Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

It is my understanding that [School name] will observe Black Lives Matter at School’s Action Week beginning next Monday, February 4th. I am writing today to express my concerns with this decision and to highlight the associated risks.

As you know, when schools engage in racial discrimination in violation of Title VI of the Civil Rights Act, they risk losing their Federal funding. Some forms of discrimination are very obvious, while others are less so. If a school were to ban students from entering its doors on the basis of a student’s skin color, for example, the illegality of that action would be clear. And it would logically follow that the school would lose its federal funding. But what about schools that use instructional materials that are discriminatory in one way or another?

Recent guidance from the United States Department of Education’s (“DOE”) Office of Civil Rights (“OCR”) states that “schools also may violate Title VI when they create, encourage, accept, tolerate, or fail to correct a racially hostile educational environment.” The guidance further provides:

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome race-based conduct that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive, that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment).

When you examine the curricular material published on the Black Lives Matter at School “Week of Action” website, you will find content that falls within the realm of what the OCR guidance contemplates.

While it is possible that the intention behind teaching such material is benign, that intention does not make them any less discriminatory, and therefore, no less illegal. Indeed, many of the Action Week lesson plans contain language that conforms to the most basic definitions of racism and/or discrimination.

Discriminatory teaching materials may offend students by making them feel unwanted in their classrooms, especially when the instructional materials promote hateful or demeaning stereotypes. In some cases, the discriminatory content may be so offensive that students become limited in their participation in school activities because they instinctively withdraw from participating or choose to skip class altogether.

This is the definition of a racially-hostile environment in violation of Title VI of the Civil Rights Act.

Title VI of the Civil Rights Act provides that “[n]o 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.” 42 U.S.C. § 2000d. The OCR’s recent guidance clarifies:

Discrimination based on race, color, or national origin includes discrimination based on a person’s actual or perceived race, color, or national origin. Such discrimination may be based on the country or world region from which a person or their ancestors come; a person’s limited English proficiency or status as an English learner; or a person’s actual or perceived shared ancestry or ethnic characteristics, including those associated with membership in a specific religion (such as Hinduism, Judaism, Islam, or Sikhism).

The guidance further clarifies:

OCR could find a Title VI violation in its enforcement work if: (1) a hostile environment based on race existed; (2) the school had actual or constructive notice of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

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It is my fear that if discriminatory content is taught at this school, students may experience a racially hostile learning environment, which would put our school’s Federal funding at risk. Additionally, the school may also face other legal liabilities.

I urge you to communicate this risk to all teachers so that our school is in the best position to avoid costly legal actions or other civil rights complaints.

Thank you for your consideration,