, the Court ruled that plans designed “to achieve racial balance” are “patently unconstitutional.” *Id.* at 723. “Classifying and assigning schoolchildren according to a binary conception of race is an extreme approach in light of our precedents and our Nation’s history of using race in public schools, and requires more than such an amorphous end to justify it.” *Id.* at 735.

Last month, the Court of Appeals for the Second Circuit held that a New York City plan to re-sort students based on race to address a “diversity problem” at certain

³ See Wauwatosa School District, *Academics + Resident Student Enrollment Brief*, available [here](#) (last visited Oct. 15, 2024).

⁴ See Wauwatosa School District, *STEM Evaluation Rubric*, available [here](#) (last visited Oct. 15, 2024).

schools would be “actionable under the Equal Protection Clause” because of “discriminatory effect or harm in the form of diminished educational opportunity.” *Chinese Am. Citizens All. of Greater New York v. Adams*, 116 F.4th 161, 177 (2d Cir. 2024). And in another similar case, a district court found a school district used a decision-making process that was “rushed, not transparent, and more concerned with simply doing something to alter the racial balance at TJ than with public engagement.” *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 23-170, 2024 WL 674659, at *3 (U.S. Feb. 20, 2024) (Alito, J., dissenting from denial of certiorari).

Moreover, the U.S. Supreme Court is currently considering a petition challenging the Boston school district’s new admission criteria for three of its competitive admission “Exam Schools.” Rather than the traditional admissions exam, the new criteria guarantee spots based on a “zip code quota” created with “intent to racially balance the Exam Schools at the expense of Asian American and white students.”⁵ Using proxies or taking action like closing schools to achieve racial balance is equally impermissible.

Given your plan to sort students based on race, and to cancel or discontinue certain programs to achieve your preferred racial balance, we write today first to give you time to correct these grievous wrongs. Corrective action should begin immediately and include abandoning your plans to close the Wauwatosa STEM School because it is, by your measure, too white. If the District does not, we are prepared to bring a civil action to enforce the constitutional rights of Wauwatosa students and families against the district, administrators, and board members who are complacent in these deprivations of constitutional rights. We are also prepared to file a federal civil rights complaint with the U.S. Department of Education. WSD receives millions each year in federal funding, all of which is subject to your promise to comply with the nondiscrimination provisions in Title VI. Your plan to racially balance students violates this promise, and therefore puts at risk this funding.

To ensure the greatest possible transparency on these issues, we also request the following public records, pursuant to Wisconsin’s public records law (Wis. Stat. § 19.35 et seq):

- All communications from January 1, 2024, to present (including text messages, e-mails, memoranda, and any other form of communication) between Superintendent Demond Means and LaShawnda Holland related to the racial makeup of schools or programs within WSD.

⁵ *Boston Parent Coalition for Academic Excellence Corp. v. The School Committee for the City of Boston*, Nos. 21-1303, 22-1144, Petition for Certiorari at pp. i, 2 (U.S., Apr. 17, 2024) available [here](#).

- Emails sent by or to any member of the WSD Board of Education discussing the “diversity” or racial balance of any STEM programs or particular schools within WSD.

As you know, state law requires you to produce these records as soon as practicable and without delay. Where those records are available electronically, I request them to be produced in that electronic format. Should the cost of producing these records exceed \$150.00, please notify me before proceeding so that I may review the cost estimate for compliance with state law.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.

A handwritten signature in blue ink, appearing to read "Dan Lennington".

Daniel P. Lennington
Deputy Counsel

cc: Wauwatosa School Board Members (via e-mail)