



August 2, 2021

Independent School District 748

Superintendent Jeff Ridlehoover

jeff.ridlehoover@sartell.k12.mn.us

Members of the School Board

dist-schoolboard@sartell.k12.mn.us

Director of Human Resources Krista Durrwachter

krista.durrwachter@isd748.org

VIA EMAIL ONLY

Re: Independent School District 748's Unlawful Equity Audit and Failure to Respond to Data Requests

Dear Superintendent Ridlehoover, Members of the Board, and Ms. Durrwachter:

We represent Kids Over Politics 748, a non-profit organization devoted to supporting Sartell's students and advocating for their best educational opportunities. Kids Over Politics 748 believes that people should be judged by the content of their character, not the color of their skin, and that parents have a right to lead the upbringing of their children based on the dictates of their conscience.

Kids Over Politics 748's members include parents and taxpayers of Independent School District 748 ("ISD 748" or "District"). A number of ISD 748's recent actions have led us to conclude that the District has failed in its legal obligations toward our clients and their children. We address each in turn.

The Compelled Equity Audit Questionnaire

We are aware that ISD 748 used federal COVID-19 relief funds to contract with a group called Equity Alliance Minnesota ("EAMN") to perform an "equity audit" for the district. As part of this audit, it is also broadly reported that EAMN imposed a survey on students ("Survey"), who were forced to respond to highly personal questions about gender identity, race, and other matters, without written parental consent. The students forced to take the Survey report that they were not allowed to obtain clarification about the meaning of questions and were not allowed to tell their parents about the questions.

The December 3, 2020 notification that parents received about this EAMN Survey did not contain any language indicating the precise dates of the Survey, offering parents the right to opt out of the Survey, the right to inspect the Survey prior to its forced imposition on students, or a request for written consent from parents. The District thus violated federal and state law, as well as its own policy, which it systematically ignored.

The First Amendment to the United States Constitution safeguards individuals against compelled speech. *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 752 (8th Cir. 2019) (“The Supreme Court has “held time and again that freedom of speech includes both the right to speak freely and the right to refrain from speaking at all.”); *see also C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 177 (3d Cir. 2005). The Fourteenth Amendment broadly protects individual privacy. *E.g., Whalen v. Roe*, 429 U.S. 589, 598-99 (1977).

Additionally, federal law under 20 U.S.C. § 1232h(b) and (c) prohibit compelled participation in a survey related to “**(1)** political affiliations or beliefs of the student or the student’s parent; **(3)** sex behavior or attitudes; without the prior consent of . . . the parent.”

Minnesota state law also provides that

School districts...must: (3) give parents direct, timely notice, by United States mail, e-mail, or other direct form of communication, when their students are scheduled to participate in a student survey; and (4) give parents the opportunity to review the survey and to opt their students out of participating in the survey.

Minn. Stat. § 121A.065(a).

Further, ISD 748 Policy 520(III)(C) requires:

Surveys containing questions pertaining to the student’s or the student’s parent(s) or guardian(s) personal beliefs or practices in sex, family life, morality and religion will not be administered to any student unless the parent or guardian of the student is notified in writing that such survey is to be administered and the parent or guardian of the student gives written permission for the student to participate or has the opportunity to opt out of the survey depending upon how the survey is funded.

And finally, ISD 748 Policy 520(V)(C) requires:

The school district must give parents the opportunity to review the survey and to opt their students out of participating in the survey.

Administering a survey to minor children for purposes of an “equity audit” without providing parents the opportunity to review the survey and opt their children out of it blatantly violates the federal Constitution, federal statutory law, and state law. It also demonstrates systematic disregard for the District’s own policy.

Superintendent Ridlehoover issued a statement to ISD 748 parents attempting to explain the District and EAMN’s conduct. The explanation is vague, defensive, and misleading, given the legal requirements for imposing a survey such as the one imposed by EAMN. Notably, Superintendent Ridlehoover’s statement implicitly acknowledges that written parental consent was not obtained for this Survey; rather, parents were “notified” via emails and announcements,

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without further detail about those notifications. The Superintendent does not take responsibility for the failure to obtain written consent from parents in his statement.

