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VIA ELECTRONIC MAIL: MilwaukeeDCS@eeoc.gov

Equal Employment Opportunity Commission – Milwaukee Area Office
310 West Wisconsin Avenue, Suite 500
Milwaukee, WI 53203

**RE: Federal Title VII Charge of Discrimination Against Madison
Metropolitan School District (Race/Color Discrimination)**

To Whom It May Concern:

The Wisconsin Institute for Law & Liberty (“WILL”) submits this complaint on behalf of Kally Bishop, a former special education teacher in the Madison Metropolitan School District (“MMSD”). Kally was “surplussed” (involuntarily transferred) to a different school based on a rubric that MMSD appears to be using as a proxy for race discrimination.¹ Indeed, when the policy was adopted, both the superintendent and the school board told the public that the change was intended and designed to protect “teachers of color.” The rubric itself is laced with racial considerations, requiring teachers to prioritize “students of color” over other students to receive the highest score on “culturally responsive practices,” the factor given the most weight. And the circumstances surrounding Kally’s transfer, described below, are highly suspicious and suggest a pretext for race discrimination.

Sadly, by prioritizing race over a teacher’s ability, the District has lost (and will continue to lose) its best teachers at the expense of its most vulnerable students. During COVID, Kally was the only special education teacher on the west side of Madison to volunteer to continue working in person for the sake of disabled students who need in-person instruction. And during her years at Thoreau Elementary, she has received nothing but glowing performance reviews. Her supervisors described her as “one of our most skilled [special education] teachers,” a “superhero,” and “the lead chef” in cultivating an environment for special needs students to thrive. None of that, unfortunately, factors into the District’s misguided, race-based rubric.

**Please consider this letter—submitted together with completed EEOC
Form 5—a formal Charge of Discrimination against MMSD under Title VII**

¹ For readability, this complaint use “race” as a shorthand for both race and color. To be clear, this complaint raises claims of discrimination on the basis of both race and color.

of the Civil Rights Act of 1964, as amended.² In addition, we request that this Charge be processed and addressed by the U.S. Equal Opportunity Commission (“EEOC”) pursuant to federal law under Title VII.³

I. THE PARTIES

A. Charging Party Kally Bishop

Kally Bishop is a passionate and dedicated special education teacher with nearly twenty years of experience. She worked in MMSD for the last fourteen of those years. For the last six years, she has been at Thoreau Elementary School, where she developed deep relationships with students, families, coworkers, and community partners—until she was told that she had been selected for an involuntary transfer to a different school on the other side of Madison.

Kally discovered her passion for disabled students in 2002 while working as an administrative assistant in the Randolph School District. Her office was large, and when special needs students needed a quiet space, they were often sent to her office. She would talk with them, listen to their stories, and do what she could to support them, and she quickly saw how extraordinary they are. This experience ignited a fire in her to serve these students, and she resolved to go back to school to become a special education teacher, which became her life’s work.

She started with an associate’s degree at the Madison Area Technical College in 2003, when her son was four years old. During her second year, her then-husband was deployed to Afghanistan for a year, so, in addition to going to school, she was parenting alone. Despite these challenges, her passion to serve disabled students drove her; she graduated with a 4.0 GPA and was the commencement speaker of her graduating class. Her exemplary performance gained her entrance into the University of Wisconsin-Madison, where she finished her bachelor’s degree in special education with a 3.85 GPA. She was the first person in her family to go to college.

After she graduated in 2007, Kally worked for a few years in the Merrill and Middleton-Cross Plains school districts as a special education teacher before joining MMSD in June of 2011. While at MMSD, Kally finished a master’s degree at Edgewood University, again with a 3.8 GPA.

