



Students for Fair Admissions
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Superintendent Devon Horton &
District 65 School Board Members
1500 McDaniel Avenue,
Evanston, IL 60201
Via Email to Adeela Qureshi, School Board Secretary: gureshia@district65.net

Re: ***Reported proposal to unconstitutionally condition provision of educational services on students' race.***

Dear Superintendent Horton and Members of the Board:

I write on behalf of Students for Fair Admissions, a nonprofit advocacy group believing the use of racial or ethnic classifications to allocate educational services is unconstitutional, unfair and unnecessary. Based on reported comments in a *Wall Street Journal* article of October 6 2020, [Can School be 'Antiracist'? A New Superintendent in Evanston, Ill., Has a Plan](#), it appears the Board is proposing to provide in person educational services on the basis of race, which may discriminate against students who are not Black or Hispanic on the basis of race and be a violation of the Equal Protection Clause to the Fourteenth Amendment of the United States Constitution.

The local paper, *Evanston Now*, reported that on a Zoom call in July the Superintendent said

If there is not enough space in schools to meet the demand, Horton said “marginalized” populations will be given priority, such as students of color, those in special education, and LGBTQ individuals. Horton said “there was a pandemic before this, inequality, racism, and classism. We have to make sure students who have been oppressed will be given the first opportunities,” he said.

<https://evanstonnow.com/schools-expect-to-run-out-of-space-this-fall/> (last visited 10/19/20).

Race-conscious policies, like those referenced on this call and reportedly still being considered, are subject to the highest level of judicial scrutiny. Courts view policies that treat one category of persons differently because of their race with the utmost skepticism: “Distinctions between

citizens solely because of their ancestry are by their very nature odious to a free people” and therefore “are contrary to our traditions and hence constitutionally suspect.” *Fisher*, 570 U.S. at 309(internal citations omitted). According to the *WSJ*, your Board included this language in a letter to the community:

When you challenge policies and protocols established to ensure an equitable experience for Black and brown students,” the board said in its letter, “you are part of a continuum of resistance to equity and desire to maintain white supremacy.”

When a board attempts to condition the delivery of services on race, that is when it is likely the board acts unconstitutionally and inequitably for all students. Strict scrutiny applies not only to policies that contain *express* racial classifications; enactments “are subject to strict scrutiny under the Equal Protect Clause ... when, though race neutral on their face, they are motivated by a racial purpose or object.” *Miller v. Johnson*, 515 U.S. 900, 913 (1995). These and other statements by the Board and Superintendent appear to show a troubling racial motivation behind the proposed policy on in person learning.

Furthermore, this policy of giving priority to Black and brown students is not likely to be construed as narrowly tailored. To pass this narrow tailoring hurdle, a court “must be ultimately satisfied that no workable race-neutral alternatives” would suffice. *Fisher*, 570 U.S. at 312. However, looking at the data for the district as summarized in the *2018-19 Achievement and Accountability Report*, <https://v3.boardbook.org/Public/PublicItemDownload.aspx?ik=45744988> (last visited 10/19/20), it is evident that academically struggling students and academically successful students are to be found distributed across every racial and ethnic category.

The below table has numbers based on the Math data, since this is the lowest performance category, but the ELA percentage data is similar. Students enrolled this year were rounded to 8000 based on the Superintendent’s representation, but the student proficiency and racial and ethnic distribution from the 2019 year is used, with rounding to the nearest whole percentage for all racial categories in excess of 1 percent. Proficiency is defined for this table as meeting or exceeding college readiness benchmarks; this is the only real proficiency measure in the 2019 data. Also, it appears testing data is only 3-8th grades, but we have extrapolated percentages to the entire population.

Headings	All Students	Black	Hispanic	White	Asian	Multiracial
Number Students	8000	1840	1680	3360	400	700
Percentage	100%	23%	21%	42%	5%	9%
Percent Not Proficient/Number						
Math	45/3600	79/1454	66/1109	22/739	29/116	35/252
ELA	39/	67/	62/	17/	30/	26/

Looking at the above chart, it is apparent that any priority given to Black or Hispanic students would be both over-inclusive, in that a significant percentage of Black and Hispanic students are not struggling, and underinclusive, in that over 1,100 students in other racial or ethnic categories are also struggling. A constitutional violation that impacts one student is significant, let alone

thousands, and a court is likely to find no tailoring, narrow or otherwise, with this type of plan. Additionally, any plan must be a “last resort.” *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 790 (2007) (Kennedy, J., concurring). There is no evidence that the proposed race-conscious policy was a last resort, or even that any other plans were seriously considered.

Your District claims as its motto “*Every Child, Every Day, Whatever it Takes.*” This should be more than a slogan. The Board should be working to eliminate racial barriers and racial stereotypes, not to reinforce them. That is the promise of the Equal Protection Clause.

As counsel who appeared before this Court for the plaintiffs in *Brown* put it: “We have one fundamental contention which we will seek to develop in the course of this argument, and that contention is that no State has any authority under the equal-protection clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities among its citizens.[internal citation omitted]

Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 747 (2007). We respectfully request that you strongly consider the constitutional implications of the proposed policies prior to implementing them.

Sincerely,



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