Our clients' rights have been violated, and they retain the option to file a federal lawsuit to vindicate those rights, as well as proceed against the District by filing an administrative complaint through the Student Privacy Policy Office.

To avoid federal litigation and administrative action, our clients demand that the District publicly take the following actions:

- (1) Discard and disregard any findings or recommendations of the Equity Survey;
- (2) Commit to never again impose a survey which asks the type of questions posed by the EAMN survey on students in the District without first providing a copy of the Survey to every parent and obtaining their written parental consent;
- (3) Provide an accounting to the undersigned demonstrating the source of the funding for the Equity Survey and the amounts paid for it, and to whom; and
- (4) Publicly take responsibility for the imposition of the Survey because of the District's agreement with EAMN, and apologize to the parents and students of ISD 748 for imposing it without obtaining written consent and affording the opportunity to inspect the Survey beforehand.

While our clients cannot speak for every parent in the District, they speak for many willing to go to federal Court to vindicate their rights absent this agreement.

The Imposition of Critical Race Theory and Its Related Ideologies on Students

In addition to the District's failures related to the imposition of an equity survey on students without parental consent, the District has also been reportedly engaging in viewpoint discrimination by allowing the posting of "Black Lives Matter" posters and paraphernalia, but not allowing the posting of divergent viewpoints on inclusion and diversity, including "All Lives Matter" or other like paraphernalia.

The imposition of "Black Lives Matter" paraphernalia on ISD 748 students creates a hostile educational environment for students because it supports a radical separatist and Marxist political group that advocates for the destruction of the nuclear family and the promotion of the "global black family." Displaying this paraphernalia and refusing to display divergent viewpoints creates the impression among students that they must conform to this ideology.

We ask the District to simply explain, in writing, its position on the posting of political slogans like "Black Lives Matter" on District property, and whether it will allow other political commentary alongside such slogans.

Responses to Data Practices Act Requests

We are also aware that ISD 748 has been served with data requests by our clients which have not been answered or have not been sufficiently answered. Thus far, we are aware of at least the following requests and the time they were made:

- (1) A June 14, 2021 request for: “1) Contract for services between Equity Alliance MN and the Sartell, St. Stephen School District, including attachments if any[;] 2) Student Survey Questions asked by Equity Alliance MN”.
- (2) A July 6, 2021 request for: “Copies of each survey used in the Equity Audit, along with a description of who was being surveyed with each version”.
- (3) A July 23, 2021 request for: “1. Documentation of payments from Sartell-St. Stephen School District 748 or on behalf of District to Equity Alliance MN. 2. Instructions that were given in email form, on the Schoology program, or other formats instructing students how to complete the equity surveys”.

We understand that the District has partially complied with Request 1 by providing the contract between ISD 748 and EAMN and emails related to it. We are also informed that the District claims to not have a copy of the survey questions. To be clear, our clients have also reached out to EAMN separately, and we will deal with requests made to EAMN separately. But the District must still fully comply with requests made to it under the MGDPA.

For each such request for which there has not been a complete response, please provide the status of the District’s response and whether it intends to provide further documents or information. We understand that the District has a “reasonable” time to respond to these requests, but that time is, at most, 35 days from the date of service. *E.g.*, Advisory Opinion 97-005, Jan. 31, 1997, 1997 WL 35433503. Given the simplicity of these requests, it is incumbent on the District to respond far sooner than that.

In addition, please also confirm, as has been widely reported, that the District paid for the equity audit using federal COVID-19 relief dollars, and that the District was aware when it contracted with EAMN that EAMN operates as a Joint Powers Organization under Minn. Stat. § 471.59 and would be subject to data practices requests. Minn. Stat. § 13.05, subd. 11; *see also* Advisory Opinion 17-004, May 5, 2017, City of Duluth.

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Please provide a full response to these demands by August 9, 2021, 5:00 P.M. Absent an appropriate response, our clients have authorized us to take further legal action, including possible litigation.

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Very truly yours,

James V. F. Dickey
Attorney for Kids Over Politics 748

cc: Douglas P. Seaton, Esq.
Client