



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455)
Fax 414-727-6385
www.will-law.org

January 28, 2024

VIA EMAIL: OCR@ed.gov
United States Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100

To Whom It May Concern:

This is a federal civil rights complaint made pursuant to the U.S. Department of Education's Office for Civil Rights' discrimination-complaint resolution procedures.

The Wisconsin Institute for Law & Liberty, Inc. (WILL) brings this complaint on behalf of our client, Colbey Decker, against the Green Bay Area Public School District (GBAPS) in Green Bay, Wisconsin, for race discrimination. GBAPS is a public school district under the laws of the state of Wisconsin and receives federal financial assistance. As described in detail below, GBAPS has several policies and practices related to "equitable access to resources" which violate Title VI of the Civil Rights Act of 1964 (Title VI) and the U.S. Constitution. On behalf of our client, we request an investigation into GBAPS.

I. Background

Our client's son, who has dyslexia, has been denied timely and adequate literacy resources for more than a year because he is white. The district has adopted a policy that establishes "priority groups" by race—namely, black, Hispanic, and Native American students—and states that the school will conduct "intentional work educating our focus students, *prioritizing additional resources to First Nations, Black, and Hispanic students.*" (Emphasis supplied.) See Attachment 1. This policy is in effect and has been applied to Mrs. Decker's son, according to multiple district employees. This policy continues to harm the students in the school district.

Mrs. Decker promptly informed the school of her son's dyslexia diagnosis and his need for one-on-one reading intervention when he enrolled in January 2024. She informed the school that her son was receiving one-on-one interventions at his previous school but received no response or support for the remainder of the school year. Despite her repeated requests and extensive documentation, the school failed to provide timely support. Her son was placed on a waitlist in April 2024 and eventually received only group-based, less intensive interventions by fall 2024.

Mrs. Decker met with School Principal Matt Malcore to discuss why her son was not receiving the help he needs. The principal was excited to discuss “priority groups” and allocation of resources by race. See Attachment 2. During the meeting, he never denied that Mrs. Decker’s son was receiving less services and less priority because he is white. Principal Malcore stated very clearly that he felt called to serve priority groups based on race because certain racial groups have been traditionally underperforming.

During the meeting between Mrs. Decker and Principal Malcore, he told her the district keeps a spreadsheet that is color coded by race. He told her that First Nations students are in orange, the district sorts its students by race, and then the district prioritizes students, making sure the racial priority groups are receiving services first.

These delays significantly impacted the academic progress of Mrs. Decker’s son. If he was black, Hispanic, or Native American, he would have been treated more favorably and received different services.

This lack of adequate intervention has severely impacted Mrs. Decker’s son across all subjects. While he excels in math, his reading difficulties slow his ability to decode text in word problems. Even in music class, he must rely on memorization rather than comprehension, further highlighting the academic challenges caused by the district’s discriminatory policy and failure to act.

This policy not only denies individualized support to students like Mrs. Decker’s son but perpetuates racial stereotypes and discriminates against students of other races who are equally in need of help. Race is used both as a negative and as a stereotype, which disregards students’ unique needs and violates U.S. Supreme Court precedent.

II. WILL Involvement and District Inadequate Response

WILL sent a letter to the district on December 9, 2024, calling on the district to rescind its discriminatory policy immediately, adopt a colorblind approach to resource allocation, and provide adequate services to Mrs. Decker’s son. See Attachment 3. To date, the district has failed to take any corrective action and continues to engage in racial discrimination in its schools.

The district has told media that their policy is not really a policy. Specifically, the district released the following statement: “The District received the letter from WILL yesterday and we are investigating the allegations. However, we can state unequivocally that the District does not have a policy that includes the language included in the letter. All District policies must be approved by the Board of

Education and no such policy language exists.”¹

This is inaccurate from a legal standpoint and does not reflect what is actually going on. Even if the King Elementary policy were the only evidence of discrimination, it is still a racially discriminatory policy in effect in a district school. Under Wisconsin law, the school board has the responsibility to manage district schools. *See Wis. Stat. § 120.12(1)*. This includes ensuring that school-level policies or practices align with board-approved policies. The school board may not delegate its ultimate authority over its schools. If a school-level policy is consistent with the policies approved by the school board, it should be considered an extension of district policy. Ultimately, as detailed below, the King Elementary policy is derived from the school board policy and is subject to oversight by the school board.

