

September 15, 2022

Via Email to jason.frazer@ed.gov

Marcela Sanchez Aguilar
Supervisory Attorney
Region V, Office for Civil Rights
U.S. Department of Education
230 S. Dearborn Street, 37th Floor
Chicago, Illinois 60604

**Re: OCR Docket # 05-22-1469—Oak Park & River Forest District 200
DFI’s Response to OCR’s August 26, 2022, Letter Regarding DFI’s Administrative
Complaint Against Oak Park and River Forest School District 200 for Racially
Discriminatory Policies**

Dear Ms. Aguilar:

The Defense of Freedom Institute for Policy Studies (“DFI”) is an independent, nonpartisan 501(c)(3) tax-exempt nonprofit organization dedicated to defending freedom and opportunity for every American family, student, entrepreneur, and worker, as well as to protecting their civil and constitutional rights at school and in the workplace. DFI includes former U.S. Department of Education (“Department”) officials who are experts in education law and policy and the operation of the Department. DFI is committed to ensuring that no educational institution receiving federal financial assistance discriminates against any student on the basis of race, color, or national origin in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”).¹

This letter serves as DFI’s response to your August 26, 2022, written request for additional information as the Department’s Office for Civil Rights (“OCR”) “evaluat[es] [the] complaint [filed by DFI] in accordance with its *Case Processing Manual* (CPM” to determine whether to open an investigation.”² In its very detailed complaint and supplemental complaint filed on June 1 and 30, 2022, respectively, DFI has provided more than sufficient detail to justify OCR’s statutory obligation to conduct an investigation to determine whether race-based discrimination is

¹ 42 U.S.C. § 2000d *et seq.*

² Letter from OCR, Region V, Aug. 26, 2022, at 1 (hereinafter “August 26 Request”).



occurring in Oak Park River Forest District 200 (“District 200”) in violation of Title VI. As a result of District 200’s illegal and unconstitutional race-based policies described in DFI’s complaint and supplemental complaint, thousands of students are being discriminated against based on their race and color, while others are being explicitly favored because of their race and color. District 200’s policies are explicitly race-based and constitutionally suspect, and DFI has presented sufficient detail for OCR to infer the “who, what, where, when, or how” of the violations of Title VI and the Constitution that OCR must investigate. DFI provides additional detail below.

OCR’s request to DFI for “additional information”

Section 108 of OCR’s “Case Processing Manual” provides that OCR will dismiss complaints for several specific reasons. Cited by OCR in its request to DFI for additional information, Section 108(d) provides for dismissal of a complaint by OCR when an “allegation(s) lacks sufficient detail (*i.e.*, who, what, where, when, or how) for OCR to infer that discrimination or retaliation may have occurred or is occurring.”³ As described *infra*, DFI has provided more than sufficient factual detail about racially discriminatory policies already adopted and implemented by District 200.

OCR asks DFI to identify further details about the alleged discrimination. The following facts are clear and should be readily discernible by OCR (and apply to OCR’s questions 2–5, which are more fully addressed *infra*):

- The identifiable victims of District 200’s racially discriminatory policies consist of each student who falls into disfavored racial categories—failing to benefit from OPRF’s race-conscious policies designed to promote students of other particular racial backgrounds.
- The identifiable dates on which the alleged acts of discrimination occurred is readily apparent: those discriminatory acts occur on every school day when students of certain, non-preferred racial backgrounds are treated differently because of the color of their skin (by school personnel) in accord with District 200’s racially discriminatory policies. The discriminatory acts occur on every single day when students of particular racial backgrounds are not afforded equal opportunities in the school district’s federally funded activities and programs. Based on the documents made publicly available by District 200, this conduct appears to have commenced in late 2019 and is ongoing.

³ See <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.



- The individuals who engaged in the alleged discriminatory acts involving racially discriminatory policies are the school district’s personnel who, acting under the District 200’s racially discriminatory policies, are required to subject students to differing treatment according to the racial backgrounds of the students.

OCR’s statutory obligation to conduct an investigation pursuant to Title VI’s anti-discrimination provisions is readily obvious, particularly where, as here, those policies clearly include race-based discriminatory treatment.

DFI presents Subsection 108(d) facts in more than sufficient detail to OCR in its complaint and supplemental complaint

On June 1, 2022, DFI filed an administrative complaint⁴ against District 200 for discrimination on the basis of race, color, and national origin in programs or activities that receive federal financial assistance in violation of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. On June 30, 2022, DFI followed that submission with a supplemental complaint to make OCR aware of further information we received demonstrating that, inclusive of and in addition to District 200’s race-based grading policy, District 200 has established a general policy of impermissible discrimination on the basis of race, color, and national origin requiring administrators at Oak Park and River Forest High School (“OPRF”)—the only school in District 200—to review nearly every decision they make in light of whether it will help one racial grouping (“people of color”) at the expense of other groups based on race.⁵

Specifically, DFI’s June 1st complaint and June 30th supplemental complaint documented the following racially discriminatory policies and conduct:

- OPRF is currently governed by a Racial Equity Policy adopted in 2019 by the District 200 Board that conflicts with the Equal Protection Clause of the Fourteenth Amendment to the Constitution and Title VI by “recogniz[ing] that fostering educational equity **may require allocating resources unequally [on the basis of race]** to focus on barriers that may

⁴ Letter from Robert S. Eitel, President, Defense of Freedom Institute for Policy Studies, to the U.S. Dept. of Ed., Office for Civil Rights, Jun. 1, 2022, at 2 (hereinafter “DFI Complaint”), available at <https://dfipolicy.org/wp-content/uploads/2022/06/OCR-Complaint-OPRF-06.01.2022-signed.pdf>.

