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WATERBURY
Public Schools

Today's Students, Tomorrow's Leaders

School Governance Councils
Board of Education Presentation
June 2016

In 2010 the Connecticut General Assembly, as part of educational reform, passed the following:

Substitute Senate Bill No. 438
Public Act No. 10-111
AN ACT CONCERNING EDUCATION REFORM IN CONNECTICUT.

(B) On and after July 1, 2010, the local or regional board of education for a school that has been designated as a low achieving school, pursuant to subdivision (1) of subsection (c) of this section, due to such school failing to make adequate yearly progress in mathematics and reading at the whole school level **shall establish a school governance council for each school so designated.**

This Public Act (10-111 Section 21(g)) enacted fourteen (14) School Governance Councils on November 1, 2011. These are known as Cohort 2 and include Bucks Hill, Carrington, Chase, Driggs, Sprague, Walsh, Washington, Wilson Schools; North End, Wallace and West Side Middle Schools and Crosby, Kennedy and Wilby High Schools. The state education reform law (Public Act 12-116, Section 23) made changes to the legislation and directed the Connecticut State Department of Education (CSDE) to amend the list of schools required to implement councils as of July 1, 2012. Those new schools were Cohort 3 and were required to implement School Governance Councils by November 1, 2013. These schools are Duggan, Gilmartin, Hopeville, Regan Schools and the Waterbury Arts Magnet School. Waterbury Public Schools now have 19 out of 31 schools that are required by legislation to have a School Governance Council.

*There have been no newly designated School Governance Councils this year.

CONNECTICUT STATE DEPARTMENT OF EDUCATION
School Governance Councils

School Governance Councils provide a remarkable opportunity for Connecticut schools to engage with families and community members in a partnership to make our schools centers of excellence that prepare all students for success. Councils are intended to represent the diverse interests of the families, teachers, students and community members that make up the school population. To that end, every effort should be made to engage broad participation in a fair and open council election process.

School Governance Council Membership and Election Process

The councils consist of 14 voting members plus up to three non-voting members depending on the type of school involved. The following tables describe the category of membership, the number of members and how they are elected.

Member	*Number*	*Election Process*
Parents or guardians of students at the school	7	Elected by the parents or guardians of students attending the school, each household with a student attending the school will have one vote.
Teachers at the school	5	Elected by the teachers of the school.
Community leaders within the school district	2	Elected by the parent or guardian members and teacher members of the council.
School principal or designee (nonvoting)	1	Principal may participate directly or name a designee.

Additional members and election process in high schools:

Member	*Number*	*Election Process*
Students, high school council members only (nonvoting)	2	Elected by the school's student body.

Community Member Chart

School	Community Members
Bucks Hill	Calvary Life Center/CJR
Carrington	WTBY YMCA/State Rep.
Chase	Assist to Lt. Gov./State Rep
Driggs	Staywell Clinic/Overlook Com. Club
Duggan	St. Patrick's Church/United Auto
Gilmartin	Liberty Bank/Bd of Health
Hopeville	Somers Thin Strip/South Cong. Ch
Regan	Texas Roadhouse/Stop & Shop
Sprague	1st Assembly of God/WTBY Hospital
Walsh	NHS of WTBY/Hoops for Life

School	Community Member
Washington	South Congregational Church
Wilson	Safe Haven/Acts 4 Ministries
North End Middle	Town Clerk/Kelly's Kids
Wallace Middle	Domenic & Vinnie's Pizza
Wtby Arts Magnet	Shakesperience/Brass City Ballet
West Side Middle	PAL
Crosby High	Mt. Olive AME Zion/CJR
Kennedy High	DCF/Cross Generations Church
Wilby High	GEAR UP/Autism Speaks of Wtby

13 Community Members are BTS Community Partners

Training

By state statute, local boards of education are required to provide appropriate training and instruction to members of School Governance Councils to aid them in executing their duties.

