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Dear District Administrator,

In recent months, the ACLU of Wisconsin has learned of efforts underway in many Wisconsin school districts to ban the teaching of concepts labelled as “Critical Race Theory” and to limit the ways that teachers can address issues of racial injustice with students. The purpose of this letter, which is being provided to every school district in Wisconsin, is to remind school leaders that state and federal law make school districts responsible for teaching issues and concepts of race and diversity. Any district or school policy or practice must comply with these legal requirements.

First, the Wisconsin legislature has made clear that **school districts must teach about race at all grade levels**. Specifically, Wisconsin Statute (“Wis. Stat.”) § 118.01(2)(c) 8 mandates that districts provide an instructional program designed to give pupils “*at all grade levels*, an understanding of human relations, particularly with regard to American Indians, Black Americans, and Hispanics” (emphasis supplied). State law also requires that school districts, “as part of the social studies curriculum, include instruction in the history, culture, and tribal sovereignty of the federally recognized American Indian tribes and bands located in this state at least twice in the elementary grades and at least once in the high school grades.” Wis. Stat. § 121.02(1)(L)4. Thus, to comply with state law, a district not only cannot prohibit teaching about racial issues, but rather must ensure that teachers provide appropriate instruction on human relations with particular regard to American Indians, Black Americans and Hispanics at all grade levels.

Second, Wisconsin law also makes clear that **school districts must ensure that students “understand” and “appreciate” different cultures and value systems of American society**. Wis. Stat. § 121.02(1)(h) requires each school board to “provide adequate instructional materials, texts, and library services which reflect the cultural diversity and pluralistic nature of American society.” Wis. Stat. § 118.01(2)(c)7 requires districts to provide an instructional program that will give students “an appreciation and understanding of different value systems and cultures.” Thus, school districts may not mandate that teachers only provide one specific cultural perspective, nor may they order teachers to exclude diverse viewpoints. To comply with state law, districts must instead ensure that teachers present multiple perspectives on American history and culture and encourage students to “appreciate and understand” diverse value systems.

Third, **school districts have a duty to address systemic racial climate problems, including racial harassment, using systemic strategies including anti-racist programs**. Hostile racial climate is a current and pervasive problem in many Wisconsin school districts.¹ When a district is

¹ For examples of Wisconsin school districts that have faced allegations or findings of a racially hostile climate within the past three years, see, e.g., *School District of River Falls*, No. 05-18-1304 (U.S. Dep’t of Educ. Office for Civ. Rts. Oct. 31, 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05181304-a.pdf>; *Garbade v. Burlington Area Sch. Dist.*, Wisconsin Department of Public Instruction Pupil Nondiscrimination Appeal No. 20-PDA-02 (April 9, 2021); Madeline Fox, “Lawsuit alleges years of racist bullying at Kettle Moraine School District,” Wisconsin Public Radio (Oct. 19, 2020), <https://www.wpr.org/lawsuit-alleges-years-racist-bullying-kettle-moraine-school-district>; Madeline Fox, “Current, former Chippewa Falls students allege pervasive discrimination in

aware that a pervasive culture of bias in its schools is limiting students' access to educational opportunity, it must take action reasonably calculated to change that culture. *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 670 (2nd Cir. 2012); *Garbade v. Burlington Area Sch. Dist.*, Wisconsin Department of Public Instruction Pupil Nondiscrimination Appeal No. 20-PDA-02 (April 9, 2021). According to the U.S. Department of Education Office for Civil Rights (OCR), elements of an appropriate response must often include "training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond." *Dear Colleague Letter* (OCR, Oct 26, 2010).² OCR has also produced a checklist for schools identifying reasonable responses to a racially hostile environment, which includes the following suggested steps: "creating an effective anti-harassment program in consultation with parents, students and community groups"; using the district's curriculum to "foster respect and appreciation for diversity"; and staff training and professional development programs to support the district's anti-harassment efforts. *Checklist for a Comprehensive Approach to Addressing Harassment* (OCR).³ In short, districts must act proactively to remedy and end any racially hostile environment in their schools, and such action will often necessarily include discussions of race.