⁵ Letter from Robert S. Eitel, President, Defense of Freedom Institute for Policy Studies, to the U.S. Dept. of Ed., Office for Civil Rights, Jun. 30, 2022 (hereinafter “DFI Supplemental Complaint”).



uniquely impact students of diverse backgrounds.”⁶ The policy commits the District 200 Board to follow its racially discriminatory demands and orders the Superintendent “to establish, in accordance with this policy, written procedures and other guidance to implement this policy.”⁷

- OPRF is executing this mandate to discriminate on the basis of race through its Strategic Plan for Racial Equity, which, according to documentation presented to the District 200 Board in January of this year by OPRF’s then-Executive Director of Equity and Student Success Dr. Patrick Hardy, envisions that OPRF “will become a model school for racial equity within four years.”⁸ As part of OPRF’s fulfillment of its goal fully to implement “racial equity procedures throughout the organization” by June 2023, OPRF commits to “[a]nnually report progress to the Board for accountability and modification in the ongoing pursuit of **ensuring equitable academic and social outcomes for BIPOC (Black, Indigenous, People of Color) students.**”⁹ This policy by its terms excludes students who are not “BIPOC”, a violation of Title VI and the Equal Protection Clause of the Constitution.
- OPRF’s long-term strategic plan requires decision-makers to “keep at the forefront” in “all work of the district” questions including the following: “[W]ho are the racial/ethnic groups affected by a particular policy, procedure, program, etc.? Will disparities remain or be made worse?”¹⁰ The strategic plan establishes a Racial Equity Analysis Tool (“REAT”)

⁶ DFI Supplemental Complaint at 3 (quoting Oak Park and River Forest H.S.D. 200, Policy Manual, 298 (2002) (hereinafter “District 200 Policy Manual”) (Section 7:12: Racial Equity Policy), available at <https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2390643/b78a28aa-a921-11ec-8a55-0e37078c7be1/file/PolicyManual2022.pdf> (emphasis added)).

⁷ *Id.* (quoting District 200 Policy Manual at 298–299).

⁸ *Id.* at 5 (quoting Oak Park and River Forest High School, Office of Equity and Student Success: Action Plan, at 1 (hereinafter “OPRF Equity Action Plan”), available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JM0BCC1A/\\$file/Office%20of%20Equity%20and%20Student%20Success%20Action%20Plan%20\(003\).pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JM0BCC1A/$file/Office%20of%20Equity%20and%20Student%20Success%20Action%20Plan%20(003).pdf)).

⁹ *Id.* at 6 (quoting Oak Park and River Forest High School District 200, Strategic Plan 2020 – 2025, at 3 (last updated Winter 2021) (hereinafter “Strategic Plan 2020 – 2025”), available at <https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2251258/a2764622-9baf-11eb-aa10-0a362c75f02f/file/OPRF%20D200%20Strategic%20Plan.pdf> (emphasis added)).

¹⁰ *Id.* (quoting Strategic Plan 2020 – 2025 at 12).



for filtering “**all policies, programs, practices, and significant decisions**” through a racially discriminatory process.¹¹

- In his January 2022 presentation to the District 200 Board, Dr. Hardy blatantly revealed the comprehensiveness and racially discriminatory aim of REAT and other “racial equity policy” tools in examining decisions across OPRF, including in grading analysis, stating: “Equity is everywhere . . . Everything is about equity. . . . And Dr. Fiorenza has been doing a phenomenal job **racializing our work, the racialization of assessment** . . . [W]e have to not let the word equity become a siloed thing that is a side conversation, but that it is permeating our organization.”¹²
- In an extraordinarily transparent, *post hoc* attempt to inoculate OPRF’s racially discriminatory grading policies against scrutiny by the public and by OCR, Dr. Fiorenza, praised just above by Dr. Hardy for her “racialization of assessment,” publicly stated that “equitable grading practices . . . has [sic] nothing to do with race.”¹³
- As part of OPRF’s plans for “grading with equity” for Fall 2023,¹⁴ OPRF included in a PowerPoint presentation to the District 200 Board on March 10, 2022, a “Prototype Example” of a “Formative Assessment Analysis Tool” helping users sort data on achievement based on race and including a “Student Details Table” that identifies each student by race prior to listing any details about the student’s assessment.¹⁵

¹¹ *Id.* at 7 (quoting Racial Equity Policy 7:12, Procedures, at 1 (2020) (hereinafter “Racial Equity Policy 7:12, Procedures”) (emphasis added), available at https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2242777/12d5b6da-8b22-11eb-a66b-0ec8fc0ddee1/file/Racial%20Equity%20Policy%20Procedures%207_12%202020627%20Final.pdf).

¹² *Id.* at 8 (“Dr. Patrick Hardy’s Presentation at Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Jan 27, 2022 (emphases added), https://www.youtube.com/watch?v=2-g952fOIo&list=PLY60NMMcuTofluE8nBnG2QrB9wYj1jy_r&index=15, at 2:13:23 mark).

¹³ *Id.* at 19–20 (quoting Dr. Laurie Fiorenza in F. Amanda Tugade, *One School Board Member Anticipated Equitable Grading Practices Would Be Misunderstood. He Was Right*, WED. J. OAK PARK & RIVER FOREST, Jun. 3, 2022, available at <https://www.oakpark.com/2022/06/03/oprf-responds-to-fake-news-story/>).