Three Training Modules in collaboration with CABE, CSDE and WPS Staff were held this year:

- Back To School Breakfast - 9/25/15- WAMS -2014-2015 BOE SGC Presentation & School Achievements with Presentations - 70 attended
- Module 1- 2/25/16 – WAMS- WPS Staff on Chronic Absenteeism, 21st Century Learning, Next Generation Science and SBAC- 50 attended
- Cafes & Ice Cream Socials – 3/29/16 & 5/11/16 – Gilmartin & Carrington -45 attended
- 12/19 School Governance Councils had Site based Training at their school during the 2015-2016 school year. CABE & CSDE materials were used and provided -112 attended.

Chairpersons of School Governance Councils 2015-2016 (see insert):

- 12 Schools have teachers-schools in red print
- 6 Schools have parents – schools in green print
- 1 School rotates roles of facilitator, recorder and timekeeper.- in black print

Main Focus for 2015-2016 School Governance Councils

Achievement	School Safety	Parent Engagement	Other
Hopeville	Chase	Wilson	Hopeville (Attendance)
Regan	Driggs	Kennedy H.S.	Wallace (Handbook/Compact/Policy)
Walsh	Gilmartin	Wilby H.S.	Carrington (New Mission/Vision)
	Bucks Hill	Sprague	Duggan (Grants/AfterSchoolOppor)
	West Side M. S.	Washington	Sprague (Creating Vision/Mission)
			North End M.S. (Re-establish SGC)
			WAMS (Parent Involvement Policy)
			WSMS (Parent Communication)
			Crosby H.S. (Chronic Absenteeism)

School Governance Questionnaire Results

School	# Members May 2016	# Parents May 2016	Attrition	# Meetings 2015-2016	% Attendance	Compact Reviewed	PIP Reviewed	Survey Conducted	Minutes/Agendas to Website	CABE By-Laws Updated
Bucks Hill	10	5	0	4	75	Yes	Yes	No	Yes	No
Carrington	16	7	1	6	68	Yes	Yes	Yes	Yes	Yes
Chase	13	5	0	7	90	Yes	Yes	Yes	Yes	No
Driggs	10	2	0	7	75	Yes	Yes	Yes	Yes	Yes
Duggan	15	5	2	8	74	Yes	Yes	Yes	Yes	Yes
Gilmartin	12	6	1	8	74	Yes	Yes	Yes	Yes	No
Hopeville	14	3	1	5	95	Yes	Yes	Yes	Yes	Yes
Regan	14	7	0	5	75	Yes	Yes	Yes	Yes	No
Sprague	15	6	0	9	60	Yes	Yes	Yes	Yes	Yes
Walsh	14	7	1	6	69	Yes	Yes	Yes	Yes	No
Washington	16	9	5	5	56	Yes	Yes	Yes	Yes	No
Wilson	17	8	0	9	58	Yes	Yes	Yes	Yes	No
North End Middle	12	5	0	4	85	Yes	Yes	Yes	Yes	No
Wallace Middle	9	5	0	6	75	Yes	Yes	Yes	Yes	No
Waterbury Arts Magnet	17	6	1	4	50	Yes	Yes	No	Yes	No
West Side Middle	9	5	0	4	85	Yes	Yes	Yes	Yes	No
Crosby High School	16	5	0	6	77	Yes	Yes	Yes	Yes	No
Kennedy High School	17	7	0	7	56	Yes	Yes	Yes	Yes	Yes
Wilby High School	17	6	4	10	50	Yes	Yes	Yes	Yes	No

2015-2016

Highlights

- 100% of Waterbury Public School Governance Councils reviewed their School Compacts.
- 100% of Waterbury Public School Governance Councils reviewed their Parent Involvement Policy.
- 100% of Waterbury Public School Governance Councils post their Minutes and Agendas on their Web Site.
- 100% of Waterbury Public School Governance Councils have adopted By-Laws using CABE as the model. Only 32% of the SGC's needed to update their By-Laws in 2015-2016.