It is clear that the district has adopted discriminatory policies that are in line with the King Elementary policy. District personnel and school board members have also discussed goals related to “equitable allocation of resources” in open meetings. More resources are being prioritized for certain students based on race, and children like Mrs. Decker’s son are being harmed because of it.

While the district has taken no action whatsoever to stop discriminating against its students, it has informed WILL that it is processing our letter as a discrimination complaint. *See Attachment 4.*² As part of this investigation, the district—via Discrimination and Title IX Coordinator Abby Tilkens—interviewed Mrs. Decker. The interview was conducted more like an interrogation, and it quickly became clear that Ms. Tilkens was biased in favor of the district.

During the interview on December 18, 2024, Mrs. Decker was asked about her specific concerns in the King Elementary policy. She responded that her child is white and has demonstrated a need for multiple years for additional resources, but he is deemed to not be a priority because of his race. Mrs. Decker was pressed for proof that race is why her son was not receiving resources, being asked questions like, “Why do you believe that? Has someone told you? Do you have data to support this?” Ms. Tilkens later asked, “Do you know of any minority students receiving more favorable care?” Clearly, Mrs. Decker has access to documentation for her son and information about his experience, but not district data. Not only is it the district which has that

¹ Scharf, Nadia, Wisconsin law firm accuses Green Bay School District of violating civil rights of a white student, GREEN BAY PRESS GAZETTE, (December 10, 2024) (last accessed January 14, 2025), <https://www.greenbaypressgazette.com/story/news/education/2024/12/10/green-bay-school-accused-of-civil-rights-violation/76895851007/>.

² Of note, the district in this correspondence did not even name the correct child of Mrs. Decker, but for some reason thought it was related to her other son who has an IEP for speech. In a media interview with WBAY a journalist asked Mrs. Decker if her son’s dyslexia impacts his speech. This raises serious concerns about student information that may have been unlawfully disclosed to a third party in violation of FERPA.

information, but no one at the district has ever denied that is the case. In fact, the classroom teacher for Mrs. Decker's son told her that if her son was in a priority group he would be receiving different services. It appeared Ms. Tilkens had not sought all relevant information before this interview.

Ms. Tilkens also asked Mrs. Decker, "What are your concerns about the services [your son] is not receiving?" Mrs. Decker responded that she is concerned he is not receiving them. In response to this, Ms. Tilkens asked if Principal Malcore spoke to Mrs. Decker about "the tier system" and claimed that every single student in the classroom was receiving some type of Tier 1 intervention. Mrs. Decker was only told that her son was waitlisted for Tier 2. She was not given any additional information as to why or the process for receiving more intensive supports.

In addition to the discriminatory King Elementary policy, our client is also concerned that the district has failed to meet its legal obligations under the federal special education law. Following the district interview of Mrs. Decker, on December 19, 2024, Ms. Tilkens requested additional documentation and asked when Mrs. Decker "recall[s] requesting a special education referral" and with whom she spoke about that. See Attachment 5.³

During the December 18th interview, Mrs. Decker asked Ms. Tilkens how to get an IEP referral for her son. Ms. Tilkens responded that is a "tough question." Mrs. Decker had been told previously by School Psychologist, Kari Morrow, that her son needed to go through the Multi-Layered System of Supports (MLSS or "tier system") before he could qualify for an IEP.⁴ Ms. Tilkens responded during the interview that if the district lacks data and "push[es] a student through for an evaluation, we might not have the full picture. It has to be our data." When asked a follow-up by WILL Attorney Dan Lennington about whether the district will consider data from another school system, Ms. Tilkens frustratingly responded, "No, Dan." Ms. Tilkens claimed that she had "no evidence" that Mrs. Decker ever asked for an IEP. As described below, this is inaccurate and incredibly concerning.