² 42 U.S.C §§ 2000e *et seq.*

³ Should EEOC opt to dual file this federal Title VII complaint with a Wisconsin state or local Fair Employment Practices Agency (“FEPA”), we nevertheless request that EEOC retain jurisdiction over this Title VII complaint. *See, e.g.,* U.S. Equal Employment Opportunity Commission, *Fair Employment Practices Agencies (FEPAs) and Dual Filing*, available at: <https://www.eeoc.gov/fair-employment-practices-agencies-fepas-and-dual-filing> (last visited July 21, 2025) (“If the charge is initially filed with EEOC and the charge is also covered by state or local law, EEOC dual files the charge with the state or local FEPA, ... but ordinarily retains the charge for processing.”).

Kally was a Cross-Categorical Teacher at Thoreau Elementary, a position that focuses on students with disabilities. Kally specifically worked with non-verbal students who struggle with basic communication skills. During her career, Kally has worked hard to develop techniques to help these students succeed and reach their highest potential. She loved her job at Thoreau and gained the trust and respect of both parents and her peers.

In her most recent full review (in the summer of 2022), Kally scored as “proficient” or “distinguished”—the highest two scores—in every single category. The principal at the time described Kally’s “passion and care for children” as her “superhero quality.” He noted that “her work [wa]s consistently on point and highly beneficial of student growth and overall care.” She had developed “strong relationships,” both with parents, who “have absolute trust in her love and care of their children,” and with “community partners,” who “know Kally well and [] frequently connect on behalf of the children.” He concluded: “Kally is not just a critical ingredient in this work, she is often the lead chef in making sure all are working together.”

An interim review in the summer of 2023 described Kally, again, as “the driving force behind all the success our kiddos have experienced.” The principal had “no suggestion for improvement as she has created the model for our work with students with complex autistic needs.” Similarly, observations in the fall of 2024 described Kally as “super responsive to the students” “in a way that supported ... their learning,” noted that her lesson pacing “was on point,” and found “strong evidence” “of the planning that went into [a] lesson to ensure the instructional materials and resources supported the learner and his needs.”

Further illustrating her passion and dedication to the students she serves, when MMSD was virtual during COVID, Kally quickly volunteered to continue working in-person for special needs students. During that year, she, her principal, and two special education assistants were often the only people in the building. An administrator in the District later told Kally that she was the only special education teacher on the west side of Madison who had volunteered to work in person during that difficult time.

B. Respondent Madison Metropolitan School District

Respondent MMSD is a school district in Madison, Wisconsin. The district is run by a Superintendent and a seven-member Board of Education. Board Members are elected in April to serve staggered three-year terms. MMSD oversees over 25,000 students across 52 separate public schools and is the second largest school district in Wisconsin.⁴

⁴ <https://www.madison.k12.wi.us/about>.

II. FACTUAL BACKGROUND

A. MMSD Adopts a Race-Laden Rubric for Surplus and Layoffs.

In the summer of 2020, shortly after George Floyd's death, Interim Superintendent Jane Belmore proposed changes to MMSD's surplus and layoff policies.⁵ The existing policies were "based solely on seniority," and she suggested moving to a "rubric" based on six criteria, including a teacher's "effectiveness scores."⁶ She pitched the changes, in part, to help the District "retain[] the most qualified staff," a laudable goal. As she correctly noted, "seniority is not [always] an indicator of qualifications or performance."⁷

But the changes were also heavily motivated by race. In her memo, Belmore explained that "[o]ver the last 5 years, the District has hired 285 teachers of color" pursuant to its "Equity Strategy."⁸ Because surplus and layoff decisions were based on seniority, the existing policy, she argued, had "come to serve as a structure of racial inequity" that "interfere[s] with our progress on fighting inequities and racism within our educational system."⁹ One of the criteria she proposed for the rubric (the second highest, after "effectiveness") was so-called "cultural competence,"¹⁰ which this administration has noted is often a proxy for race discrimination.¹¹

Racial considerations ultimately predominated, such that when the Board approved the changes in March 2021, the new policy elevated "culturally responsive practices" above all else and eliminated any criteria based on a teacher's "effectiveness" or "performance." So much for "retaining the most qualified staff."

