



April 11, 2023

United States Department of Education
Office for Civil Rights - Seattle Office
915 Second Avenue Room 3310
Seattle, WA 98174-1099

Sent via email

To Whom It May Concern:

This is a federal civil rights complaint filed in accordance with the United States Department of Education's Office of Civil Rights' (the "OCR") Complaint Resolution Process.

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. FAIR brings this complaint as an interested third party against Pathfinder K-8 School, located at 1901 SW Genesee Street, Seattle, Washington ("Pathfinder"). Pathfinder is part of Seattle Public Schools and serves children in kindergarten through 8th grade. This complaint is for discrimination in violation of Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. § 2000d et seq., and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Pathfinder leadership has implemented several programs that separate students and other community members based on race or skin color in violation of federal law, as evidenced by the attached documentation. Specifically, the school has offered several opportunities that are racially-exclusionary or separate individuals based on race, including, without limitation:

- Pathfinder Community Cafe, which is meant to "connect and foster relationships" and "bring community members together for a series of loosely structured conversations that directly address issues important to the community." In September 2021, the school's Racial Equity Committee invited all "[f]amilies of Color, Black Families, Indigenous Families, and Multiracial Families at Pathfinder to the inaugural Pathfinder Community Cafe!" (Ex. A).
- Affinity Groups, the following of which are offered this school year: "BIPOC, Mixed Race, White, LGBTQIA2+, Disabled, and Jewish." In the [October 16](#),

[2022 issue](#) of the Pathfinder Compass newsletter, Pathfinder’s principal, Dr. Britney Holmes stated: “[s]imilar to last year, Affinity Groups are starting soon! ...We realize folx can share more than one of these identities, so we plan to offer groups on a rotation” (Ex. B). In the [January 22, 2023 issue](#) of the newsletter, however, Dr. Holmes narrows the scope of offered Affinity Groups, saying that “[t]eachers Timmesha and Fatuma are beginning our Black affinity space. This too will begin with our Middle School scholars and we will seek a similar path to including our elementary school student [sic]” (Ex. B). There is no mention in the January 2023 newsletter of Affinity Groups other than the “Black affinity space.”

- [Listening Sessions](#) for “Middle School,” “Families Receiving SPED Services,” and “BIPOC and Mixed Race Families” (Ex. C). Dr. Holmes mentioned the Listening Sessions in the October 2022 newsletter, stating that the school was “excited to re-start our Listening Sessions,” and that the school “*will use what you share with us to inform our practice and further consult with teachers*” (emphasis original) (Ex. C). The [January 2023 issue](#) of the newsletter provided dates, times, and zoom links for the Listening Sessions (Ex. C).
- [Lunchtime Community Building Groups](#), which are for only “BIPOC & Multiracial Scholars.” Originally announced during the 2021-2022 school year, the Lunchtime Groups appear to be on-going today (see the [live registration link here](#)). This opportunity is offered during lunch on the third Wednesday of each month, and the registration page states: “WHO: All BIPOC & Multiracial Scholars, K-8, are invited to join” (Ex. D).

The separation of individuals on the basis of race and/or skin color in public schools is a direct violation of Title VI and the Fourteenth Amendment, from which Title VI is derived. Previous findings of the Department of Education’s Office of Civil Rights clearly support this conclusion, not to mention the relevant body of Supreme Court precedent. That a public school might offer a racially-segregated group for every race of student within the school does not mitigate the illegality of this practice.

As you know, 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.