Next Steps

1. Hold new elections in the schools that have had attrition. (Fall 2016)
2. Continue to work with schools to keep two (2) Community Members on each School Governance Council.
3. Help schools recruit parents. Continue with Site Based Training to enhance success of SGC.
4. Continue the Back To School Breakfast in order to share BOE presentation and school achievements. Work with the ILD's and principals to arrange training to meet specific needs.
5. Arrange Module Training based on a survey. CABE, CSDE and WPS staff will support effort.
6. Yearly questionnaire, update and report to the Board of Education on the progress of our School Governance Councils.

2015 - 2016 School Governance Councils Achievements to Share			
School	**Administrator**	**Chairperson**	**Achievement**
Elementary			
Bucks Hill School	Mrs. Filomena Hudobenko, SVP	Ms. Margaret Felton, Teacher	Parent Involvement - Vocabulary Parade
Carrington School	Ms. Karen Renna, Principal	Rotating Facilitator	Complete Revision K-8 Compacts and helped create a new Vision, as well as, Mission Statements for school.
Chase School	Mrs. Maria Zillo, SVP	Ms. Marie Croco-Fagan, Parent	Meeting involving community leaders to discuss safety and attended Board of Alderman to discuss safety and over-crowding.
Driggs School	Mr. Michael Theriaut, Principal	Mrs. Jennifer Rumbin, Teacher	Parent and Community Engagement - Focus Events - Roller Magic Parent Night. Santa Breakfast, Career Day

Duggan School	Ms. Melissa DiGiovanni, SVP Dr. Patricia Frageau	Mrs. Carla Fidanza, Teacher	Girls Inc. After-School Programming - Earning the Laura Bush Library Grant!

2015 - 2016 School Governance Councils Achievements to Share			
School	**Administrator**	**Chairperson**	**Achievement**
Elementary (Con't)			
Gilmartin School	Mrs. Jennifer Dwyer, Interim Principal Ms. Talisha Foy, Interim SVP	Mrs. Danielle Albert, Parent	School Safety Plan
Hopeville School	Ms. Deborah Ponte, Principal Ms. Erika Lanza, SVP	Mrs. Harvey, Teacher	One Book One Read
Regan School	Mrs. Angela Razza, Principal Ms. Maria Jimenez, TVP	Ms. Maria Jimenez, Teacher	Increased number of Community and Parent members to SGC and have a clear vision for next year's SGC goals.
Sprague School	Mrs. Diane Bakewell, Principal	Ms. Shelby Goderre, Teacher	Creating a Vision and Mission Statement for the school.
Walsh School	Mrs. Ellen Paolino, Principal Mr. Paul White, Supervisor of School Turnaround	Ms. Nicole Scarzella, Teacher	Parent communication with parents and parent involvement has increased. Top events to share clothing drive, cookies and cocoa night and literacy night.

2015 - 2016 School Governance Councils Achievements to Share			
School	**Administrator**	**Chairperson**	**Achievement**
Elementary (Con't)			
Washington School	Mrs. Roxanne Augelli, Principal	Ms. Jacqueline Petrassi, Teacher	Recruited twice and held two elections to try and maintain consistent parents.
Wilson School	Ms. Jennifer Rosser, Principal	Ms. Zuheill Aviles, Teacher	Implemented Rosetta Stone Language Program in Family Resource Enrichment room to help parents who desire to learn English to have a resource at Wilson.
Middle & High Schools			
North End Middle School	Mr. James Simpson, Blue House Principal	Ms. Melissa Labbe & Ms. Rebecca Shaw, Parent Co-Chairs	Restarting the SGC - making it viable with regular meeting goals and objectives and 2 Community members. Compact Revision.
Wallace Middle School	Mr. Michael LoRusso, Principal	Ms. Nicole Silveira, Parent	Compact Revision and Handbook completed.

