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June 16, 2022

Sent via Email to:

Attorneys Mark L. Olson and Emily R. Turzinski
Buelow Vetter Buikema Olson & Vliet, LLC
20855 Watertown Road Suite 200
Waukesha, Wisconsin 53186

Re: Cease and Desist

Dear Attorney Olson and Attorney Turzinski:

We are writing on behalf of our client, Alexandra Schweitzer, whom you contacted on May 13, 2022 with a cease-and-desist pertaining to her communications about the Oconomowoc Area School District School Board. We write to inform you that our client will not be revoking any statements she has made about the School Board because they do not meet the definition of defamatory and are not actionable.

In fact, use of outside counsel by the Oconomowoc Area School District (the District) to send threatening letters to parents who speak in good faith about their experiences with a school district is antithetical to our Constitution and to your clients' obligation as public officials.

The claim that our client defamed the Oconomowoc Area School District and School Board President is unequivocally false. A statement is defamatory only if, among other things, it is "false," "nonprivileged" and "tends to harm one's reputation, lowering him or her in the estimation of the community or deterring third persons from associating or dealing with him or her." *Torgerson v. Journal/Sentinel, Inc.*, 210 Wis.2d 524, 534, 563 N.W.2d 472 (1997). In determining truth or falsity, a statement need only be "substantially true." "[S]light inaccuracies of expression' do not make the alleged defamation false." *Laughland v. Beckett*, 2015 WI App 70, ¶ 23, 365 Wis. 2d 148, 870 N.W.2d 466" (citing *Lathan v. The Journal Co.*, 30 Wis.2d 146, 158, 140 N.W.2d 417 (1966)).

In addition, that a statement is an opinion may also constitute a defense against an action for defamation. *Laughland, supra*, at ¶ 22 (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 13, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990) (Under the common law principle of "fair comment," legal immunity is afforded for the honest expression of opinion on matters of public interest *when based upon a true or privileged statement of fact not*

made solely for the purpose of causing harm.). None of the alleged statements at issue here meet that standard. At no point did our client make a public statement that meets the standard of defamation under *Laughland*.

But the barriers to the claim you seek to state here stack even higher than that. The United States Supreme Court made clear that damages cannot be awarded to a public official for statements concerning his or her official conduct unless it is made with actual malice, “that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times v. Sullivan*, 376 US 254, 280 (1964). You can’t come close to establishing that standard. Ms. Schweitzer communicated with the District about her concerns prior to making any public statements, and her statements were based on District officials’ responses to her concerns, her personal experiences with the District, or following discussions with families whose children attend District schools. Even if her statements were false (and they were not), Ms. Schweitzer did not act with reckless disregard for the truth. Our client’s statements regarding the District were made with the absolute intent to *find* the truth.

You seem to claim that our client defamed the District in her February 2022 testimony to the Senate Committee on Education and in her May 2022 e-newsletter for No Left Turn. She did not. Her comments fall into three general categories:

- (1) Statements pertaining to students’ access to inappropriate books, including *Gender Quest Workbook*, *It’s Perfectly Normal*, and *Queer*.
- (2) Statements pertaining to the use of an inappropriate book, *The 57 Bus*, for an eighth grade class.
- (3) Statements pertaining to her communications with the District, particularly when raising concerns to School Board President, James Wood.

In every statement made by Ms. Schweitzer, her comments were substantially true and made without malice. They cannot meet the definition of defamatory.

Statements About Access to Inappropriate Books

In July 2021, Ms. Schweitzer became aware that age-inappropriate books were accessible via student Chromebooks. Upon reviewing the SORA app on her son’s Chromebook, Ms. Schweitzer found several questionable books available to students without any parental or teacher oversight. Specifically, Ms. Schweitzer found *Gender Quest Workbook*, *It’s Perfectly Normal*, and *Queer* as available books for her fourth-grade son. The content of these books is inappropriate for elementary school students.

Ms. Schweitzer was not the only parent concerned about these books. Individuals in the Oconomowoc community also raised concerns about unrestricted access to age-

inappropriate books after becoming aware of the WILL letter to Elmbrook. They were right. A few weeks later, concerns from community members prompted the District, vis-à-vis Board President, James Wood, to issue the following statement on August 18, 2021:

After reviewing the digital library subscription, the district has decided to discontinue the ... SORA. The decision was made due to the lack of the ability to personalize to align with our OASD selection process and age guidelines. We're in the process of reviewing those procedures to include parent permissions for access to the young adult collections. If anyone wanted to come up here and read porn to us, please don't. We've already took action on that and we get it, it's important that parents are aware what's getting in front of their kids. We're working as a district to put that front and center. Thank you for bringing to our attention and just know that we are listening.