¹⁴ DFI Complaint at 2.

¹⁵ DFI Supplemental Complaint at 9 (quoting Oak Park and River Forest High School District 200, Strategic Plan Priority 2: Transformative Education, Data Driven Instruction, at 15 (2022), available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CC7MJ95B7026/\\$file/Final%20Data%20Strategy%20Plan%20BOE%20Presentation.pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CC7MJ95B7026/$file/Final%20Data%20Strategy%20Plan%20BOE%20Presentation.pdf)).



- As OPRF followed the District 200 Board’s commands to filter all capital expenditure decisions through a racially discriminatory process, in February 2021, OPRF presented a PowerPoint presentation to the District 200 Board that weighed whether to perform certain projects based on the race of the individuals who would benefit from such projects, including a **finding that spending capital on upgrading facilities for OPRF’s tennis, field hockey, and lacrosse teams does not align with OPRF’s racially discriminatory goals because these sports “have ‘historically’ involved ‘higher levels’ of participation by white students.”**¹⁶ The presenter at the meeting made the racially discriminatory nature of the mandated decision-making process even clearer, stating that “we also have to be mindful and really understand from an extracurricular standpoint, who are we . . . **what’s the racial makeup in terms of teams** . . . the tennis team, our field hockey team, also, the lacrosse team”¹⁷ OPRF makes use of illegal categories based on race for capital spending for facilities and athletic teams.
- OPRF launched a “Motivational Mentorship” program specifically to help students of one racial grouping but not others. As an OPRF presenter explained to the District 200 Board, this program is **“dedicated to the success and security of students of color** as they explore the many ways of knowing in academia”¹⁸ The program uses racially discriminatory criteria for the program.
- In implementing District 200’s racially discriminatory demands in the area of curricula, OPRF has launched an intensive training program for approximately forty teachers to learn how to “analyz[e] their curriculum, teaching methods, practices, processes, and classroom relationships through a racial lens” and train other teachers in these discriminatory practices over the course of five years.¹⁹

¹⁶ *Id.* at 10–11 (quoting 2020–2021 Superintendent Goal #2, at 10, available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/BYDUJ47C39A0/\\$file/20210225%20BRD%20Superintendent's%20Goals%20-%20%232.pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/BYDUJ47C39A0/$file/20210225%20BRD%20Superintendent's%20Goals%20-%20%232.pdf)).

¹⁷ *Id.* at 11 (quoting Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Feb. 25, 2021, <https://www.youtube.com/watch?v=oiAR4ZDhktk>, at 3:11:47 mark (emphasis added)).

¹⁸ *Id.* at 11–12 (quoting Shannon Perryman, coordinator of Motivational Mentorship Program, Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Jan 27, 2022, https://www.youtube.com/watch?v=g952fOIo&list=PLy60NMMcuTofluE8nBnG2QrB9wYj1jy_r&index=15, at 1:56:15 mark (emphasis added)).

¹⁹ *Id.* at 12–13 (quoting Oak Park and River Forest High School, Ongoing Racial Equity Work, <https://www.oprfhs.org/racial-equity-program/ongoing-work> (hereinafter “Ongoing Racial Equity Work”) (last visited Jun. 8, 2022)).



- As part of its long-term strategic plan, OPRF implements a policy using illegal racial quotas to reduce disparities in punitive discipline between “students of color” and white students. In its 2019-2020 “Transformative Education” goals, OPRF states that it fell short by 50% of its racially discriminatory goal to reduce disparities in discipline referrals and “tardies” between “students of color” and white students, vowing to “[c]arry over” this goal to the new year.²⁰
- Interpreting the District 200 Board’s employment diversity commands as instruction to implement racially discriminatory hiring quotas, OPRF established July 2024 for its goal to **“increase representation of minority teachers to 35% of the overall faculty”** and to **“increase representation of minority employees to 50% of all employees**, with 55% and 65% respectively completed.²¹
- OPRF announced in 2021 its plan to “eliminate separate college-prep and honors level classes for freshman English, science, history, and world languages, replacing them with a single, rigorous, high-level honors curriculum for all,” stating that its reason for doing so **“is for race and ethnicity to cease being predictors of enrollment in high-level course work, so that students earning honors and AP credits will mirror the demographics of our overall population.”**²²

DFI responds to the questions in OCR’s August 26, 2022, letter as follows (and incorporates is all discussion *supra*):

1. Your complaint states the District has announced its intention to implement a strategy by Fall 2023 to “consistently integrate equitable assessment and grading practices into all academic and elective courses” after its determination that traditional grading practices “perpetuate inequities and intensify the opportunity gap.” You allege the District’s stated intention discriminates against District students in violation of Title VI. Please provide the following information:

a. State whether the District has implemented the strategy referenced in Item 1.

DFI notes that it appears that District 200 has begun to implement its “grading with equity” strategy. Dr. Fiorenza’s presentation celebrates the “[m]any” teachers who “are successfully exploring and implementing more equitable grading practices such as: utilizing aspects of

²⁰ *Id.* at 14 (quoting Strategic Plan 2020 – 2025 at 7).

²¹ *Id.* at 14–15 (quoting OPRF Strategic Plan 2020 – 2025 at 8 (emphasis added)).