The Board first discussed this proposal at a meeting on July 20, 2020.¹² During that meeting, the Board Members expressed their racial motivations for supporting the changes. Ali Muldrow stated that "the phenomena we are trying to address with

⁵ See Letter from Jane Belmore to the Board of Education, regarding "Modifications to MMSD Employee Handbook" (July 16, 2020), *available at* <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BRKMH85B45FB>.

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.* at 5.

¹¹ Memorandum from Attorney General Pam Bondi to All Federal Agencies ("Bondi Memo") at 2, 5 (July 29, 2025), <https://www.justice.gov/ag/media/1409486/dl?inline>.

¹² The agenda, minutes, and video of this meeting are all available at <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BRKJB34C4852>.

this language is that people of color are the last hired and the first fired.”¹³ Gloria Reyes, the Board President at the time, said “with any equity work, with what we’re trying to do here today, I think we’re all on the same page. We do want to get to the point where we are increasing diversity of teachers.”¹⁴ (Cleaned up). Savian Castro noted that “if you look up the chart, you know, the chart of who’s been here the longest, it gets whiter and whiter as you go up.”¹⁵ Ananda Mirilli said, “we’re really talking about racial justice.”¹⁶ And Cris Carusi agreed the changes would “help us achieve our goal of bringing more teachers of color into this district and making sure that we can retain them.”¹⁷ No one objected to or disagreed with this hyper focus on the racial makeup of staff as a justification for the changes.

The Board, however, felt that the proposal needed more work, so they directed staff to continue working with the teachers’ union to try to reach a consensus. In August, Carlton Jenkins became the Superintendent, and he provided updates on their progress at various meetings. In his January update, he reiterated the racial motivation: “Our goals in this process are to improve staff composition and stability by school, improve staff satisfaction and *maximize retention of staff of color*.”¹⁸ (Emphasis added).

The process was not finished by February (when surplus decisions are made), so staff proposed adding some temporary language to the surplus policy that exempted “probationary teachers” from the surplus process (those in their first three years).¹⁹ At a meeting on February 8, 2021, MMSD staff member Heidi Tepp explained the race-based justification for this change: “The reason behind that change was our concern ... [that] our most recent people coming in are often our staff of color.”²⁰ The Board approved this temporary change on February 22,²¹ and the exemption for probationary employees was retained in the final version.

¹³ Board of Education Special Workshop Meeting 7/20/20 at 47:25, https://www.youtube.com/watch?v=fg8_ae1oKX8&t=2845s.

¹⁴ *Id.* at 51:50.

¹⁵ *Id.* at 1:06:42.

¹⁶ *Id.* at 1:13:00

¹⁷ *Id.* at 1:16:15.

¹⁸ Handbook Revision Update (date January 5, 2021), <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BXAN9R5EC12E>.

¹⁹ Employee Handbook Proposed Revisions (Feb. 11, 2021), <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BWBUSM7D36ED>.

²⁰ <https://www.youtube.com/live/G-yQwiofqO4?feature=shared&t=10793> at 2:59:54.

²¹ Minutes of Feb. 22, 2021, Meeting, Agenda Item 9.1, <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BWBUQT7D36AF>.

District staff and union representatives could not reach an agreement on the proposed changes, so Superintendent Jenkins brought a recommendation to the Board unilaterally. MMSD staff first presented and explained his proposed changes at a board work group meeting on March 8, 2021.²² That presentation focused almost entirely on race, with slides showing “Teacher Cumulative Hires” (divided between “White” staff and “Staff of Color”); “Teacher Seniority by Race”; “Teacher Hire and Separation by Staff of Color”; “MMSD Turnover Rates by Race”; and “Teacher Seniority by Race and Certification.”²³ During the presentation, MMSD’s HR Director, Deirdre Hargrove-Kreghoff, highlighted that “last year 27% of our hires were staff of color so we’re continuing to make incremental gains. ... We have to ensure that every aspect of our work is supporting the retention of our staff of color in order to realize breakthrough gains that we want to see.”²⁴