While Ms. Schweitzer had hoped this issue was properly addressed, she requested a list of library books available to students in the District in September 2021. She did receive a list of all books in the library, but it omitted any books accessible on student Chromebooks and books used by the teachers but not available in the library. She also continued to hear from parents that the District was making age-inappropriate books available to students, including in class and via Chromebooks. Other than the statement made by Mr. Wood about discontinuation of the SORA app, Mr. Schweitzer had no way to confirm whether the concerns that she and other District parents raised were appropriately addressed.

So on February 22, 2022, Ms. Schweitzer inquired to the District about whether age-inappropriate books were still available to students. Mr. Wood responded but did not address whether these books were still available to students. Instead, he cited District policy about how to address concerns by parents. At no point did Mr. Wood imply or state to Ms. Schweitzer that these books were no longer available. In other words, she asked. He did not answer.

In sum, Ms. Schweitzer had been able to access these books on her son's Chromebook. When she attempted to follow-up, the District did not state that the books were no longer available. Therefore, her comments, both in her February 2022 testimony to the Senate Committee on Education (which, as noted below are privileged) and in her May 2022 e-newsletter for No Left Turn, were substantially true and were not made with reckless disregard for their truth.

Statements About the Use of the Book The 57 Bus

In February 2022, Ms. Schweitzer was contacted by several parents regarding the use of the book *The 57 Bus* in an eighth-grade classroom. She was informed that the

teacher had read parts of the book aloud to the class, including discussions about gender identity and sexual orientation. Parents who reached out to Ms. Schweitzer expressed immense discomfort with the use of this book. Importantly, they stated they were not provided parental notice of the substance of what would be read and discussed in class.

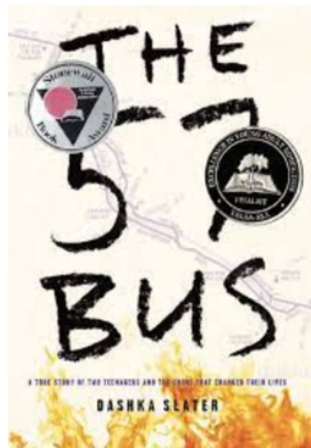
On February 21, 2022, Ms. Schweitzer contacted the principal of the school, Charles Olson, about the use of this book. In his response, Mr. Olson called the book a “mentor text” used for discussion in the classroom. He also stated that parents were provided notice about “[t]he use of the text” as part of teachers’ “weekly communications to families.” A screenshot of the weekly communication to families is copied below.

January 24th - 28th

Language Arts

Literary Nonfiction

- Chose our first book
- Began our read aloud
- Discussed themes, central ideas and social issues
- Open discussions on read aloud



Please click this [link](#), to read the introduction to the unit family letter.

In your letter, you say that Ms. Schweitzer was informed that *The 57 Bus* was a “mentor text available only to teachers for checkout and use in instruction and that only small portions of the text were read aloud for the purpose of critical thinking and writing craft.” But that’s not quite what Mr. Olson said. He did refer to the book as a “mentor text” but did not define that term (which would have been meaningless to Ms. Schweitzer and, in any event, does not seem to mean what you say it does). He

said that “[t]he text is not being read in its entirety to students, rather small excerpts are shared to analyze the author's craft and structure in comparison to other texts. The teacher did take time to identify the terms students would hear, as this would help ensure common context when evaluating themes created by the author.” This obviously says nothing about how it is made available to students and how much of the book or what portions were read.

Indeed, Mr. Olson went on to write that “NHI [Nature Hill Intermediate] serves students who currently identify as non-gender-conforming in the 8th grade. This instructional technique provided a name for someone they interact with, but not in a manner that is forcing them to take a position.” This supports an inference that “the very controversial gender/sexual identity issues currently being discussed in this country” were part and parcel of the book’s use as Ms. Schweitzer said.