²² *Id.* at 16 (quoting Oak Park and River Forest High School, Questions from Community Meetings, <https://www.oprfhs.org/academics/questions-from-community-meetings> (last visited Jun. 8, 2022) (emphasis added)).



competency-based grading, eliminating zeros from the grade book, and encouraging and rewarding growth over time.”²³ In her presentation, Dr. Fiorenza declares that District 200 teachers and administrators “will continue the process necessary to make grading improvements that reflect our core beliefs.”²⁴ DFI believes that District 200 and OPRF teachers are continuing to implement the racially discriminatory “grading with equity” strategy in fulfillment of District 200’s broader racial equity goals.

District 200 also entered into various contracts and professional services agreements commencing in March 2019. Pursuant to those contracts, work to implement the racially discriminatory policies that DFI believes violate Title VI began by Fall 2019 and continues through the present. Those contracts provide training for teachers in the matters described in DFI’s complaints and include blatantly race-conscious materials designed to favor students of certain racial backgrounds because of their racial backgrounds. Moreover, District 200’s Freshman Curriculum Restructuring, presented to the Board in the Fall of 2017, for which a 5-year implementation began in the 2018-2019 school year, by its terms is continuing and similarly provides race-based instruction and grading to and for students based on the race of the students. Finally, in its November 2020 Freshman Curriculum & Instruction Update (“Grade Weighting & Science Curriculum Sequencing”), District 200 has begun implementing a “detracking” system to promote academic achievement and college placement by students based on the race of the students; this effort continues.

i. If the strategy has been implemented by the District, describe how the strategy, as implemented, discriminates against District students in violation of Title VI.

The Supreme Court has held that the distribution of “burdens or benefits on the basis of individual racial classifications” must be reviewed under strict scrutiny,²⁵ and the few interests the Court has found compelling are not applicable to District 200’s policies.²⁶

²³ DFI Complaint at 2 (quoting Oak Park and River Forest High School District 200, Strategic Plan Priority 2: Transformative Education, Professional Development & Grading, May 26, 2022 (hereinafter “Strategic Plan”), available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CELJGA4D1599/\\$file/Professional%20Development%20and%20Grading%20BOE%20Presentation_.pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CELJGA4D1599/$file/Professional%20Development%20and%20Grading%20BOE%20Presentation_.pdf)).

²⁴ *Id.* (quoting Strategic Plan at 2).

²⁵ DFI Supplemental Complaint at 17 (quoting *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007)). The U.S. Supreme Court has held that Title VI’s prohibition of racial classifications is coextensive with that of the Fourteenth Amendment’s Equal Protection Clause. *Id.* at 16 n.95 (citing *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003)).

²⁶ *Id.* at 17–18.



OPRF is implementing its “grading with equity” strategy at the behest of the District 200 Board, whose discriminatory “racial equity policy” requires OPRF to “allocat[e] resources unequally [on the basis of race] to focus on barriers that may uniquely impact students of diverse backgrounds.”²⁷ The “grading with equity” strategy is also part of OPRF’s broader Strategic Plan for Racial Equity, which requires all District decision-makers to “keep at the forefront” how “all work” they do will affect different racial groupings—that is, to use the race of students in decision-making.²⁸ As seen within this broader framework, OPRF’s “grading with equity” strategy is simply one of many strategies aimed at benefiting “students of color” but not students of other race who are not of color. This is the essence of distributing a burden or benefit on the basis of individual racial classifications in violation of Title VI and the Equal Protection Clause of the Constitution.

DFI has furnished further evidence that OPRF’s “grading with equity” scheme is not only based on a broader strategy of racial discrimination within District 200 but also that OPRF is implementing the scheme in a racially discriminatory way in violation of Title VI and the Equal Protection Clause. OPRF’s then-Executive Director of Equity and Student Success Dr. Patrick Hardy made clear in his January 2022 presentation that Dr. Fiorenza’s “grading with equity” strategy is all about **“racializing our work, the racialization of assessment.”**²⁹ The strategy will include using OPRF’s “racial equity analysis tool,” a device that requires administrators to make decisions based on how it will benefit or burden “students of color” versus students of other race who are not of color³⁰ to review all grading practices. The resulting grading system will thus be based unavoidably on decision-making relying on how benefits or burdens will be distributed among “students of color” versus students of other races who are not students of color.

Title VI and the U.S. Constitution forbid such a basis of decision-making in grading practices (or any other matter) by a public school district or high school. Any students currently subject to this process has suffered racial discrimination.

2. In the complaint supplement, you provide information that you state is related to the District’s consideration of capital expenditure proposal through the lens of its Racial Equity Plan. Does your complaint allege the District discriminates in violation of Title VI in this area?

Yes. District 200 clearly adheres to and has engaged in a policy based on discrimination on the basis of race, color, and national origin in violation of Title VI and the Equal Protection Clause in

²⁷ *Supra* note 6.

²⁸ *Supra* note 10.

²⁹ *Supra* note 12.

³⁰ DFI Supplemental Complaint at 6.



its consideration of capital expenditure proposals (as described in DFI’s supplemental complaint).³¹

If yes, provide:

a. The specific act(s) of alleged discrimination.