Public schools operating via the expenditure of federal tax dollars are required to adhere to Title VI and the Fourteenth Amendment. Under Title VI (and the Equal Protection clause of the Fourteenth Amendment), all distinctions based on skin color are “strictly scrutinized.” See *Oak Park and River Forest High School Dist. 200*, U.S.D.O.E. (Office of Civ. Rights Sept. 15, 2015) and *Adarand Constr., Inc. v. Peña*, 515 U.S. 200, 227 (1995). Strict scrutiny applies not only to invidious racial discrimination. Rather, it applies to distinctions that are “benign” or that purport to treat people “differently yet equally.” See *Johnson v. California*, 543 U.S. 499, 506 (2005). In *Johnson v. California*, an inmate challenged a prison policy that separated new inmates according to skin color: Latino prisoners were housed with other Latinos, black inmates with other black inmates, 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 all inmates were still treated equally within their respective groups. *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). Similarly, following an investigation of a complaint against Oak Park and River Forest High School after it hosted a school assembly only for black students, the OCR pointed out that “state actions, policies or laws that rely on the racial classification of individuals, and which give benefits or burdens on that basis, are subject to strict judicial scrutiny. In order to survive strict scrutiny, such actions, policies or laws must be shown to be narrowly tailored to meet a compelling governmental interest.” *Oak Park* at 2. Thus, even if Pathfinder’s racial segregation practices are benign or “separate but equal,” they will still be strictly scrutinized.

Strict scrutiny “is a searching examination” that is rarely survived (See *Fisher v. University of Texas*, 570 U.S. 297, 310 (2013); *Burson v. Freeman*, 504 U.S. 191, 211 (1992)). Racial classifications such as Pathfinder’s 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.” *Adarand*, 515 U.S. at 227. Again, the *Oak Park* OCR [letter of findings](#) is instructive. The OCR found that “while the District had a compelling diversity interest in hearing the concerns of African American students, the means used were not narrowly tailored to address this interest” because “the District did not assess fully whether there were workable race-neutral alternatives” to the racially-segregated assembly. *Oak Park* at 4.

In announcing the various racially-segregated and racially-exclusionary events at Pathfinder, Dr. Holmes has offered various reasons. They include:

- Offering a “space of connection and community for BIPOC & Multiracial scholars at Pathfinder;”
- Providing “[a] time for White folx to embrace, excavate, and reckon with their Whiteness, including their privilege and power examine how to center the voices and experiences of BIPOC without harming and/or re-traumatizing BIPOC;” and
- Offering “[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.”

Offering students and community members the opportunity to connect with one another in environments that are safe and welcoming is certainly a compelling goal. However, the separation of students and other community members by race or skin color is not narrowly tailored to achieve that goal. Many other non-discriminatory alternatives are readily available, such as encouraging individuals to speak openly and freely, allowing equal time for each individual who wishes to speak, giving individuals an option to submit comments and questions anonymously in advance, and articulating rules and expectations of respectful conduct and dialogue. Moreover, Pathfinder’s racially-segregated and racially-exclusionary events send all students the message that it is unsafe to be around those who do not share the same skin color. This is a message that harms all students. As stated by the Supreme Court, instead of helping individuals, separating them by color “threaten[s] to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.” *Shaw v. Reno*, 509 U.S. 630, 643 (1993).

The act of separating students based on skin color is not only illegal and unconstitutional, it is harmful to the students Pathfinder aims to serve. We ask that the OCR thoroughly

investigate the allegations in this complaint and provide instructions to promptly remedy the unlawful practices undertaken by the school.

Sincerely,

A handwritten signature in black ink, appearing to read "LA O'Neill". The signature is fluid and cursive, with the first name "LA" and the last name "O'Neill" clearly distinguishable.

Leigh Ann O'Neill

Managing Director of Legal Advocacy

Foundation Against Intolerance & Racism

EXHIBIT A

RACIAL EQUITY COMMITTEE

Working in partnership with Dr. Holmes and Dr. Cordell, your family-based Racial Equity Committee (REC) invites all Families of Color, Black Families, Indigenous Families, and Multiracial Families at Pathfinder to the inaugural Pathfinder Community Cafe!

WHO: For our Black Families, Indigenous Families, Multiracial Families, and Families of Color

WHAT: Meant to connect and foster relationships, Community Cafes bring community members together for a series of loosely structured conversations that directly address issues important to the community. Please check out the video below to learn more!