³ During the interview, Ms. Tilkens stated that she "does not work in special education." WILL responded to the December 19, 2024, email requesting additional information. WILL asked for clarification about whether Ms. Tilkens is now expanding her investigation to include the special education concerns that Mrs. Decker has. The district has taken the position that "the only significance of the special education services is if Ms. Decker is alleging that her child was denied special education services as a result of his race." WILL responded that "Our allegation includes that race was a factor in the provision of services, not merely that [Mrs. Decker's son] was denied services because of his race. The consideration of race as part of any policy or plan impacting [her son] would be illegal."

⁴ Mrs. Decker was told by the school psychologist that her son would have to go through the MLSS before he can qualify for an IEP. Importantly, "[t]he use of RTI strategies [such as multi-tiered instructional framework] cannot be used to delay or deny the provision of a full and individual evaluation . . . to a child suspected of having a disability." See OSEP Memorandum 11-07 (Office of Special Education Programs, 2011).

First, in an effort to resolve the issue and gather more information even before WILL sent our December 9, 2024, letter to the district, Mrs. Decker met with the classroom teacher for her son. She recorded the conversation with the permission of the teacher. See Attachment 6. That recording was provided to the district on December 19, 2024. See Attachment 7.

Second, Mrs. Decker first verbally requested accommodations for her son in January 2024—before even enrolling her children—when she toured the school with the principal. She also asked for accommodations in writing at least as early as March 18, 2024. See Attachment 8. She also asked in that email to be notified about next steps needed to get interventions and accommodations started. When she followed up with a phone call to Ms. Morrow, she specifically told Ms. Morrow that her goal was to get her son a special education designation. Of note, dyslexia is classified as a specific learning disability under federal law.⁵

During the above-referenced phone call, Ms. Morrow told Mrs. Decker that the district never received any of the documentation that she provided related to the dyslexia testing, diagnosis, or previous interventions for her son. Mrs. Decker subsequently forwarded all of the documentation to Ms. Morrow directly. Shortly thereafter, Mrs. Decker was notified by Ms. Morrow that her son was waitlisted for Tier 2 (small group) reading support, even though he had been receiving 20 minutes a day of one-on-one reading intervention four days a week at his previous school.

Inexplicably, Ms. Tilkens interpreted this to say that “[Mrs. Decker] requested accommodations and interventions, but did not request a special education evaluation.” This demonstrates a fundamental lack of understanding of special education law. WILL explained in response that expression of concern by a parent about academic struggles or need for additional support for their child is sufficient to trigger the district’s obligation to conduct an evaluation. See Attachment 9.

Importantly, GBAPS is subject to a Child Find Mandate. *See* 34 C.F.R. § 300.111(c)(1). It is obligated to seek out and find children who it suspects may have a disability. Mrs. Decker’s son had a confirmed diagnosis of dyslexia and had a Student Support Plan at his previous school that should have been converted into an IEP. The district should have been prompted to do an IEP evaluation within 60 days of the request being made by Mrs. Decker. *See* 20. U.S.C. § 1414(a)(1)(A); 20. U.S.C. § 1414(a)(1)(C); *see also* 34 C.F.R. § 300.301(b). The district of course did not do any evaluation.⁶

⁵ 20 U.S.C. § 1401(30)(b).

⁶ On January 22, 2025, Ms. Tilkens issued a Complaint Determination in which she states that a student must progress to two rounds of Tier 2 interventions and two rounds of Tier 3 interventions. Only “[i]f Tier 3 interventions are not successful” may students “be referred for a special education

At the same time, on December 20, 2024, WILL pointed out that Ms. Tilkens appears to have a bias in this case. It was apparent in her aggressive and at times unprofessional interview of Mrs. Decker that she, as the investigator, has not sought all relevant information available from the district. Moreover, Ms. Tilkens confirmed in email that she is acting as an attorney representing GBAPS, which would impose several ethical duties upon Ms. Tilkens preventing her from conducting an impartial investigation and interview of Mrs. Decker. For example, Ms. Tilkens would breach her duty to her client if she unilaterally concluded that her client violated federal law and then made such an admission on behalf of her client during a meeting with Mrs. Decker (or in a subsequent writing). In other words, there is no possible way Mrs. Decker could ever get the due process she requires when an attorney, acting on behalf of her client and with all the duties imposed on her as an attorney, conducts an “investigation.” This process raises significant about the objectivity of the investigation. This approach suggests a predisposition towards justifying the actions of the district rather than conducting an unbiased and thorough inquiry.