OPRF is implementing its review of capital expenditures using its Racial Equity Plan at the behest of the District 200 Board, whose discriminatory “racial equity policy” requires OPRF to “allocat[e] resources unequally [on the basis of race] to focus on barriers that may uniquely impact students of diverse backgrounds.” This race-based review of capital expenditures is also part of OPRF’s broader Strategic Plan for Racial Equity, which requires all District decision-makers to use race in decision-making. As seen within this broader framework, OPRF’s review of its capital expenditure plan in terms of the burdens and benefits of its plan on different racial groupings is simply one of many strategies aimed at benefiting “students of color” and not benefiting students of other races who are not of color. This is the essence of distributing a burden or benefit on the basis of individual racial classifications, and it is unlawful under Title VI and the Equal Protection Clause. OPRF’s February 2021 presentation to the District 200 Board demonstrates this.³² OPRF is not even attempting to hide its unlawful use of racial classifications in its decision-making; it has proudly published its discriminatory decision-making practices online.

Based on evidence *published by District 200 and OPRF*, District 200 and OPRF are engaged in a scheme to distribute burdens and benefits on the basis of individual racial classifications in violation of Title VI and the Equal Protection Clause.

See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

b. The date on which the alleged act of discrimination occurred.

District 200 and OPRF currently maintain a policy of requiring that capital expenditure decisions be considered through the lens of the District’s Racial Equity Plan. DFI thus believes that the act of discrimination began in late 2019, upon the District 200 Board’s adoption of a Racial Equity Policy underpinning this decision-making, and is ongoing.

c. The individual(s) who engaged in the alleged discriminatory act.

³¹ *Id.* at 9–11.

³² *Supra* notes 16, 17.



Through its adoption and ongoing implementation of a Racial Equity Plan, the District 200 Board has engaged in the alleged discriminatory act by requiring the distribution of burdens and benefits on the basis of individual racial classifications. OPRF has engaged in the alleged discriminatory act by requiring in their strategic plan on racial equity that capital expenditure proposals be considered through the lens of OPRF’s Racial Equity Plan, which requires a consideration of burdens and benefits on the basis of illegal individual racial classifications.

d. The specific facts that lead you to believe the conduct constituted discrimination in violation of Title VI.

In their presentation to the District 200 Board in February 2021, OPRF personnel openly admitted to considering the racial makeup of various sports teams in their decision-making regarding funding of capital expenditures that would benefit those teams.³³ In his presentation to the District 200 Board, the OPRF presenter of the capital expenditure proposals clearly stated “we also have to be mindful and really understand from an extracurricular standpoint, who are we . . . **what’s the racial makeup in terms of teams** . . . the tennis team, our field hockey team, also, the lacrosse team”³⁴ At the time of this presentation, OPRF thus indicated its intention to evaluate capital expenditure decisions using its Racial Equity Plan to distribute burdens and benefits on the basis of illegal individual racial classifications in violation of Title VI and the Equal Protection Clause. To our knowledge, District 200 and OPRF continue to be committed to their unconstitutional and unlawful policies, have not revoked this policy, and continue to implement it.

See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

3. In the complaint supplement, you state the District has implemented a six-year professional development plan to eliminate racial bias in the classroom. Does your complaint allege the District’s professional development plan discriminates in violation of Title VI?

Yes. District 200 is clearly engaged in discrimination on the basis of race, color, and national origin in violation of Title VI and the Equal Protection Clause in its implementation of a racialized curricula and teaching practices program (misidentified by OPRF as a “professional development” plan) requiring teachers to develop curricula and teaching practices through a “racial lens,” as described in DFI’s supplemental complaint.³⁵

³³ *Supra* note 16.

³⁴ *Supra* note 17.

³⁵ DFI Supplemental Complaint at 12–13.



See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

If yes, provide:

a. The specific act(s) of alleged discrimination.

OPRF is implementing its racialized curricula and teaching practices program under the rubric of its Racial Equity Plan at the behest of the District 200 Board, whose discriminatory “racial equity policy” requires OPRF to “allocat[e] resources unequally [on the basis of race] to focus on barriers that may uniquely impact students of diverse backgrounds.” The racialized curricula and teaching practices program is also part of OPRF’s broader Strategic Plan for Racial Equity, which requires all District decision-makers to “keep at the forefront” how “all work” they do will affect different racial groupings. As seen within this broader framework, OPRF’s review of its teaching practices and curricula in terms of the burdens and benefits of these aspects of its program on different racial groupings is simply one of many strategies aimed at benefiting “students of color” and not benefiting students who are not of color. This is the essence of distributing a burden or benefit on the basis of individual racial classifications, and it is unlawful under Title VI and the Equal Protection Clause. As it specifically relates to this program, OPRF is simply not permitted under Title VI or the Equal Protection Clause to require teachers to analyze their curricula and methods “through a racial lens” and ensure that they “develop healthy racial consciousness” in an effort to benefit “students of color” and not benefit students of another race who are not of color.³⁶ Neither the Constitution nor federal law allows the distribution of burdens and benefits on such race-based grounds. Based on evidence published by District 200 and OPRF, they are clearly engaged in a scheme to distribute burdens and benefits on the basis of individual racial classifications in violation of Title VI and the Equal Protection Clause.

b. The date on which the alleged act of discrimination occurred.

The act of discrimination on the basis of race, color, and national origin began as late as 2019, upon the District 200 Board’s adoption of a Racial Equity Policy underpinning the program, and is ongoing.

c. The individual(s) who engaged in the alleged discriminatory act.

³⁶ *Id.* at 13 (quoting Oak Park and River Forest High School, Ongoing Racial Equity Work, <https://www.oprfhs.org/racial-equity-program/ongoing-work> (hereinafter “Ongoing Racial Equity Work”) (last visited Jun. 8, 2022)).