WHEN: Friday, October 15 from 7:00-8:00PM

HOW: Please RSVP for this event here:

<https://www.eventbrite.com/e/community-cafe-at-pathfinder-tickets-174447676697>

WHY: This event responds to data collected during our Racial Equity Questionnaire last year. Black, Indigenous, Multiracial and Families of Color at Pathfinder expressed a desire for more opportunities to connect and be heard in our community. We hope you and your families join us in this safe space of welcome, belonging, and hope!

PLEASE SHARE: Please forward this invitation to other Pathfinder families that are Black, Indigenous, Multiracial and Families of Color and encourage them to attend with you.

EXHIBIT B

AFFINITY GROUPS

Similar to last year, Affinity Groups are starting soon! These are open to the community, staff are also welcome to attend. We are hoping to open our affinity groups to a wider range of intersections last year and build a foundation that is not rooted in the trauma of the year, but the forward growth we all seek.

The groups we are offering this year are: BIPOC, Mixed Race, White, LGBTQIA2+, Disabled, and Jewish. We realize folx can share more than one of these identities, so we plan to offer groups on a rotation. We are still working on identifying facilitators so do not have a start date yet, and hope to soon!

Groups for Scholars

We are thrilled to begin offering groups for scholars. Teacher Dani has started our GSA with our Middle School scholars. We are exploring how to begin expanding this group to our elementary scholars as well!

Teachers Timmesha and Fatuma are beginning our Black affinity space. This too will begin with our Middle School scholars and we will seek a similar path to including our elementary school student.

EXHIBIT C

LISTENING SESSIONS

At Pathfinder we are excited to re-start our listening sessions! Listening sessions are time for families to check in with our Admin team. Our hope is to build community, listen, and learn from Pathfinder families! *We will use what you share with us to inform our practice and further consult with teachers.*

Our sessions will be focused on grade band specific information and opportunities to share praises, questions, and concerns. To allow for more folx to join all sessions will happen via Zoom! Please join the session or sessions that make the most sense for you!

Third, Fourth, and Fifth Grade

[Join Zoom Meeting](#)

[Meeting ID: 895 6417 1361](#)

Passcode: 608602

- Middle School
- Families Receiving SPED Services
- BIPOC and Mixed Race Families

We hope to see all of you at at least one of the listening sessions!

Upcoming Listening Sessions

Listening Sessions are going to start again in January! At Pathfinder we are excited to re-start our listening sessions! Listening sessions are time for families to check in with our Admin team. Our hope is to build community, listen, and learn from Pathfinder families! *We will use what you share with us to inform our practice and further consult with teachers.*

Our sessions will be focused on grade band specific information and opportunities to share praises, questions, and concerns. To allow for more folx to join all sessions will happen via Zoom! Please join the session or sessions that make the most sense for you!

Tuesday, January 24th 6:00 - 7:00pm [Kindergarten, First, and Second Grade](#)

At this listening session we will update folx on the plan for K/1 looping and spend lots of time building community!

Thursday, January 26th 6:00 - 7:00pm [Third, Fourth, and Fifth Grade](#)

For the last 20 minutes of this listening session we will hold space for Elk families to discuss what has happened this year and ensure we are moving in the right direction!

Tuesday, January 31st 6:00 - 7:00pm [Middle School](#)

We invite 5th grade families to join us for this session! Our 6th grade teachers, Clarissa and Trissa, will facilitate an open house to give incoming 5th graders a better idea of what to expect next year.

Wednesday, February 1st 6:00 - 7:00pm [Families Receiving SPED Services](#)

We also encourage folx who are learning more about the REACH, SIT, and/or 504 processes. Please join to build community and have your questions answered.

Tuesday, February 7th 6:00 - 7:00pm [BIPOC and Mixed Race Families](#)

More information to come!