The Board then considered and approved the proposed changes at their March 22, 2021, meeting.²⁵ Superintendent Jenkins’ memo for that meeting noted, as before, that the District had “hired more than 300 teachers of color” pursuant to its “Equity Strategy,” and argued that the existing seniority-based model had become “a structure of racial inequity” and a “racist practice[.]” that needed to be “dismantle[d].”²⁶

Under Jenkins’ proposal, surplus and transfer decisions would be based on four criteria, none of which included a teacher’s effectiveness or performance. The first and most important criterion would be “Culturally Responsive Practices,” with the remaining three “additional language proficiency,” “academic credentials/certifications,” and “seniority.”²⁷ The proposal also exempted “probationary teachers” from the surplus process. Finally, Jenkins provided the Board with a “draft, sample rubric” illustrating how the administration would operationalize the four factors described above.

²² <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BXVL83545CC5>

²³ [https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BYT4RT08E435/\\$file/Handbook%20OWG%203.8.21%20presentation.pdf](https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BYT4RT08E435/$file/Handbook%20OWG%203.8.21%20presentation.pdf)

²⁴ <https://www.youtube.com/live/LTfbsLg4yi0?feature=shared&t=9782> at 2:43:02.

²⁵ <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BXFL9353A326> (Agenda Item 9.4).

²⁶ Letter from Carlton Jenkins to the Board of Education, regarding “Modifications to MMSD Employee Handbook” (March 18, 2021), available at [https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BZ8VAN7FD284/\\$file/Handbook%20Proposals%20-%20Final%20Recommendation_3_18_21.pdf](https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BZ8VAN7FD284/$file/Handbook%20Proposals%20-%20Final%20Recommendation_3_18_21.pdf)

²⁷ [https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BZ8VAW7FD33B/\\$file/Unilateral%20Transfer Surplus%20Redline%203_3_21\(updated%203_18_21\).pdf](https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BZ8VAW7FD33B/$file/Unilateral%20Transfer Surplus%20Redline%203_3_21(updated%203_18_21).pdf)

The “sample” rubric was, itself, heavily race-based.²⁸ The “Culturally Responsive Practices” factor was assigned 40% of the total score and was described, at a high level, as a teacher’s ability “to articulate the systems and beliefs that may lead to inequitable outcomes *for students of color*.” (Emphasis added). Teachers could receive a score ranging from 0 (a “[n]egative/harmful impact on learning”) to 3 (an “[a]ccelerated impact on learning.”). Each category had a list of bullet points and examples. Notably, the examples in the *lowest, negative-impact* category **included teachers who take a “color blind approach” or “focus on equal versus equity.”**

In other words, to avoid being selected for an involuntary transfer, the rubric encourages teachers *not* to treat students equally, but to prioritize some races over others. Indeed, to achieve the highest score, the first bullet point required teachers to “[e]ngage[] Students of Color, especially Black students in learning and classroom community.” There is no equivalent bullet for white students. Another bullet in the highest category is: “Actively intervenes in harmful interactions that perpetuate racist beliefs *about students of Color*” (emphasis added)—but apparently not racist beliefs about white students. Many of the other bullet points also focus on “students of color” over others.

The Board ultimately approved the changes to the surplus policy in a 4-3 vote.²⁹ Three board members objected, but mostly because the rubric was not being adopted into the handbook itself (just the four criteria and the exemption for probationary employees). Instead, an “oversight committee” would have authority to continue developing the rubric and to amend it as needed. The dissenting board members thought this gave the administration too much power to change the rubric without Board or union input. They also wanted the administration to spend more time working with the teachers’ union to reach a consensus. Board Member Ananda Mirilli responded that this “aim for perfectionism” was “rooted in” “white supremacy” and a “symptom of whiteness.”³⁰

Although they discussed the policy for nearly an hour and a half, none of the Board Members disagreed with the race-based motivation for the change or the many race-laden bullets and examples in the “sample” rubric. No one objected when the District’s in-house counsel, Sherry Terrell-Webb, described the “goals” as “increasing retention of our most recently hired staff with the focus on retaining high quality staff

²⁸ [https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BZ8VAU7FD31C/\\$file/Sample%20Layoff%20and%20Surplus%20Rubric%202-12-21\(update%203_18_21\).pdf](https://go.boarddocs.com/wi/mmsd/Board.nsf/files/BZ8VAU7FD31C/$file/Sample%20Layoff%20and%20Surplus%20Rubric%202-12-21(update%203_18_21).pdf)

²⁹ Minutes of Mar. 22, 2021, Meeting, Agenda Item 9.4, available at <https://go.boarddocs.com/wi/mmsd/Board.nsf/goto?open&id=BXFL9353A326>.

