

October 1, 2021

Dr. Peter Smith
Superintendent
Jamesville-Dewitt School District
psmith@jd.cnyric.org



Sent via Email

Dear Dr. Smith:

I am an attorney at the Foundation Against Intolerance & Racism (FAIR), a nonpartisan organization dedicated to advancing civil rights, tolerance, and recognition of our shared humanity. We have tens of thousands of members nationwide and more than 70 chapters from coast to coast, including four chapters in the State of New York. FAIR's advisory board includes John McWhorter, Ayaan Hirsi Ali, Steven Pinker, Bari Weiss, and others similarly dedicated to our mission. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to three incident reports submitted anonymously to FAIR through our transparency website, fairtransparency.org, regarding Jamesville-Dewitt School District (JDSD). Each report and our response thereto are set forth in turn below.

Incident Report #1

Incident Report #1 states: "When developing their Equity Policy, the district held a meeting for parents of color only. When a white parent tried to attend, he was not admitted." It attaches an informational flyer titled, "A Forum For Parents: JD Families of Students of Color." The flyer states, "We have been hearing, loudly, the call for the voices of parents of students of color to be heard," and announces a forum to "help shape the direction of the district for the next five years." Incident Report #1 also attaches entries from JDSD's calendar, showing the forum in fact occurred on October 17, 2019 at 7pm at Jamesville-Dewitt High School.

If that account is accurate, JDSD likely violated the Equal Protection clause of the Fourteenth Amendment in holding the forum. As interpreted by the Supreme Court, that clause prohibits states (including their agencies) from denying rights and privileges to individuals based on their skin color. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701, 719 (2007). Regardless of their purported motivation, race-based exclusions are presumptively invalid and will be upheld only upon extraordinary justification. *Personnel Admin. v. Feeney*, 442 U.S. 256, 272 (1979). Historically, courts have allowed states to take skin color into account only if the purpose is to remedy past prejudice in the specific locality and industry at issue, or to achieve diversity in the relevant population -- *provided* skin color is only one among many factors and the individuals are still viewed holistically. *Parents Involved*, 551 U.S. at 720-1; *see Grutter v. Bollinger*, 539 U.S. 306, 328-33 (2003); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498-504 (1989).

Neither of those conditions appears to exist with respect to the forum. To our knowledge, JDSD made no showing of past racial discrimination in policy-shaping meetings that could be cured in 2019 only by banning everyone of European descent. Nor has JDSD claimed racial exclusion was necessary to achieve diversity at the forum. Indeed, because the forum was specifically designed to hear families of color, skin color homogeneity was hardly a legitimate concern. In any event, skin color was not one of many factors in selecting who was invited; it was the *only* factor. Thus, JDSD's invitation was not a racial preference (sometimes permissible), but a racial ban (virtually never permissible).

Additionally, the forum violated Title VI of the Civil Rights Act, if it was connected to federal financial assistance. Title VI 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 recipients of federal funds, public school districts must comply with Title VI. *Campaign for Fiscal Equity, Inc. v. New York*, 631 N.Y.S.2d 565, 573 (N.Y. 1995). Consequently, if the forum related to monies received from any federal agency or program, JDSD violated Title VI by intentionally limiting attendance based on skin color.

Incident Reports #2 and #3

Incident Report #2 states, in pertinent part, that students “were asked to state their preferred pronouns via a google form,” teachers placed “BLM and other political stickers in their rooms,” and “Stamped For Kids by Ibram X. Kendi is now part of the 8th grade social studies curriculum.”

Similarly, Incident Report #3 states that teachers distributed a form “asking for preferred pronouns to students as young as 12 years,” and the principal “recommended and encouraged all staff” to use that form. Incident Report #3 attaches what appears to be the form in question, which instructs students to circle the listed pronouns that apply to them and to indicate whether the teacher “may use these pronouns when [s/he] calls [the student's] home.” The form does not say any of the questions is optional or that students are free not to respond. Incident Report #3 also attaches a photo of a message, ostensibly sent by the form-creating teacher to other school faculty, saying, “I am attaching a ‘Get to know you’ form that I plan to use with my students. You are welcome to use it too,” and adding, “If you see anything that needs to be changed, please let me know.” A response (presumably by the principal or other school official) is also attached, stating, “This is an outstanding form! I would recommend that all staff use this to help our students feel more comfortable and allow you their preferences!”

We believe that form should not have been used by JDSD. Requiring students to choose their pronouns is effectively demanding that they affirm a particular set of ideological beliefs about sex and gender, which many do not share. The First Amendment prohibits such compelled speech. *Hurley v. Irish-American Gay, Lesbian, & Bisexual Grp.*, 515 U.S. 557, 573 (1995); *see also Wooley v. Maynard*, 430 U.S. 705, 714

(1977) (“A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts.”); *Oliver v. Arnold*, 3 F.4th 152, 162 (5th Cir. 2021) (public school teachers may not give assignments for the purpose of compelling students to assert specific ideals). As Justice Jackson famously stated, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). While teachers should permit students to declare their pronouns if they so choose, they may not require them to do so.

With respect to the teachers’ alleged political stickers, FAIR supports the constitutional right of teachers (and students) to personally speak on matters of public concern, provided the speech causes no substantial disruption and does not undermine school operations. *Pickering v. Board of Educ.*, 391 U.S. 563, 571-3 (1968); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969). However, if political opinions inform the curriculum, as suggested by Incident Report #2, that is another matter. Most socio-political matters are complex and open to substantial disagreement and debate about their causes, nature, and possible solutions. A K-12 school can certainly include works of Ibram Kendi in its curriculum as part of exploring race and racism, but we hope his perspective is balanced by competing views -- particularly as many of his ideas (including that institutions should racially discriminate and the state should “monitor” officials to detect “racist ideas”) are extreme and/or legally questionable. We imagine JDSD agrees that schools should teach students *how* to think, not *what* to think. Free thought, however, is possible only with free access to diverse sources. We hope source diversity is provided and opinion diversity is encouraged in all JDSD classes that discuss controversial, socio-political, and similar matters.

In a recent letter to the school community, you state that JDSD is “[r]eviewing all our district policies to ensure they reflect current law.” We hope JDSD will consider the matters raised in this letter as part of that review.

We would like to give JDSD an opportunity to respond. Please let us know within the next five business days if you intend to do so.

Very truly yours,

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

cc: Ms. Lori DeForest, President of Board of Education