2015 - 2016 School Governance Councils Achievements to Share			
School	**Administrator**	**Chairperson**	**Achievement**
Middle & High Schools (Con't)			
Waterbury Arts Magnet School	Ms. Lauren Elias, Principal	Ms. Doreen Kopecky	1st Annual Color Run - 5/21/16. 185 Participants
West Side Middle School	Mrs. Maria Burns, Principal	Ms. Amy Densmore, Teacher	1) Revised and sent home Visitor's Policy 2) Meet & Greet at Parent Conferences. 3) Promoting Governor's Summer Reading Challenge Grades 6-8.
Crosby High School	Mrs. Jade Gopie, Principal Mr. Paul White, Supervisor of School Turnaround	Mr. Rick Pecka, Teacher	SGC held Attendance Matters Poster Contest. Winner - Muzamil Zafer. Poster being used schoolwide and statewide to promote attendance policy.
Kennedy High School	Mr. Robert Johnston, Principal	Ms. Julie Sochacki, Teacher	Parent Engagement - Latino Night

Wilby High School	Mrs. Michele Buerkle, Principal	Ms. Jennifer Hillbert, Teacher	"Futures in Reach" - adults only event with local colleges, universities, post high school academies/training programs.

#5-8

Waterbury Public Schools

EDUCATIONAL SPECIFICATION
For
Chase Elementary School

Code Update-Elevator Addition

1. **PROJECT RATIONALE**

The installation of a handicapped accessible elevator addition at the Chase Elementary School will a llow the City of Waterbury to provide a safe and appropriate learning environment accessible to all members of the student body and staff. It is necessary for the C ity of Waterbury to install an elevator at the Chase Elementary School as the City of Waterbury plans to continue to utilize the C hase Elementary School, as an elementary school, for the next twenty years.

2. **LONG-RANGE PLAN**

The long-range plan for the school buildings in Waterbury calls for full code compliance at all school buildings. While Chase Elementary School is not designated as an accessible elementary school, a code update will be completed. This will allow Waterbury to move toward compliance at all facilities in accordance with the long-range plan.

Waterbury plans to continue to utilize Chase Elementary School in its current capacity, and with appropriate maintenance, as an elementary school for the next twenty years.

The long range plan for the Chase Elementary School in Waterbury calls for the installation of an elevator. The existing school was constructed in 1905. The original design did not incorporate any handicapped accessible features. While some handicapped modifications, which comply with the American with Disabilities Act (ADA), have been put in place, the major impediment to a fully handicapped a ccessible school facility is the lack of a handicapped accessible elevator.

3. **THE PROJECT**

The City of Waterbury proposes the following components for the elevator project. This project will address violations of the ADA Code. The areas adjacent to the elevator will be affected by minor construction. Details of the project are presented below.

THE PROJECT—Entire Facility

There are several aspects of the code update which will impact the facility. This work will include the following:

1. Survey the existing facility and determine an appropriate and cost effective location for an addition containing a three stop, handicapped a ccessible elevator complying with the Americans w ith Disabilities Act (ADA). The elevator a ddition is

anticipated to increase the existing building footprint.

2. Inspect for hazardous containing materials in the area of the addition by an environmental consultant.

3. Abatement of hazardous containing materials, if required.

4. Identify existing building components including mechanical and electrical systems to be demolished in the area of the elevator addition.

5. Identify mechanical and electrical services and systems which will be required for the elevator addition.

6. Determine where electrical and mechanical services/systems are required to support the new elevator are located. Identify requirements for extending those services/systems to the location of the new elevator.

7. Perform necessary work to install an elevator.

8. Any finishes will be of a type similar to that of the existing building.

THE PROJECT—Select Areas

The Code Update-Elevator which will impact only select areas of the existing facility. This work will include the following:

Current space:	TBD
Construction:	After the best location for the elevator is found construct the necessary elements to install the elevator.
Final space:	Three stop elevator
FF&E:	Not applicable.

4. **BUILDING SYSTEMS**

Security:	Not applicable.
Public Address:	Not applicable.
Technology:	Not applicable.
Phone System:	Not applicable.
Clocks:	Not applicable.

