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Via email: john.strack@rusd.org

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Mr. Strack:

We are writing this letter, along with our client the Wisconsin Council of Religious and Independent Schools (“WCRIS”), to address reports that the Racine Unified School District (“RUSD” or the “District”) is attempting to evade its statutory obligation to provide transportation to Racine children attending private schools. Our hope is that a recitation of RUSD’s legal obligations in this area will persuade the District to reconsider its approach so that a resort to more drastic remedies is unnecessary.

It is our understanding that RUSD has decided that its own schools will operate on a virtual basis through November, obviating the District’s need to transport public school students. But the District’s decision not to provide in-person education for its own students does not in any way relieve the District’s separate statutory obligation to transport private school students—who will be receiving in-person education—to the private schools they have chosen.

It is also our understanding that RUSD is nevertheless refusing to provide yellow bus service, as it has in the past, to many Racine students attending private schools except at times that do not coincide with their schools’ start and end times. For example, RUSD has said that it will drop off children at some schools at 9:00 a.m. and pick them up at 4:15 p.m. even though school starts at 8:05 a.m. and ends at 3:10 p.m. RUSD has known of the various schools’ start and end times for months (because they have not changed from last year) and RUSD knows that it provides transportation for only a small fraction of the total student body at those schools, so that those students who rely upon RUSD for transportation will miss the first hour of school and then will have to remain at their schools for an hour after school is over to wait for transportation home. Contrary to RUSD’s apparent belief, causing this result is a breach by the District of the legal obligations that it owes to Racine students and their families.

**RUSD Is Breaching its Statutory Obligations to Racine Students.**

Bringing students to school an hour late will interfere with their education causing them to be late for class and, in the case of students attending religious schools, to miss morning prayer or chapel service, an integral part of the students' education and formation.

It is no answer to say that that the private schools must simply shift their start and end times. RUSD has no authority to set the start and end times of private schools and its obligation to provide transportation to Racine students, *see generally* Wis. Stat. § 121.54, exists independently of how a private school may wish to organize its schedule and otherwise order its affairs. Just as RUSD cannot determine the calendar of school days for private schools and decide to only transport children to private schools on the days that public schools are open, *Hahner v. Bd. of Ed.*, 89 Wis. 2d 180, 278 N.W.2d 474 (Ct. App. 1979), RUSD, likewise, cannot determine the school day schedule for private schools simply because its own schools are open only for virtual instruction.

Further, RUSD has long known the planned school day schedules for the private schools involved and knows that the staff, families and students at those schools have all planned for those schedules. RUSD has no right to tell those schools and the staff, families and students to change their schedules for the convenience of RUSD.

In that regard, the Wisconsin Legislature has made clear that RUSD's responsibility is to "effectively coordinate" the transportation of students and to establish and administer a schedule of school bus routes in a manner that "insure[s] the safety and welfare of the pupils." Wis. Stat. § 121.56. RUSD's new approach accomplishes the exact opposite, forcing children to miss class and prayer time and creating expenses for before and/or after-school care because of parent work schedules. It goes without saying that the Legislature's command that school districts "effectively coordinate[]" the transportation of private school students and do so with a view to their "welfare" impliedly includes the proviso that students arrive at school on time, not just in one piece. What is the point of transportation to school if students do not arrive in time to participate?

Whether this new approach would be cheaper for RUSD is of no moment. The Wisconsin Court of Appeals has already ruled that the language of Wis. Stat. § 121.56 means that public school districts cannot withhold transportation benefits from private schools in order to save money, including when public schools are closed. *Hahner*, 89 Wis. 2d 180. "The fact that [a] school district would save money" by withholding benefits, the Court wrote, is a factor which bears no relationship to the safety and welfare of the pupils being transported to private schools." *Hahner*, 89 Wis. 2d at 191.

Similarly, under the "reasonable uniformity doctrine" recognized in Wisconsin case law, *id.* at 190, districts like RUSD are generally prohibited, in fulfilling their transportation obligations, from favoring their own public school students to the detriment of private school students. *See also id.* at 191 (discussing the doctrine and then explaining that "the objective" of the safety-and-welfare requirement in Wis. Stat. § 121.56 is "to prevent discriminatory treatment of pupils attending private schools in the transportation provided them"). If its own schools were open RUSD would certainly, as it has in the past, provide its public school students with transportation that aligns with school start and end times. The District may not then decline to do the same for private school students simply because their own schools are closed for in-person instruction. This is not reasonable uniformity.

### **RUSD's Conduct Also Raises Constitutional Concerns.**

There are additional constitutional concerns with the District interfering with the education provided to students at those schools. RUSD may not interfere with the liberty interests of parents and guardians to direct the upbringing and education of children by sending them to private schools. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925); *see* Wis. Const. art. I, § 1.

Further, causing children at religious schools to miss religious services and religious instruction by transporting them late to school on a daily basis imposes a significant religious burden on the families involved which violates both the United States and Wisconsin Constitutions. *State v. Miller*, 202 Wis. 2d 56, 66, 549 N.W.2d 235 (1996) (Wisconsin Constitution bars state from burdening religious exercise except in truly exceptional circumstances); *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020) (federal Constitution bars state from requiring religious adherents to choose between the free exercise of religion and the receipt of otherwise-available state aid); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (same).

### **Parent Contracts Are Not an Acceptable Substitute.**

Perhaps aware that your approach violates both state and federal law, you have offered as an “alternative” individual contracts with parents, meaning parents who currently depend on the busing provided by RUSD would have to find some alternative way to get their children to school and then seek reimbursement from the District. But forcing parents off of yellow bus service and onto parent contracts would not meet the District's obligations under state law.

As a so-called City Option School District, RUSD has no right to require parents to resort to parent contracts. *See* Wis. Stat. § 121.55(1)(b); Wis. Admin. Code § PI 7.04(1) (“If the parent or guardian rejects a contract offered under this section, the school board is still obligated to provide transportation for the pupil . . .”). This is so because the statutory provision allowing school districts to fulfill their obligations by merely offering parent contracts applies only to districts “transporting a pupil under § 121.54(2)(b)1.,” *i.e.*, non-City Option districts. Wis. Stat. § 121.55(3)(a).

Conversely, if RUSD believes it is providing transportation under § 121.54(2)(b)1. and can meet the terms of § 121.55(3)(a), it is still required to “notify the parent or guardian of the private school pupil of its intention [to offer a contract] at least 30 days before the commencement of the school term of the public school district.” Wis. Stat. § 121.55(3)(c). RUSD has already missed that deadline. The Legislature foresaw that a district like RUSD might try to use the pressure of an approaching school year to strong-arm parents into undesirable contract terms and explicitly prohibited those tactics.

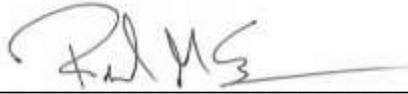
Either way, then, RUSD cannot compel parents who wish to continue receiving on-time yellow bus service to switch over to parent contracts.

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In sum, the choice RUSD has made to deny transportation to Racine children attending private schools that will get them to school on time is wholly unacceptable. The only option available to RUSD is obvious: go back to the drawing board and fulfill its legal obligations by scheduling yellow bus service in a manner that will get students to class on time, just as it would do for its own students.

We encourage RUSD to resolve this matter in an equitable and expeditious manner and look forward to receiving its response. Students will have enough challenges this year without having to worry about whether the bus is going to pick them up on time.

Sincerely,



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