III. Unlawful King Elementary “School Success Plan” and Discriminatory District Policies and Practices

The district’s policy, as stated in the 2024-25 King Elementary School Success Plan, violates constitutional and statutory protections that guarantee equality under the law regardless of race.

Under both Title VI and the United States Constitution, the District 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). As the Supreme Court stated in *Adarand Constructors, Inc. v. Peña*: Any preference based on racial or ethnic criteria must necessarily treat persons as individuals, not as simply components of a racial or ethnic class. 515 U.S. 200, 211 (1995). Policies that classify students by race undermine the fundamental principle that all children are entitled to be treated as individuals with dignity and worth.

The U.S. Supreme Court has consistently held that racial discrimination, even when intended to remediate disparities, must meet exacting standards. In *Parents Involved in Community Schools v. Seattle School District No. 1*, public school districts employed plans to assign students to certain schools “so that the racial balance at the

evaluation, which may review whether a student has a specific learning disability and is eligible for special education services.” GBAPS incorrectly takes the position that initiating a special education evaluation referral earlier in the process at the request of parents is *optional*. Moreover, GBAPS does not dispute that Mrs. Decker’s son has a diagnosis of dyslexia. Ms. Tilkens goes on to state in the Complaint Determination that that dyslexia “is not a specific learning disability on its own.” On the contrary, “dyslexia” is defined as a specific learning disability in both Wisconsin law (Wis. Stat. § 118.016(1)(c)) and the Individuals with Disabilities Education Act (IDEA) (34 C.F.R. § 300.8(c)(10)).

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.

While the district addressing disparities in reading proficiency may be well-intentioned, categorizing students and prioritizing resources based on race is unacceptable. Effective reading interventions can and should be allocated based on individual student needs rather than race.

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. 42 U.S.C. § 2000d. Courts have interpreted Title VI to apply to policies that disproportionately exclude or disadvantage students based on race. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). By prioritizing students of specific races for additional resources, the district excludes other students, like Mrs. Decker’s son, from equal access to educational resources.

As the Supreme Court decided in *Students for Fair Admissions*, race may never be used as a negative or as a stereotype. 600 U.S. at 213. The district’s policy does just that: because he is white, Mrs. Decker’s son’s race is a negative for him. And by assuming that certain racial groups need help *because of their race* (rather than their individual needs), the policy is also a stereotype. This is a violation of Title VI.

In addition to the policy as stated in the King Elementary School Success Plan, the district has been open about its discriminatory policies and practices. For example, the school board has adopted a Strategic Roadmap to support its mission as stated in Policy No. 110. See Attachment 10. It lists “Equity” as a “core value,” which it describes as “[s]ystems and procedures we use to place students into nurturing and rigorous settings where students’ cultural approaches are honored and students are empowered to fully use their capacities.” On the same Strategic Roadmap, the district lists “*equitable access to educational opportunities* in safe and welcoming schools” as part of its “vision.” (Emphasis supplied.)

The GBAPS school board also adopted a policy on Reading Instruction Goals. See Attachment 11. It sets an “all students goal” and “priority performance group goal.” It defines the priority performance group as students “who identify as black.” While the board hopes to see an increase of at least 5% improvement points for all students, it sets a goal of 10% improvement points for black students. In the corresponding exhibit to this policy, the school board says the rationale is that “focusing on a priority performance group of students will elevate the skills of

educators and ultimately benefit all students.” See Attachment 12.

The Reading Instruction Goals policy also sets a goal that “the percent of students receiving Tier 3 interventions will decrease by at least 10% by the end of the 2025-26 school year.” This is precisely the type of interventions that Mrs. Decker’s son would benefit from. In the corresponding policy exhibit, the school board offers rationale that if it chooses “curriculum aligned with rigorous standards that encompasses phonics and reading comprehension aligned to and informed by the Science of Reading,” then the district “can ensure students develop essential ELA skills.” This overlooks the obligation of the district to help students who need help, such as those with a dyslexia diagnosis. This is absurd. It indicates that Mrs. Decker’s son might not be receiving adequate resources both because students of other races are being prioritized and perhaps also because the district has set a goal to provide less of this intensive intervention.