5. **INTERIOR BUILDING ENVIRONMENT**

Acoustics:	Ceilings: Ceilings in the construction area will be replaced for fire code reasons. Walls: Interior walls will be patched and repaired as necessary only where construction related to interior accessible route directly impacts existing structure.
Lighting:	Lights in the modified areas for the elevator may need to be reconfigured
HVAC:	Heating, ventilation, and air conditioning modifications maybe required to accommodate the elevator.
Plumbing:	Not applicable.
Windows/Doors:	Not applicable.

6. **SITE DEVELOPMENT**

Site Acquisition:	Not applicable.
Parking:	Not applicable.
Drives:	Not applicable.
Walkways:	Not applicable.
Outdoor Athletic Facilities:	Not applicable.
Landscaping:	Not applicable.
Site Improvements:	Not applicable.

7. **CONSTRUCTION BONUS REQUESTS**

Chase Elementary School does not house any of the special programs eligible for a school construction bonus.

School Readiness:	C.G.S. 10-285a(e)--Not applicable.
Lighthouse Schools:	C.G.S. 10-285a(f)--Not applicable.
CHOICE:	C.G.S. 10-285a(g), as amended--Not applicable.
Full-day Kindergarten:	C.G.S. 10-285a(h)--Not applicable.
Reduced Class Size:	C.G.S. 10-285a(h)--Not applicable.
Regional Vo-Ag Center:	C.G.S. 10-65--Not applicable.
Interdistrict Magnet School:	C.G.S. 10-264h--Not applicable.
Interdistrict Cooperative School:	C.G.S. 10-158a--Not applicable.
Regional Special Education Center:	C.G.S. 10-76e--Not applicable.

8. **COMMUNITY USES**

Chase Elementary School will be designed to facilitate activities during the school hours, before and after school hours, and throughout the calendar year.

- PTO will use the media center and conference rooms for meetings before and after school; as well as, they have an office and storage space within the building
- The Recreation Department will use the gymnasium for evening activities when it is not being used by the students
- Summer Enrichment Programs are held at the school
- Neighborhood and City-wide Community Meetings will take place in the evenings

#9-12

Waterbury Public Schools

EDUCATIONAL SPECIFICATION
For
Hopeville Elementary School

Code Update-Elevator Addition

1. **PROJECT RATIONALE**

The installation of a handicapped accessible elevator addition at the Hopeville Elementary School will a llow the City of Waterbury to provide a safe and appropriate learning environment accessible to all members of the student body and staff. It is necessary for the C ity of Waterbury to install an elevator at the Hopeville Elementary School as the City of Waterbury plans to continue to utilize the H opeville Elementary School, as an elementary school, for the next twenty years.

2. **LONG-RANGE PLAN**

The long-range plan for the school buildings in Waterbury calls for full code compliance at all school buildings. While Hopeville Elementary School is not designated as an accessible elementary school, a code update will be completed. This will allow Waterbury to move toward compliance at all facilities in accordance with the long-range plan.

Waterbury plans to continue to utilize Hopeville Elementary School in its current capacity, and with appropriate maintenance, as an elementary school for the next twenty years.

The long range plan for the Hopeville Elementary School in Waterbury calls for the installation of an elevator. The existing school was constructed in 1905. The original design did not incorporate any handicapped accessible features. While some handicapped modifications, which comply with the American with Disabilities Act (ADA), have been put in place, the major impediment to a fully handicapped a ccessible school facility is the lack of a handicapped accessible elevator.

3. **THE PROJECT**

The City of Waterbury proposes the following components for the elevator project. This project will address violations of the ADA Code. The areas adjacent to the elevator will be affected by minor construction. Details of the project are presented below.

THE PROJECT—Entire Facility

There are several aspects of the code update which will impact the facility. This work will include the following:

1. Survey the existing facility and determine an appropriate and cost effective location for an addition containing a three stop, handicapped a ccessible elevator complying with the Americans w ith Disabilities Act (ADA). The elevator a ddition is

anticipated to increase the existing building footprint.

2. Inspect for hazardous containing materials in the area of the addition by an environmental consultant.

3. Abatement of hazardous containing materials, if required.

4. Identify existing building components including mechanical and electrical systems to be demolished in the area of the elevator addition.

