



April 21, 2021

Tammy Prentiss
Superintendent of Schools
Hinsdale District 86
Email: tprentis@hinsdale86.org

cc: Debra Kedrowski
Administrative Chief of Staff
Hinsdale District 86
Email: dkedrows@hinsdale86.org

Dear Ms. Prentiss,

I write as the president and co-founder of the Liberty Justice Center, a national public-interest law firm. Among other issues, we litigate education-law and free-speech cases across the country. We are especially interested in cases where constitutional rights are infringed by members of public sector unions and those unduly influenced by them — most notably, in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), where I served as lead counsel for Mark Janus. I am also a resident of Hinsdale.

I write to express my deep concern about Hinsdale’s adoption of an Equity Statement that creates serious legal and constitutional issues by wholesale incorporating critical theory into our schools. The statement pledges “coherent, deliberate, and intentional equity work that prioritizes the equality of opportunity and equality of outcome for every student” (emphasis added). It promises a curricular approach that implements “a culturally responsive curriculum and pedagogy that interrupts racism and other systems of oppression and allows all students to see themselves in their schooling.” It aims to “empower students to have critically conscious discourse on diverse political and social topics.” And it says the District will begin “professional development for all employees to identify, examine and eliminate institutional beliefs, policies and practices that perpetuate discrimination based on race, culture, religion, language, ability, gender and/or sexual identity.”

It is hard to catalogue the variety of ways this theory of equity undermines fundamental guarantees of equal treatment and equal protection under American and Illinois law.

- “Equality of outcomes” is antithetical to the American notion of opportunity for all. As a federal court has observed concerning nondiscrimination, “equality of opportunity--not equality of outcomes--is the linchpin of what the Constitution requires . . .” *Werme v. Merrill*, 84 F.3d 479, 485 (1st Cir. 1996). By promising “equality of outcomes” for students, Hinsdale District 86 exposes itself to reverse discrimination litigation by students whose learning opportunities are limited downward to achieve a false equality from low expectations.



- This guarantee of equal protection also prevents schools from extending special privileges to students based on race, or limiting leadership opportunities or access to extracurricular activities based on race. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007); *Fisher v. Univ. of Tex.*, 136 S. Ct. 2198 (2016).
- The U.S. Constitution guarantees not only the equal protection of the laws, but also the freedom of speech. For students, that includes a fundamental right not to be compelled to say or affirm any statement which they do not believe to be true or appropriate. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). And the District must be wary of the silent compulsion of even supposedly voluntary activities for young students. *Lee v. Weisman*, 505 U.S. 577, 592 (1992). Thus, equity-based curriculum that include “equity pledges” or exercises that require students to speak certain messages about their background, feelings, or identity can violate the compelled speech doctrine. *See, e.g., Clark et al v. State Public Charter School Authority et al*, 2:20-cv-02324 (D.Nev. 2021).
- The Protection of Pupil Rights Amendment, codified at 20 U.S. Code 1232h(b)(1) protects students from any survey or other response instrument that “reveals information concerning political affiliations or beliefs of the student or the student’s parent.” Making students complete surveys that ask them to respond to race-related statements may delve into their personal and familial political beliefs in ways that violate the PPRA.
- District 86 may not adopt professional training programs for its teachers that create a hostile work environment by calling them racists or using other language that is offensive to a reasonable person. *See Reynaga v. Roseburg Forest Prods.*, 847 F.3d 678, 687 (9th Cir. 2017).
- The District must also respect the reasonable academic freedom of its teachers to teach their subjects according to their expertise, and not compel their speech beyond what the First Amendment allows. *See Meriwether v. Hartop*, No. 20-3289, 2021 U.S. App. LEXIS 8876 (6th Cir. Mar. 26, 2021).
- Finally, these rights under federal law are complemented by additional rights under Illinois law, including the Illinois Constitution’s guarantee of a quality education. Ill. Const. article X, section 1. *See Cahokia Unit School District No. 187 v. Pritzker*, 154 N.E.3d 782 (Ill. 2020) (granting leave to appeal). Adopting a critical-theory-based educational model may violate this clause by falling below the set standards of quality or by denying a quality education to students whose opportunities are limited by the need to create an artificial equality of “equality of outcomes.”

In short, adopting critical theory into our local public schools poses a variety of legal problems which all underline one central truth: both the substance and practice of critical theory presuppose a vision of society fundamentally at odds with long-standing American values and principles. Thus, not only because of the potential for litigation exposure, but more importantly



because of its negative impact on our students, the District should withdraw its statement and adopt a better, more inclusive and respectful approach to civics education grounded in the values of this nation. Otherwise Liberty Justice Center stands ready to represent any teacher, taxpayer, or student who is compelled to violate their beliefs or endure racial discrimination.

A better path is to remember this truth: “In the eyes of government, we are just one race here. It is American.” *Adarand Constructors v. Pena*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring).

Very truly yours,

A handwritten signature in black ink, appearing to be "Patrick J. Hughes", written in a cursive style.

Patrick J. Hughes
President & Co-founder