The District 200 Board has engaged in the alleged discriminatory act by requiring the distribution of burdens and benefits on the basis of individual racial classifications through its adoption of a Racial Equity Plan in 2019 and its ongoing implementation. The OPRF administration has engaged in the alleged discriminatory act by prompting the development of the racialized curricula and teaching practices program with its strategic plan on racial equity, which requires a consideration of burdens and benefits on the basis of individual racial classifications.

d. The specific facts that lead you to believe the conduct constituted discrimination in violation of Title VI.

Under its Strategic Plan on Racial Equity, OPRF is requiring intensive training of teachers—some over the course of six years and others over the course of five³⁷—to analyze their curricula and methods “through a racial lens” and ensure that they “develop healthy racial consciousness” in an effort to benefit “students of color” and not benefit students of different races. As of the date of this response (September 15, 2022), District 200 and OPRF continue proudly to display this racialized curricula and teaching practices program on OPRF’s website on a page entitled “Ongoing Racial Equity Work.”³⁸ By its own admission, District 200 and OPRF are continuing their unconstitutional and unlawful policies and currently engaging in unlawful discrimination to the detriment of OPRF students and employees.

See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

4. In the complaint supplement, you state the District provides “Race Equity Coaching” to its teachers. Does your complaint allege the coaching provided by the District discriminates in violation of Title VI?

Yes. District 200 is clearly engaged in discrimination on the basis of race, color, and national origin in violation of Title VI and the Equal Protection Clause in its implementation of a “Racial Equity Coaching” program, as described in DFI’s supplemental complaint.³⁹

See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

If yes, provide:

³⁷ *Id.* at 12–13.

³⁸ See <https://www.oprfhs.org/racial-equity-program/ongoing-work>.

³⁹ DFI Supplemental Complaint at 13.



a. The specific act(s) of alleged discrimination.

As explained in DFI’s supplemental complaint, OPRF is implementing its “Racial Equity Coaching” program under the rubric of its Racial Equity Plan at the behest of the District 200 Board, whose discriminatory “racial equity policy” requires OPRF to “allocat[e] resources unequally [on the basis of race] to focus on barriers that may uniquely impact students of diverse backgrounds.” This program is also part of OPRF’s broader Strategic Plan for Racial Equity, which requires all District decision-makers to “keep at the forefront” how “all work” they do will affect different racial groupings. As seen within this broader framework, OPRF’s requirement that teachers be coached in a race-based manner on their “lesson planning, culturally responsive behaviors, and self-efficacy”⁴⁰ in an effort to alter the burdens and benefits of these aspects of its program on different racial groupings is simply one of many strategies aimed at benefiting “students of color” and not benefiting students of other races who are not students of color. This is the essence of distributing a burden or benefit on the basis of individual racial classifications, and it is unlawful under Title VI and the Equal Protection Clause.

As it is specifically related to this program, OPRF is simply not permitted under Title VI or the Equal Protection Clause to require teacher coaching on “lesson planning, culturally responsive behaviors, and self-efficacy” on the basis of race, color, or national origin.⁴¹ Neither the U.S. Constitution nor federal law allows the distribution of burdens and benefits on such race-based grounds. Based on evidence published by District 200 and OPRF, District 200 and OPRF are engaged in a scheme to distribute burdens and benefits on the basis of individual racial classifications in violation of Title VI and the Equal Protection Clause.

See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

b. The date on which the alleged act of discrimination occurred.

The act of discrimination on the basis of race, color, and national origin began as late as 2019, upon the District 200 Board’s adoption of a Racial Equity Policy underpinning the program, and

⁴⁰ *Id.* at 13 (quoting Department of Equity and Student Success, Racial Equity Initiatives Overview, Jan. 27, 2022, at 5–6 (hereinafter “Racial Equity Initiatives Overview”), available at [https://go.boarddocs.com/il/oprfs/Board.nsf/files/CAYPQC63E64B/\\$file/20220127%20Reg%20OESS%20Initiatives%20Metrics%20and%20Research.pdf](https://go.boarddocs.com/il/oprfs/Board.nsf/files/CAYPQC63E64B/$file/20220127%20Reg%20OESS%20Initiatives%20Metrics%20and%20Research.pdf)).

⁴¹ *Id.* at 13 (quoting Oak Park and River Forest High School, Ongoing Racial Equity Work, <https://www.oprfhs.org/racial-equity-program/ongoing-work> (hereinafter “Ongoing Racial Equity Work”) (last visited Jun. 8, 2022)).



is ongoing. District 200 and OPRF are currently implementing their “Racial Equity Coaching” program.

c. The individual(s) who engaged in the alleged discriminatory act.

The District 200 Board has engaged in the discriminatory act by requiring the distribution of burdens and benefits on the basis of individual racial classifications through its adoption of a Racial Equity Plan in 2019. The OPRF administration has engaged in the alleged discriminatory act by prompting the development of the “Racial Equity Coaching” program with its strategic plan on racial equity, which requires a consideration of burdens and benefits on the basis of individual racial classifications.

d. The specific facts that lead you to believe the conduct constituted discrimination in violation of Title VI.