³⁰ <https://www.youtube.com/live/9zaratLRUY0?feature=shared&t=10871> at 3:01:10.

of color,”³¹ or when Board Member Savion Castro argued that the changes to the surplus policy “help[] us with one of the most important strategies of retaining staff of color, which is clustering folks at specific schools.”³² No one objected to elevating “culturally responsive practices” above all else. No one objected to the many race-based requirements in the sample rubric. Even the dissenters seemed united with the majority that the ultimate goal was to prioritize and protect “staff of color.” Dissenting board member, Cris Carusi, for example, agreed that “at the end of the day, we are trying to support our new staff of color.”³³ Nicki Vander Meulen, another dissenter, also agreed that “we have a commitment to antiracist education.”³⁴

After the vote, multiple Board Members spoke to the press and reaffirmed the race-based motivation for the changes. Savion Castro, in an interview, said, “[i]f you look at our numbers on seniority, the more senior [the] teacher, the more likely they are to be white. And so teachers of color are disproportionately impacted by surplus or reassignment.”³⁵ Ali Muldrow said, “I went to school here ... and I never once had a teacher who looked like me. We are obligated to do something about that.”

The District’s current surplus policy, which is attached to this complaint and available on the District’s website,³⁶ has not materially changed since. Surplus decisions are based on the four criteria described above, with “culturally responsive practices” as the first and most important factor, and no consideration of a teacher’s effectiveness. And probationary teachers are exempt.

The current rubric that was applied to Kally, also attached to this complaint, is identical to the “draft sample” at the time of the Board’s vote, except that the “examples” have been removed. “Culturally Responsive Practices” is assigned 40% of the weight; seniority, 25%, additional language proficiency, 20%, and credentials/certifications, 15%. There is no criterion for a teacher’s effectiveness or ability as a teacher. For each category, teachers get a score ranging from 0 to 3. That score is multiplied by the weight percentage, and then all scores are added together.

As in the draft sample, “Culturally Responsive Practices” is described, at a high level, as a teacher’s ability to “articulate the systems and beliefs that may lead to

³¹ *Id.* at 2:14:20.

³² *Id.* at 2:55:06.

³³ *Id.* at 2:50:35.

³⁴ *Id.* at 2:12:20

³⁵ Ayomi Wolff, *Madison school board changes layoff policy: no longer based on seniority alone*, Madison 365 (Mar. 31, 2021), <https://madison365.com/madison-school-board-changes-layoff-policy-no-longer-based-on-seniority-alone/> .

³⁶ Employee Handbook, Addendum A – Teachers, Section 3.2, <https://www.madison.k12.wi.us/human-resources/employee-handbook>.

inequitable outcomes *for students of color*.” (Emphasis added). And, as in the draft, the bullets encourage teachers to prioritize “students of color” over all other students in the District. To get the highest score, the first bullet evaluates whether the teacher “[e]ngages *Students of Color, especially Black students* in learning and classroom community.” (Emphasis added). Another bullet encourages teachers to “[a]ctively intervene[] in harmful interactions that perpetuate racist beliefs about *students of Color*” (emphasis added)—but not racist or hateful interactions directed at other students.

B. The Race-Based Rubric is Applied to Kally Under Suspicious Circumstances That Suggest It Was Used as a Proxy for Race Discrimination.