Finally, **districts must continue to use appropriate teaching strategies to reduce racial disparities in academic achievement.** Both Title VI of the Federal Civil Rights Act of 1964 and Wis. Stat. §118.13 mandate that schools prevent discrimination against students in their access to educational opportunity based on race. Further, students in Wisconsin have a fundamental constitutional right to an equal opportunity for a sound basic education that will "equip students for their role as citizens and enable them to succeed economically and personally." *Vincent v. Voight*, 2000 WI 93, ¶ 87. Ample research supports the proposition that culturally responsive pedagogy—*i.e.*, teaching practices that affirm students' social and cultural histories—plays a critical role in improving learning outcomes for students of color.⁴ Many Wisconsin school

complaint," Wisconsin Public Radio (June 16, 2021), <https://www.wpr.org/current-former-chippewa-falls-students-allege-pervasive-discrimination-complaint>; Emily Pyrek and Olivia Herken, "School district complaint process 'hidden', students and advocates say," La Crosse Tribune (June 6, 2021), https://lacrosetribune.com/news/local/education/school-district-complaint-process-hidden-students-and-advocates-say/article_9ef56e4b-b179-5cdd-bce6-db328cf06d65.html; Alec Johnson, "A Cedarburg student says she has experienced racism from her peers and teachers for years. Now she's trying to spark change.," Milwaukee Journal Sentinel (April 14, 2021), <https://www.jsonline.com/story/communities/northshore/news/cedarburg/2021/04/14/cedarburg-high-school-student-family-say-been-victims-racism/4744515001/>.

² Available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

³ Available at <https://www2.ed.gov/policy/rights/guid/ocr/checklist.html>.

⁴ See, *e.g.*, Ellen Eliason Kisker et al., *The Potential of a Culturally Based Supplemental Mathematics Curriculum to Improve the Mathematics Performance of Alaska Native and Other Students*, 43 *Journal for Research in Mathematics Education* 75 (2011); Thomas Dee and Emily Penner, *The Causal Effects of Cultural Relevance: Evidence from an Ethnic Studies Curriculum*, 54 *American Education Research Journal* (2017); Thomas Dee and Emily Penner, *My Brother's Keeper? The Impact of Targeted Educational Supports*, Stanford Center for Education Policy Analysis Working Paper No. 19-07 (2019); Adriana J. Umaña-Taylor et al., *A Small-Scale Randomized Efficacy Trial of the Identity Project: Promoting Adolescents' Ethnic-Racial Identity Exploration and Resolution*, 89 *Child Development* 862-870 (2018). See also *Promoting Excellence for All: A Report from the State Superintendent's Task Force on Wisconsin's Achievement Gap* (Wisconsin Department of Public Instruction, 2014), <https://dpi.wi.gov/sites/default/files/imce/excforall/exc4all-report.pdf>.

districts have made culturally responsive teaching a core component of their efforts to combat racial achievement gaps.⁵ Districts therefore must develop and use appropriate strategies, including culturally relevant instruction, to ensure they are providing their students of color an equal opportunity for a sound basic education.

In short, to comply with the law, you must ensure that your district continues to (1) provide appropriate instruction to students at all grade levels about human relations and race; (2) provide students instruction and curricular materials reflective of diverse value systems and cultural viewpoints; (3) appropriately redress racial climate problems in district schools; and (4) use appropriate strategies to ensure students of color in district schools have an equal opportunity to obtain a sound basic education.

Please do not hesitate to contact the ACLU of Wisconsin if you have any questions about this letter or wish to discuss it further.

Sincerely,

Attorney Elisabeth Lambert
Equal Justice Works Fellow
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⁵ See, e.g., Wauwatosa School District Equity Plan (2020-2022), <https://www.wauwatosa.k12.wi.us/cms/lib/W102216059/Centricity/Domain/261/W.S.D.%202020-2022%20Equity%20Plan%20Final%20Draft%20-%20Google%20Docs.pdf>; Kenosha School District Culturally Relevant Opportunities for Professional Development, <https://www.kusd.edu/departments/school-leadership/diversitystudent-and-family-engagement/culturally-relevant>; Milwaukee Public Schools Culturally Responsive Practices, <https://mps.milwaukee.k12.wi.us/en/Families/Family-Services/Intervention---PBIS/Culturally-Responsive-Practices.htm>; School District of Beloit Culturally Responsive Practices, <https://www.sdb.k12.wi.us/Page/5077>; Greendale School District Equity Non-Negotiables, <https://www.greendaleschools.org/improvement/equity-cultural-competence.cfm>.