In its presentation to the District 200 Board in January 2022, OPRF’s Department of Equity and Student Success described its plan to require racially focused teacher coaching on “lesson planning, culturally responsive behaviors, and self-efficacy” within the rubric of OPRF’s Racial Equity Plan, which seeks to distribute benefits and burdens on the basis of racial groupings. At the time of this presentation, OPRF thus indicated its intention to require teachers to consider various practices in an effort to distribute burdens and benefits on the basis of individual racial classifications in violation of Title VI and the Equal Protection Clause. DFI has no information indicating that District 200 or OPRF has changed its policies since that time or that either entity is making its decisions on a different basis. To the contrary, on the basis of the evidence we have furnished to OCR throughout our complaint, District 200 and OPRF continue their unconstitutional and unlawful policies. Therefore, we believe District 200 and OPRF will continue to engage in unlawful discrimination that is harmful to OPRF students and employees.

See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

5. In the complaint supplement, you provide information you state is related to the District’s implementation of District Policy 200, which you state requires the District to provide alternatives to punitive discipline. Does your complaint allege the District discriminates in violation of Title VI in this area?

Yes. District 200 is clearly engaged in discrimination on the basis of race, color, and national origin in violation of Title VI and the Equal Protection Clause in its unlawful scheme, constituting an



impermissible quota system, to reduce the disparity in disciplinary referrals using racial classifications, as described in DFI’s supplemental complaint.⁴²

If yes, provide:

a. The specific act(s) of alleged discrimination.

OPRF has a policy of using the race of students when allocating resources relating to student disciplinary policies. It is doing so under the rubric of the Racial Equity Plan urged by the District 200 Board, whose discriminatory “racial equity policy” requires OPRF to “allocat[e] resources unequally [on the basis of race] to focus on barriers that may uniquely impact students of diverse backgrounds.” This program is also part of OPRF’s broader Strategic Plan for Racial Equity, which requires all District decision-makers to use race-based decision-making. OPRF’s racially inspired plan to reduce disciplinary referrals for “students of color” in an effort to alter the burdens and benefits of these aspects of its program on different racial groupings is simply one of many strategies aimed at benefiting “students of color” and not benefiting students of other races who are not of color. This is the essence of distributing a burden or benefit on the basis of individual racial classifications, and it is unlawful under Title VI and the Equal Protection Clause.

As it is specifically related to this program, OPRF is simply not permitted under Title VI or the Equal Protection Clause to direct its personnel to reduce disciplinary referrals for one group based on the race of that group without conferring the same benefit to all other races.⁴³ Neither the U.S. Constitution nor federal law allows the distribution of burdens and benefits on such race-based grounds. Based on evidence published by District 200 and OPRF, District 200 and OPRF are engaged in a scheme to distribute burdens and benefits on the basis of individual racial classifications in violation of Title VI and the Equal Protection Clause.

See also the discussion of ongoing race-based curricula and professional services agreements discussed in item 1, *supra*.

b. The date on which the alleged act of discrimination occurred.

The act of discrimination on the basis of race, color, and national origin began as late as 2019, upon the District 200 Board’s adoption of a Racial Equity Policy underpinning the scheme, and is ongoing.

⁴² *Id.* at 13–14.

⁴³ *Id.* at 13 (quoting Oak Park and River Forest High School, Ongoing Racial Equity Work, <https://www.oprfhs.org/racial-equity-program/ongoing-work> (hereinafter “Ongoing Racial Equity Work”) (last visited Jun. 8, 2022)).



c. The individual(s) who engaged in the alleged discriminatory act.

The District 200 Board has engaged in the discriminatory act by requiring the distribution of burdens and benefits on the basis of individual racial classifications through its adoption of a Racial Equity Plan in 2019. The OPRF administration has engaged in the alleged discriminatory act by prompting the development of the scheme unlawfully to reduce disparities in disciplinary referrals on the basis of racial classifications with its strategic plan on racial equity, which requires a consideration of burdens and benefits on the basis of individual racial classifications.

d. The specific facts that lead you to believe the conduct constituted discrimination in violation of Title VI.

As part of its strategic plan, OPRF has openly committed to using arbitrary and illegal racial quotas to reduce disparities in punitive discipline between “students of color” and other students. In its 2019-2020 “Transformative Education” goals, OPRF states that it fell short by 50% to reduce disparities in discipline referrals and “tardies” between “students of color” and other students by 10%, vowing to “[c]arry over” this goal to the new year.⁴⁴ The work to fulfill this goal, which is unlawful under Title VI and unconstitutional under the Equal Protection Clause, inherently relies on redistributing burdens and benefits among students on the basis of individual racial classifications. This use of racial classifications to benefit one favored racial grouping and not benefit another is not permitted under federal law.

DFI has no information to demonstrate that District 200 or OPRF has changed its policies since that time or that either entity is making its decisions on a different basis. To the contrary, on the basis of the evidence we have furnished to OCR throughout our complaint, we have every reason to believe that District 200 and OPRF continue to be committed to their unconstitutional and unlawful policy of reducing discipline disparities along arbitrary racial lines. Therefore, we believe District 200 and OPRF continue to engage in unlawful discrimination that is harmful to OPRF students and employees.

6. In the complaint supplement, you provide information you state is related to the District’s hiring practices. You state the District has established hiring goals to increase the number of minority teachers and employees in the District. You characterize the hiring goals as a “racial quotas.” Please provide:

a. Any information regarding any specific employee who has been denied employment by the District due to the hiring goals referenced in Item 6.

⁴⁴ *Id.* at 14 (quoting Strategic Plan 2020 – 2025 at 7).



