ATTORNEY GENERAL OF MISSOURI
ANDREW BAILEY

February 22, 2024

Dr. Tony Lake, Superintendent
Lindbergh School District
9350 Sappington Road
St. Louis, MO 63126
Sent via email to: tonylake@lindberghschools.ws

Dear Dr. Tony Lake:

It has come to my attention that Lindbergh School District has implemented a race-based criteria for students seeking to enter its Gifted Program. According to reports my office has received, the program's traditional pathway to entry requires a student to score in the **95th national percentile** on at least one screener or standardized test (math or reading) and in at least the **84th percentile** on the other. Alternatively, students who are part of an underrepresented racial or ethnic population in the district are only required to achieve standardized test scores in the **84th percentile** on one test (math or reading) and in the **50th percentile** on the other before being considered for additional testing. The district's policy states that its goal is to reach a **20% equity index for underrepresented student populations**. If these reports are true, Lindbergh School District is discriminating on the basis of race, in direct violation of both state and federal law.

Racial discrimination is illegal in the United States. Title VI of the Civil Rights Act of 1964, its implementing regulations, and the recent Supreme Court case *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* make that crystal clear.[1] Title VI protects students from discrimination based on race, color, or national origin. It prohibits a school from excluding a student from participation in or denying a student the benefits of an educational program or activity on those bases.[2] Further, the Department of Education's implementing regulation clearly states that a school may not, on the basis of race, "treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota,

[1] 600 U.S. 181 (2023).
[2] 42 U.S. Code § 2000d.

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eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service."[3] As recently as last summer, the U.S. Supreme Court reiterated that all racial discrimination—no matter the motivation—is unconstitutional. In doing so, it struck down Harvard's and the University of North Carolina's race-based admissions policies. As Chief Justice John Roberts put it: "Eliminating racial discrimination means eliminating *all* of it."[4]

In *Students for Fair Admissions*, the Court noted that racial preferences unlawfully impose harm on individuals outside preferred racial groups, solely on the basis of their skin color. "[I]t is not even theoretically possible to 'help' a certain racial group without causing harm to members of other racial groups. It should be obvious that every racial classification helps, in a narrow sense, some races and hurts others."[5]

Regarding Harvard's unlawful admissions program, the Supreme Court pointed out that it was a quota system in all but name—as all race-conscious practices inevitably are. "For all the talk of holistic and contextual judgments, the racial preferences at issue here in fact operate like clockwork."[6] Playing this "numbers game" is blatantly illegal: "[O]utright racial balancing" is "patently unconstitutional."[7] It is irrelevant that the district uses other criteria in addition to applying race-based thresholds to standardized test scores. Under *Students for Fair Admissions*, which effectively overruled *Grutter*, a "holistic" policy does not pass constitutional muster when certain admissions criteria are applied differently to some applicants than others depending only on their race. Using race distinctions for *any* program admissions criteria is illegal. Racial discrimination has no place in our schools.

After all, well-intentioned racial discrimination is just as illegal as invidious discrimination, and for good reason. As Justice Thomas noted in his concurrence in *Students for Fair Admissions*:

> Respondents and the dissents argue that the universities' race-conscious admissions programs ought to be permitted because they accomplish positive social goals. I would have thought that history had by now taught a greater humility when attempting to distinguish good from harmful uses of racial criteria. [. . .] Arguments for the benefits of race-based solutions have proved pernicious.... Though I do not doubt the sincerity of my dissenting colleagues' beliefs, experts and elites have been wrong before—and they may prove to be

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[3] 34 CFR Part 100 § 100.3(v).
[4] *Students for Fair Admissions*, 600 U.S. at 206 (emphasis added).
[5] *Id.* at 271.
[6] *Id.* at 222.
[7] *Id.* at 223.

wrong again. In part for this reason, the Fourteenth Amendment outlaws government-sanctioned racial discrimination of all types. The stakes are simply too high to gamble.[8]

Under both state and federal law, school districts may not treat students differently because of their race and may not set racial quotas. *Thus, Lindbergh School District must immediately cease and desist using all unlawful race-based preferences and quotas it has adopted for its Gifted Program and any other program or activity.*

As the chief legal officer for the State of Missouri, I will protect the constitutional rights of all Missourians, including the right of students to learn free from the evil of racial discrimination. I am prepared to exercise my office's full authority under the law, including the Missouri Human Rights Act, to ensure that no Missouri school district deprives its students of access to education because of the color of his or her skin. Racism has no place in Missouri.

Sincerely,

ANDREW BAILEY
Missouri Attorney General

[8] *Id.* at 266–68 (Thomas, J. concurring) (internal quotation marks omitted).