Because of the District’s opacity and because Ms. Schweitzer believes such use required parental notice, consent and context, she was not satisfied with Mr. Olson’s response. The screenshot of the weekly communication to families did not provide adequate notice to parents about the nature of the book. It did not provide any warning to parents that the material planned for the “read aloud” may not be age-appropriate and may be considered controversial. Based both on the screenshot and on the surprise and concern that parents conveyed to her, Ms. Schweitzer believed the notice to parents to be inadequate.

Comments by Ms. Schweitzer pertaining to this book did not claim anything false. She stated the following at the February 23, 2022 Senate Committee on Education hearing:

Currently, Nature Hill Intermediate in Oconomowoc parents have contacted me with grave concern that a book, *The 57 Bus*, which has been read [aloud] in class and much time is being dedicated during ELA to the very controversial gender/sexual identity issues currently being discussed in this country. This book was read aloud without parental consent.

In its May 13, 2022, cease and desist letter, the District claims Ms. Schweitzer stated that the entire book was read aloud. That is not true. She did not say how much of the book was read; only that it was read. Additionally, the parent of a student in the class provided an anonymous statement, which is attached as an addendum, confirming that portions related to gender identity and sexual orientation were in fact discussed in class. Thus, the statement by Ms. Schweitzer at the hearing cannot reasonably be construed as false. And it certainly was not made with reckless disregard for its truth or falsity.

Additionally, the statements by Ms. Schweitzer at the February 23, 2022 hearing were at least conditionally privileged since they were given as testimony during a legislative proceeding. *See Vultaggio v. Yasko*, 215 Wis. 2d 326 (1998). Even if her statements did constitute defamation, it would not be actionable because they “fall within a class of conduct which the law terms privileged.” *Id.* at ¶ 7 (citing *Zinda v. Louisiana Pacific Corp.*, 149 Wis. 2d 913, 921, 440 N.W.2d 548 (1989)). None of the circumstances that might defeat even a conditional privilege are present here.

Statements Pertaining to School Board President, James Wood

Prior to testifying at the Senate Education Committee, Ms. Schweitzer exchanged emails with both Mr. Wood and Mr. Olson. In her written testimony, which she read aloud to the committee, Ms. Schweitzer quoted Mr. Wood’s statements *verbatim*. None of her statements attacked Mr. Wood personally. She acted with respect and prudence by quoting statements that Mr. Wood himself made. As such, this cannot be construed as defamation.

Specifically, Ms. Schweitzer referenced or quoted Mr. Wood in her testimony in the following statements:

- (1) “Just yesterday I contacted the school board in Oconomowoc and asked them: *When can parents and taxpayers expect these books to be pulled from the shelves and kept behind a desk so that they can only be checked out with parental consent, not to be shared inside the school with classmates?* The book I specifically asked about was not addressed. The fact that it was read allowed in class was not confronted. Instead, the Board President hid behind a text from a parent. He said that ‘transparency is alive and well in Oconomowoc.’ The text he shared illustrated that there is some transparency; It said that a student expressed interest in controversial books and the teacher was letting the parent know. I applaud that teacher for doing that, it is what parents are asking for.” **RESPONSE:** Ms. Schweitzer’s statement was referring to an email exchange on February 21 and February 22 with Mr. Wood discussing several books that parents had contacted her about relaying their concerns. This statement is true or, at the very least, Ms. Schweitzer did not act with reckless disregard for its truth. She told Mr. Wood that she had heard the books were still available to children. If she was wrong, he could have told her so. He did not.

- (2) “I pointed out that as recently as August 2021 they said that these questionable books would be pulled from the shelves. It was suggested that the books be kept behind the librarian or teachers’ desk and could only be checked out with parental consent. I was left shocked by his answer, I quote: ‘The discussion we had months ago was to review the selection of library materials standards and how we can refine that to our community, not academia’s standards. We

commit to using transparency and communication to help our parents know what is in their kids' backpacks. I believe this because there is no single standard for appropriateness, and I believe in the 1st amendment.”

RESPONSE: As noted above, notwithstanding his reference to transparency, Mr. Wood declined to say that the books were not made available (if, indeed, they were not).