OPRF is openly furthering its objective of hiring more minority teachers and other employees by imposing a specific, percentage-based racial quota that *on its face* discriminates in violation of Title VI and the Equal Protection Clause. Regardless of the availability of any additional facts about this discriminatory policy’s application to individual job candidates, OCR has a duty to enforce federal law by ending a policy that requires the OPRF to discriminate based on race in hiring.

b. Any additional information you have in support of your contention that the District utilizes race-based quotas in its hiring practices.

DFI submits that the materials District 200 and OPRF have made publicly available on its hiring policies and that are outlined in DFI’s supplemental complaint⁴⁵ demonstrate that District 200 and OPRF racially discriminate with hiring quotas in violation of Title VI and the Equal Protection Clause. These materials are more than sufficient to trigger an investigation by OCR.

c. Any additional information you have regarding actions done by the District in support of the above-referenced hiring goals that violate Title VI.

DFI respectfully refers OCR to the District 200 Board and OPRF administrators, who would have additional information about their implementation of their racially discriminatory quota-based hiring policy.

7. In the complaint supplement, you state that, for the 2022-23 school year, the District has announced the elimination of separate college-prep and honors level classes for freshman English, science, history, and world languages, with these courses being replaced with a single curriculum for all students. Does your complaint assert that the District’s action constitutes discrimination in violation of Title VI? If yes, provide the specific facts that lead you to believe the act constituted discrimination in violation of Title VI.

Yes. District 200 is clearly engaged in discrimination on the basis of race, color, and national origin in violation of Title VI and the Equal Protection Clause in its “detracking” scheme using racial classifications to reduce disparities in enrollment in high-level courses.⁴⁶ With this method, OPRF is using its Racial Equity Plan at the behest of the District 200 Board, whose discriminatory “racial equity policy” requires OPRF to “allocat[e] resources unequally [on the basis of race] to focus on barriers that may uniquely impact students of diverse backgrounds.” This program is also part of OPRF’s broader Strategic Plan for Racial Equity, which requires all District decision-makers to

⁴⁵ *Id.* at 14–15.

⁴⁶ *Id.* at 16.



“keep at the forefront” how “all work” they do will affect different racial groupings. As seen within this broader framework, OPRF’s arbitrary plan to reduce disparities in high-level-course enrollment in an effort to alter the burdens and benefits of these aspects of its program on different racial groupings is simply one of many strategies aimed at benefiting “students of color” and not benefiting students of other races who are not students of color. This is unlawful under Title VI and the Equal Protection Clause.

As it specifically relates to this program, OPRF is simply not permitted under Title VI or the Equal Protection Clause to draw lines between chosen racial groups and make alterations to its course offerings in an effort to benefit one race over another. Neither the Constitution nor federal law allows the distribution of burdens and benefits on such race-based grounds. Based on evidence published by District 200 and OPRF, District 200 and OPRF are engaged in a scheme to distribute burdens and benefits on the basis of individual racial classifications in violation of Title VI and the Equal Protection Clause.

OCR also requests the following information: “If any of the acts of alleged discrimination occurred more than 180 days prior to the date on which you filed your complaint (June 1, 2022), please state whether you are requesting a waiver of OCR’s timeliness requirement and, if so, the specific reason you did not file the complaint within 180 days of the alleged discrimination.”

On information and belief, all of the policies related to OPRF’s decision-making processes discussed above, and especially OPRF’s commitment to filtering all decisions through its Racial Equity Analysis/Assessment Tool, are ongoing and form the basis of past and pending decision-making by District 200 and OPRF. Therefore, the acts of alleged discrimination, which consist of the currently in-force District 200 and OPRF policies, are presently occurring and are thus within OCR’s timeliness requirement.

Given the level of detail already provided by DFI in its complaint and supplemental complaint, OCR’s request to DFI for “additional information” is at odds with OCR’s policy and practice.

OCR’s August 26, 2022, response to DFI’s complaint and supplemental complaint is, frankly, bewildering. In contravention of its prior practice, the August 26th letter raises the bar far above what is required for a complaint of discrimination by OCR’s Case Processing Manual. Indeed, OCR has opened investigations based on far less information substantiating violations of Title VI’s prohibitions; DFI has already provided more information than is usually provided by other complainants as part of its complaint and supplemental complaint. In those submissions, DFI has already explained to OCR the “who, what, where, when, and how” of District 200’s and OPRF’s unlawful discrimination; it has provided more in this letter. OCR has what it needs to investigate



District 200 and OPRF. It simply needs to do it. Failure to do so would be arbitrary and capricious behavior by the agency.

Simply put, when a school says in its policies and procedures that it must use race in its decision-making, it has engaged in a “specific act of . . . discrimination” in violation of federal law, and OCR must investigate. To dismiss a claim involving such baldly discriminatory policies, with a multitude of evidence showing that District 200 and OPRF personnel view these policies as requiring them to engage in prohibited racial discrimination, on the basis of a lack of information from the complainant of specific actions of these personnel, would constitute an administrative nullification of OCR’s statutory obligation to investigate race-based discrimination complaints. Given the facially race-based policies now being openly implemented by the District, DFI is highly concerned that OCR has not already initiated an investigation.

Accordingly, DFI urges OCR to investigate the allegations in this complaint, as supplemented, and ensure that District 200 complies with Title VI of the Civil Rights Act of 1964, as well as provide other appropriate relief.

Please feel free to contact me with any questions related to this request.

Sincerely,

Robert Eitel

Robert S. Eitel
President