As noted above, Kally worked at Thoreau Elementary School, which, at the time, had five special education teachers. Two of the five were probationary employees (within their first three years) and thus were exempt from the surplus process under the District’s policy (as described above, this exemption was, itself, racially motivated). One of the five had many years of experience and more credentials than the remaining two, so she would likely receive the highest rubric score. That left Kally, with fourteen years of experience at MMSD (the last six at Thoreau), and a black special education teacher who had only 4 years of teaching experience in total (the first two on a temporary certification).

On February 18, Thoreau’s principal notified staff that Thoreau would need to “surplus” one of the special education teachers. She asked for volunteers, but no one did. On Friday, February 21, at an all-staff meeting, the principal announced that a surplus decision had been made and would be revealed the following Monday. Fearing that it might be her, Kally met with her principal later that afternoon. She confirmed that Kally had been selected for surplus and would be involuntarily transferred to a different school next year. During that meeting, the principal told Kally that she was “one of the most-skilled [special education] teachers that I’ve seen,” but “that’s not part of the rubric.” She said she felt “sick” about what was happening to Kally, but that it was a “unique situation.”

Multiple circumstances around this decision were highly suspicious and suggest that the rubric was really being used as a proxy for race discrimination, to keep the black special education teacher over Kally. That was, after all, the administration’s stated goal in adopting the policy.

First, during their meeting on February 21, Thoreau’s principal told Kally that she could “not surplus someone if they’re on leave.” Conveniently, the black teacher took *a month* of leave—supposedly for mental health—during the entire month of February, when everyone knows that surplus decisions are made. The teachers’ union later told Kally that this statement was incorrect; teachers on temporary leave are *not* exempt from the surplus process. Whether the principal’s statement was based on something she was told by the administration is unknown at this point, but the

combination of this statement and the timing of the black teacher’s month-long leave suggests that the process was being manipulated to select Kally over the black teacher based on her race.

Second, at the all-staff meeting on February 21, the principal told staff that she had had multiple meetings with the administration earlier that week to ensure that she was applying the rubric correctly, given that she was a new principal. According to her, she had met with Carlettra Stanford (Assistant Superintendent of Schools), as well as Chelsy Tubbs and Deb Hoffman (both Associate Superintendents).³⁷ Rubric scores are supposed to be calculated in late January or early February, *before* principals know which positions in their school will be surplussed. The timing of these meetings with the administration, *after* it was known that Thoreau would lose a special education teacher, provided an opportunity to change the rubric scores to achieve a particular outcome.

Third, the administration told principals that they were not allowed to share with staff how their rubric scores were calculated, strongly suggesting that the administration is trying to hide how it is applying the rubric. After she was told she had been selected for surplus, Kally asked to see her rubric score. Her principal shared that her “composite score” was 1.45. Kally then asked to “see[] the individual scores of the four rubric criteria.” Her principal responded, in an email on March 10 (attached), that “[p]rincipals received guidance that [they] can only share the composite score. This was in a recent communicat[ion] late last week.”

Fourth, the only possible way that Kally could have scored lower than the black teacher is if she was given a “1” for “culturally responsive practices” and the black teacher was given a “3.” Both Kally and the black teacher had the same scores for “academic credentials” (2 out of 3, for a “specialized certification”) and “additional language proficiency” (0 out of 3; neither spoke an additional language). But on seniority, Kally had the highest score (3 out of 3, for more than 10 years at MMSD), and the black teacher had a 1 out of 3 (4–5 years at MMSD). To get a 1.45 composite score, Kally must have been given a 1 out of 3 for “culturally responsive practices.”³⁸ The only way the black teacher could get a higher rubric score is if she were given a “3” for “culturally responsive practices,” which would give her a composite score of 1.75.³⁹ If she were given a “2” for “culturally responsive practices,” her composite score would be 1.35—below Kally. Or if Kally were given a “2” for “culturally responsive practices,” her composite score would be 1.85—above the black teacher.

³⁷ <https://www.madison.k12.wi.us/associate-superintendents>.

