



April 22, 2022

Dr. Britney Holmes, Principal
Pathfinder K-8 School
1901 SW Genesee Street
Seattle, WA 98106
bdholmes@seattleschools.org

Sent via email

Dear Dr. Holmes:

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan, non-profit organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. We have more than 100 chapters and tens of thousands of members nationwide, including in Washington. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to incident reports submitted to FAIR through our transparency website, fairtransparency.org, regarding Pathfinder K-8 School. Based on those reports and our review of Pathfinder's public website, we understand that in October 2021, a school employee discovered a jump rope fashioned as a noose in a tree outside the school. The report also suggests that the responsible individual was a disabled youth. After the discovery, you reportedly sent an email to the parents, stating the school would be "providing affinity spaces for Black, White, and Mixed-Race groups" to process the event. According to the email, the groups were "a designated safe space where everyone in that group shares a particular identity." The report also states that staff directed students to the "correct" skin color group based on their appearance:

Children who appeared BIPOC were directed by adults to one of two groups based on the darkness of their skin and children who appeared white were directed to the white group.... Some children reported that they attempted to go to the groups they racially identified with but were directed to, and in some cases physically guided to different groups based on their skin color or darkness of their skin.... Some children reported that when they had attempted to join specific affinity groups they felt they belonged in based on family racial identity or skin color of siblings, adults directed them to go to different groups based on the color of their own skin.... Some children reported attempting to join groups with friends and were directed to separate and attend different groups if their skin color did not match that of their friends.

We further understand that Pathfinder has continued and expanded its affinity groups since 2021. An issue of the school's newsletter explains that the "white" affinity group is "[a] time for White folx to embrace, excavate, and reckon with their Whiteness, including their privilege and power and to examine how to

center the voices and experiences of BIPOC without harming and/or re-traumatizing BIPOC.” Pathfinder’s “BIPOC” affinity group is “[a] time for BIPOC folx to take care of themselves and one another while unpacking racism, internalized oppression, and racialized trauma, discussing the impact of White Supremacy Culture and the pressure of assimilation in the absence of Whiteness.”

We also understand that Pathfinder has established “community building groups” during lunch period on the third Wednesday of each month. According to a school communication, those groups are limited to “Black, Indigenous, People of Color (BIPOC) & Multiracial” students.

If the reports are accurate, Pathfinder’s establishment of the affinity and lunch groups raises substantial concerns. The Constitution’s Equal Protection clause prohibits states from treating individuals differently based on skin color or racial classification. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701, 720 (2007). Similarly, Title VI of the Civil Rights Act, which is derived from the Equal Protection clause, provides:

No 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. As public and federally-funded entities, charter schools are subject to both the Equal Protection guarantee and Title VI. *Id.* § 2000d-4a(2); *see Reach Academy for Boys & Girls, Inc. v. Delaware Dept. of Educ.*, 8 F. Supp. 3d 574, 578-9 (D. Del. 2013) (finding that the Equal Protection clause and Title VI applied to charter school).

Because of those protections, all distinctions and classifications based on skin color are “strictly scrutinized” by the courts. *Adarand Constr., Inc. v. Peña*, 515 U.S. 200, 227 (1995). Strict scrutiny applies not only to invidious racial discrimination; it also applies to distinctions that are benign or treat people “differently yet equally.” *See Johnson v. California*, 543 U.S. 499, 506 (2005). The *Johnson* case is instructive. There, an inmate challenged a prison policy that separated new inmates according to skin color or ethnicity: prisoners classified as white were housed with others classified as white, inmates classified as black were housed with other inmates classified as black, and so forth. *Id.* at 502. The corrections department argued that strict scrutiny should not apply because the separation was for a benign purpose—reduction of gang-based violence—and the different groups were treated equally. *Id.* The Court rejected that rationale:

The CDC claims that its policy should be exempt from our categorical rule because it is “neutral”—that is, it “neither benefits nor burdens one group or individual more than any other group or individual.” In other words, strict scrutiny should not apply because all prisoners are “equally” segregated. The CDC’s argument ignores our repeated command that “racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally.” Indeed, we rejected the notion that separate can ever be equal—or “neutral”—50 years ago in *Brown v. Board of Education*, and we refuse to resurrect it today.

Id. at 506 (internal citations omitted); *see also Powers v. Ohio*, 400 U.S. 400, 410 (1991) (“It is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree.”). Thus, even if Pathfinder’s separation of individuals into skin color groups were deemed benign or “separate but equal,” it will still be strictly scrutinized.¹

Strict scrutiny “is a searching examination” that is rarely survived. *Fisher v. University of Texas*, 570 U.S. 297, 310 (2013); *Burson v. Freeman*, 504 U.S. 191, 211 (1992). Racial classifications will pass strict scrutiny only if the entity proves it has a “compelling interest” in treating individuals differently based on skin color and the means used to achieve that interest are “narrowly tailored.” *See Adarand*, 515 U.S. at 227. A policy is not narrowly tailored if a “less restrictive alternative is readily available.” *Boos v. Barry*, 485 U.S. 312, 329 (1988).

With respect to the affinity groups, Pathfinder claims an interest in “address[ing] the harm to Black students and other students of color” and in providing a “safe space” for each skin color group. The asserted purpose of the lunchtime “BIPOC” group is to “build community.” Certainly, schools have an interest in addressing troubling on-campus incidents and in fostering a cohesive and harmonious environment. However, separating and excluding students according to skin color is not narrowly tailored to achieve those goals. Many non-discriminatory alternatives are readily available, such as inclusive groups where individuals are encouraged to communicate respectfully, and groups that focus on shared concerns rather than shared skin color. Moreover, the lunchtime group may *undermine* community-building rather than further it: it is difficult to see how a “BIPOC”-only group strengthens school community when a large portion of that very community is visibly and openly excluded. The message that it is unsafe to be with those who do not share the same skin color stigmatizes all. *See Shaw v. Reno*, 509 U.S. 630, 643 (1993) (separation by skin color “threaten[s] to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.”).²

We recognize that dealing with such an incident can be very challenging, particularly where the symbols used evoke fear, anger, and disgust. Nonetheless, we believe separating students and families by skin color is neither a constructive nor a legally sanctioned response. We urge Pathfinder to discontinue sponsoring identity-based affinity groups and instead host discussions and activities where no individual is excluded based on their immutable traits.

¹ At least some of Pathfinder’s affinity groups appear unequal. The purpose of the “white” group is to “examine their privilege and power,” “center the voices and experiences of BIPOC people,” and cease “harming and/or retraumatizing BIPOC.” In contrast, the “BIPOC” group is a time “for BIPOC folx to take care of themselves,” unpack “their racialized trauma,” and discuss “the impact of White Supremacy Culture and the pressure of assimilation in the absence of Whiteness.”

² It is immaterial that participation in the affinity and lunchtime groups is not required. Discrimination based on skin color is prohibited even in activities and endeavors that are voluntary. *See, e.g.*, Rev. Code Wash. 49.60.15 (visiting amusement parks); *id.* (staying at hotels); *id.* 49.60.222 (purchasing a home); *id.* 49.60.176 (applying for credit).

We would like to give Pathfinder an opportunity to respond. Please let us know within the next week if you intend to do so.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Kim', written in a cursive style.

Letitia Kim
Managing Director of the Legal Network
Foundation Against Intolerance & Racism

cc: Chris Cordell, Assistant Principal (chcordell@seattleschools.org)