Since Mrs. Decker’s son has been deemed not a priority due to his race, and since the district has explicitly passed a policy that it does not want to provide as many students with Tier 3 reading assistance, this is incredibly problematic and harmful to students in the district.

In April of 2021, the Coordinator of Pupil Services for GBAPS was interviewed by local media and referenced an equity dashboard. She stated the district would take results from a Diversity, Equity, and Inclusion survey “and couple it with district data from the last few years. From that, we’re going to create an equity dashboard.” She went on to state that “a taskforce would look at the data and then make recommendations as to goals and strategies to get there, as well as a system to monitor that so that we do what we say we’re going to do.” See Attachment 13.

It does not end there. The district held a work session on March 11, 2024 in which it discussed the “district goal for mathematics achievement is an increase by 8% points for all students and an increase in 10% points for black students.”⁷ (32:00) The school board also discussed literacy and said “our district goal for reading achievement is an increase by 5% points for all students and an increase by 10% points for black students.” (37:00). Corresponding PowerPoint at Attachment 14.

The school board *also* held a meeting on November 11, 2024, in which it discussed that “equity really needs to be embedded within all departments.”⁸ (36:30) During this meeting, school board members discussed “equitable access to resources,” saying their “first core commitment is around equitable access . . . with a specific

⁷ GBAPS Work Session 3/11/20214, GBAPS Stream, YOUTUBE, <https://www.youtube.com/watch?v=ZoCJbYJFsi8>.

⁸ BOE Special Board Meeting Followed by Work Session 11/11/24, GBAPS Stream, YOUTUBE, <https://www.youtube.com/live/JBnRbfwsNUs?si=fQChUdaEU8HnSsKY>.

focus on the Multi Level System of Support.” (41:35) When the school board received pushback via a questioner at the meeting, a board member stated that “primarily white students are taking [advanced placement] classes and students without disabilities. We need to change that.” (54:14) Towards the end of the meeting, the school board acknowledged that it “identifies groups” and “isolates students,” and it is evident through other district policies that this means separating students by race.

Even the job description for Ms. Tilkens includes emphasis on equity. See Attachment 15. It lists several “essential functions,” including “equity” and that the Student Discrimination and Title IX Coordinator must “promote[] efforts on diversity . . . and utilize[] skills to remove barriers for students of diverse backgrounds.”

IV. District Complaint Determination

On January 22, 2025, Ms. Tilkens issued a decision admitting that the district categories students by race and that the district has policies that prioritize students by race. See Attachment 16. Inexplicably, she then claims the district is not liable because it did not allocate resources by race, and that its race-based policies and practices had no impact on the lack of supports provided to Mrs. Decker’s son. In effect, the district alleges they have a policy of racial balancing but it has no impact. This contradict further supports that an investigation into the district is warranted.

WILL asks that the Office of Civil Rights investigate the Green Bay Area Public School District to ensure that it focuses on students’ individual needs rather than implementing arbitrary racial classifications and priority groups.

V. Conclusion and Request for Investigation

Ultimately, discrimination on the basis of race at GBAPS raises concerns that the district received federal funds in violation of Title VI, which declares that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Given the district’s blatant violation of constitutional and statutory guarantees, and the harm caused to all students including the benefits denied to Mrs. Decker’s son, WILL demanded the following actions by the district:

1. Rescind the discriminatory policy that prioritizes resources based on race.
2. Adopt a colorblind approach to resource allocation, ensuring that all students receive support based on individual need.
3. Provide immediate and adequate reading support to Mrs. Decker’s son, who has been unfairly excluded from the opportunity to receive necessary resources.

The district has refused to take any action to end its discrimination as outlined in this complaint and the attached documents.

WILL asks that the Department promptly investigate the allegations in this complaint, act swiftly to remedy unlawful policies and practices, and order appropriate relief. Thank you for your prompt attention to this request for investigation and resolution. Please contact us for further information.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Daniel P. Lennington
Deputy Counsel



Cory Brewer
Education Counsel



Lauren Greuel
Associate Counsel

Enc. Attachments 1—16