³⁸ $2 \times .15$ (Academic Credentials) + $0 \times .2$ (Language Proficiency) + $3 \times .25$ (Seniority) + $1 \times .4$ (Culturally Responsive Practices) = 1.45

³⁹ $2 \times .15$ (Academic Credentials) + $0 \times .2$ (Language Proficiency) + $1 \times .25$ (Seniority) + $3 \times .4$ (Culturally Responsive Practices) = 1.75.

Fifth, after Kally realized she must have received a 1 out of 3 for “culturally responsive practices,” she asked her principal how she had “not demonstrated myself to be a culturally responsive special educator” and what “special educators at the elementary level [have] done specifically that would elevate their score to a 2 or 3?” After all, she noted, most of the students she worked with were non-verbal. She never received any explanation.

Moreover, none of her prior reviews *ever* suggested that she was *not* “culturally responsive” or criticized her work in that regard. If anything, her reviewers *praised* her “cultural sensitivity.” In her most recent full review, Kally was given the highest grade (“Distinguished”) for “Communicating with Families,” which assesses, among other things, whether she communicates in a “culturally sensitive manner.” Her principal wrote that all of her communications were “highly sensitive to families’ cultural norms.” She also received the highest score for “creating an environment of respect and rapport” in the classroom, reflecting that she showed “sensitivity to students as individuals” and made “all students feel valued.”

A review from October 2024, under a section labeled “Equity Probes,” found that Kally was “super responsive to the students,” “us[ing] lots of praise and encouragement while balancing it with subtle redirects to help each student stay focused.” A review from December 2024 noted “strong evidence” “of the planning that went into this lesson.” And the “Equity” section noted that Kally provided “a myriad of supports” to help “the focus student [] access the learning,” and found that “[a]ll of this supports our vision in co-plan to co-serve.” None of her reviews have ever indicated, in any way, that her “practices” were not “culturally responsive.”

On March 13, with the help of a union representative, Kally filed a formal grievance.⁴⁰ The principal responded with Kally’s composite score and a link to the surplus policy but did not provide any more details or explanation. The grievance proceeded to step two—review by the Executive Director of Human Resources, Angela Tessner. She issued a short decision on April 28, denying the grievance on the grounds that “the surplus process was followed.” Again, the letter did not explain how or why Kally and the black teacher were scored the way that they were on “culturally relevant practices.” The grievance then moved to step three—a hearing before an impartial hearing officer—which was scheduled for June 11.

At the same time, however, Kally began looking for another job. She had spent many years building relationships with the students, families, teachers, and community partners at and around Thoreau, and did not want to start that entire process over at another school—especially if she could just be transferred again on the basis of such easily manipulable, race-based criteria. Unsurprisingly, given her

⁴⁰ The grievance procedure is set forth in Section 4.4 of the Employee Handbook. <https://www.madison.k12.wi.us/human-resources/employee-handbook>.

qualifications, she was quickly offered the first and only job she applied for at a nearby school district, and she accepted it. Because she was so committed to her students, she decided to finish out the school year, although it broke her heart to know she would be leaving.

Kally planned to continue with the grievance process—and the hearing was scheduled before the school year was over—but when the union discovered Kally had accepted a new job for the following year, it cancelled the hearing the day before it was scheduled. Kally resigned from MMSD after the last day of school.

* * * * *

MMSD has decided to prioritize race and ideology over providing the best possible education for its students. And this misguided focus on race comes at the expense of the most vulnerable children in the District. For special needs students and their parents, that means losing “one of the most skilled [special education teachers]” at Thoreau, possibly in the entire District. Autistic and nonverbal children do not need an educator that “looks like them” or who is skilled in “uncover[ing] implicit biases” (see the attached rubric). They need a teacher with a “passion” and “love” for them, and the experience and highly specialized skills to help them reach their highest potential. An educator with “superhero” qualities in whom parents can place their “absolute trust.” In short, they need “the best [special education] teacher” the school can offer. They need Kally.