- (3) “Which, as a side note, was incorrectly written down, as a man responsible for our overseeing our students’ education should he not be held to the highest standards we have?” **RESPONSE:** Ms. Schweitzer was referring here to the general rule that numbers under ten should be written out. See, e.g., <https://www.grammarly.com/blog/when-to-spell-out-numbers/>.
- (4) “School Board President Jim Wood was asked when parental rights would be restored by this board and I was told he believes in the First Amendment.” **RESPONSE:** He did say this and, in any event, believing in the First Amendment is not defamatory.
- (5) “We are told by elected school board officials that sex manuals are protected by the First Amendment.” **RESPONSE:** It is a reasonable – even necessary – inference from Mr. Woods e-mail that the First Amendment makes these texts – which Ms. Schweitzer could reasonably refer to as sex manuals – constitutionally protected. And even if you disagree with that inference, her statement was both a non-actionable opinion and made without actual malice.

Once again, these statements are conditionally privileged. None are false. Ms. Schweitzer included both her question posed to Mr. Wood as well as his direct responses. None are defamatory. Her only criticism was his failure to cite the First Amendment correctly, which is not a false statement that can reasonably be interpreted to “lower him in the estimation of the community.” *Laughland*, 2015 WI App 70, ¶ 22, 365 Wis. 2d 148, 870 N.W.2d 466. The remaining statements established that he did not contradict what she had heard about certain books still being made available or read in class. While she did say that he “hid” behind a text in not responding to her questions, that is Ms. Schweitzer’s opinion based on the (ironic) lack of transparency in Mr. Wood’s response. It is hardly a defamatory statement of fact made with actual malice.

As noted above, opinions are defenses to defamation as long as they are based upon a true statement and not made solely for the purpose of causing harm. *Id.* (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 13, 110 S. Ct. 2695 (1990)). Ms. Schweitzer expressed an opinion that Mr. Wood should be held to the highest standards, and she implied that not citing the First Amendment correctly fails to meet those standards. She was well within her rights to do so.

Ms. Schweitzer fairly articulated Mr. Wood’s position just as he explained to her via email. Ms. Schweitzer is free under the First Amendment to discuss her experiences with the School Board and to publicly disagree with and criticize the conclusions of Mr. Wood as the School Board President. Our Supreme Court has held that the constitutional protections for speech and press were “fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *New York Times*, 376 US 254, 269 (citing *Roth v. United States*, 354 U.S. 476, 484, (1987)).

This is the crux of the problem. Ms. Schweitzer (and other families) have a disagreement with the District. That disagreement should be addressed through public discourse and the political process, not by sending mothers intimidating letters on legal letterhead. A defamation suit by public officials can be appropriate in certain extreme circumstances, but those are not present here. Not even close.

Conclusion

In sum, none of the statements by Ms. Schweitzer were defamatory. She will not be revoking them. Additionally, the decision by the District to use outside counsel to threaten parents after they speak out is concerning and must end.

Our requests on behalf of Ms. Schweitzer are twofold. First, we request that the District revoke its cease and deist letter. Second, we request confirmation from the District that it will stop spending taxpayer dollars to fund bullying tactics via legal counsel. The District should instead focus on educating its students with age-appropriate material.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Rick Esenberg
President/General Counsel



Luke Berg
Deputy Counsel



Cory Brewer
Associate Counsel

ADDENDUM

Mr. Olson

I have some very deep concerns about a book that is being read to my child in her 8th grade ELA class as well as the discussions that also go on about this book. I am looking for explanation as to why this book is being read to our students.

The book is called The 57 Bus.

My child came home from school very upset one day because a part in the book that they read that day made her feel very uncomfortable and confused. She told me the teacher spent a whole class period talking to them about all these different genders and their names that were in the book. My child was asking me why this is even allowed to be taught in school and didn't understand why the teacher took so much time out to talk about genders. I told her that is a great question that I also would like answered.

My daughter also said she felt like the teacher was pushing her opinion onto the class.

No child should ever feel uncomfortable with what a teacher is teaching or pressured into accepting a teacher's opinion on such a controversial subject. This is an ELA class. I do not understand why gender discussion is even happening. The unit is Literacy Non-Fiction. I cannot believe there wasn't a more appropriate book that could have been chosen for this unit. These kids already have so much on their plate they do not need gender ideology thrown at them too.

This is not the first time either a gender book was chosen for the read aloud in this ELA class. Completely unacceptable.

These types of books and teachings should not be allowed in school in my opinion. Especially when it makes kids feel uncomfortable.

My child also requested for this all to be anonymous because she was afraid that she would be treated differently by her teacher if she openly discussed her feelings about this book with her teacher. Even more so if I brought up my concerns to the teacher and school.