III. REQUEST FOR FURTHER INVESTIGATION

Title VII protects individuals, like Kally, from employment discrimination based on race or color. This includes both “discharg[ing] any individual” and “otherwise [] discriminat[ing] against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual’s race [or] color.”⁴¹

The United States Supreme Court has recognized that a “forced transfer” based on race can violate Title VII, since a transfer obviously affects the employee’s “terms” and “conditions” of employment. *Muldrow v. City of St. Louis*, 601 U.S. 346, 350, 354 (2024). The employee must show “some harm” to prevail, but it need not be “significant,” “serious,” “substantial,” “or any similar adjective.” *Id.* at 355–56. Kally’s transfer easily surpasses that low threshold—she had spent six years at Thoreau building relationships with students, families, coworkers, and the local community, and the transfer would have forced her to start over. As the Supreme Court noted, “[m]any forced transfers leave workers worse off” because “[a]fter all, a transfer is not usually forced when it leaves the employee better off.” *Id.*

⁴¹ 42 U.S.C §§ 2000e(a)-(b); 2000e-2(a)(1)-(2).

The Attorney General has also recently explained that “[f]acially neutral criteria,” like “cultural competence,” often “function as proxies for protected characteristics.”⁴² Such criteria “violate federal law if [they are] designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics.” Bondi Memo, *supra* n.11 at 2, 5.

MMSD’s “culturally responsive practices” criterion was both designed and applied (or so it appears) as a proxy for race discrimination. As outlined in detail above, the superintendent, board members, and high-level District staff all stated openly, and repeatedly, that the purpose of the new surplus policy and rubric was to protect and retain “staff of color.” And the circumstances surrounding Kally’s transfer strongly suggest that the rubric was actually applied, in practice, as a proxy for race discrimination. As the Supreme Court recently noted, “the first step of the *McDonnell Douglas* framework—the prima facie burden—is not onerous.” *Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 309 (2025). Plaintiffs simply need evidence that “give[s] rise to an inference of unlawful discrimination.” *Id.* Kally has that in spades here, as described above.

Courts have also recognized that discrimination leading to a resignation can violate Title VII if it amounts to a “constructive discharge.” *Green v. Brennan*, 578 U.S. 547, 555 (2016). Such claims have “two basic elements”: (1) “discriminat[ion] ... by [the] employer to the point where a reasonable person in [the employee’s] position would have felt compelled to resign”; and (2) an “actual[] resign[ation].” *Id.* Here, Kally resigned because she reasonably felt that she could not continue working in an environment where she could be forcefully transferred, at any time, based on her race.

“Eliminating racial discrimination means eliminating all of it.” *Students for Fair Admissions, Inc. v. Harvard*, 600 U.S. 181, 206. (2023). School districts like MMSD cannot be allowed to continue using facially race-based policies and not-so-subtle proxies to achieve “equity,” “racial justice,” or some target racial makeup of staff. And these goals are especially inappropriate when they harm the District’s special needs students. These students deserve the best teachers available.

Kally would love to return to her job at Thoreau—it was her life—but not if she would continue to be subject to a surplus policy and rubric that was both intended and appears to have been applied as a proxy for race discrimination. She also does not want to be forced to prioritize certain students over others, based on their race, just to avoid being selected for transfer or layoff, as the rubric requires.

⁴² To be clear, MMSD’s “culturally relevant practices” criterion is *not* “facially neutral.” As described in detail above, it explicitly requires teachers to prioritize “students of color” over other students.

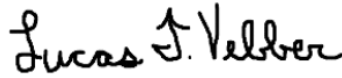
Accordingly, we ask that you open a formal investigation based on this Charge of Discrimination and find that the Madison Metropolitan School District's actions violated Title VII.⁴³

Sincerely,

Wisconsin Institute for Law & Liberty



Luke N. Berg



Lucas T. Vebber



Cory J. Brewer

⁴³ By encouraging teachers to prioritize “students of color” over other students, MMSD’s current rubric likely also violates Title VI, 42 U.S.C. § 2000d *et seq.*, and the EEOC may want to share this complaint with the Department of Education’s Office for Civil Rights.

Moreover, if Kally is unable to resolve this through this EEOC process, she has and likely will bring other claims as well, including under § 1983.