5. Identify mechanical and electrical services and systems which will be required for the elevator addition.

6. Determine where electrical and mechanical services/systems are required to support the new elevator are located. Identify requirements for extending those services/systems to the location of the new elevator.

7. Perform necessary work to install an elevator.

8. Any finishes will be of a type similar to that of the existing building.

THE PROJECT—Select Areas

The Code Update-Elevator which will impact only select areas of the existing facility. This work will include the following:

Current space:	TBD
Construction:	After the best location for the elevator is found construct the necessary elements to install the elevator.
Final space:	Three stop elevator
FF&E:	Not applicable.

4. **BUILDING SYSTEMS**

Security:	Not applicable.
Public Address:	Not applicable.
Technology:	Not applicable.
Phone System:	Not applicable.
Clocks:	Not applicable.

5. **INTERIOR BUILDING ENVIRONMENT**

Acoustics:	Ceilings: Ceilings in the construction area will be replaced for fire code reasons. Walls: Interior walls will be patched and repaired as necessary only where construction related to interior accessible route directly impacts existing structure.
Lighting:	Lights in the modified areas for the elevator may need to be reconfigured
HVAC:	Heating, ventilation, and air conditioning modifications maybe required to accommodate the elevator.
Plumbing:	Not applicable.
Windows/Doors:	Not applicable.

6. **SITE DEVELOPMENT**

Site Acquisition:	Not applicable.
Parking:	Not applicable.
Drives:	Not applicable.
Walkways:	Not applicable.
Outdoor Athletic Facilities:	Not applicable.
Landscaping:	Not applicable.
Site Improvements:	Not applicable.

7. **CONSTRUCTION BONUS REQUESTS**

Hopeville Elementary School does not house any of the special programs eligible for a school construction bonus.

School Readiness:	C.G.S. 10-285a(e)--Not applicable.
Lighthouse Schools:	C.G.S. 10-285a(f)--Not applicable.
CHOICE:	C.G.S. 10-285a(g), as amended--Not applicable.
Full-day Kindergarten:	C.G.S. 10-285a(h)--Not applicable.
Reduced Class Size:	C.G.S. 10-285a(h)--Not applicable.
Regional Vo-Ag Center:	C.G.S. 10-65--Not applicable.
Interdistrict Magnet School:	C.G.S. 10-264h--Not applicable.
Interdistrict Cooperative School:	C.G.S. 10-158a--Not applicable.
Regional Special Education Center:	C.G.S. 10-76e--Not applicable.

8. **COMMUNITY USES**

Hapeville Elementary School will be designed to facilitate activities during the school hours, before and after school hours, and throughout the calendar year.

- PTO will use the media center and conference rooms for meetings before and after school; as well as, they have an office and storage space within the building
- The Recreation Department will use the gymnasium for evening activities when it is not being used by the students
- Summer Enrichment Programs are held at the school
- Neighborhood and City-wide Community Meetings will take place in the evenings

#13-16

Waterbury Public Schools

EDUCATIONAL SPECIFICATION
For
Kingsbury Elementary School

Code Update-Elevator Addition

1. **PROJECT RATIONALE**

The installation of a handicapped accessible elevator addition at the Kingsbury Elementary School will a llow the City of Waterbury to provide a safe and appropriate learning environment accessible to all members of the student body and staff. It is necessary for the C ity of Waterbury to install an elevator at the Kingsbury Elementary School as the City of Waterbury plans to continue to utilize the K ingsbury Elementary School, as an elementary school, for the next twenty years.

2. **LONG-RANGE PLAN**

The long-range plan for the school buildings in Waterbury calls for full code compliance at all school buildings. While Kingsbury Elementary School is not designated as an accessible elementary school, a code update will be completed. This will allow Waterbury to move toward compliance at all facilities in accordance with the long-range plan.

Waterbury plans to continue to utilize Kingsbury Elementary School in its current capacity, and with appropriate maintenance, as an elementary school for the next twenty years.

The long range plan for the Kingsbury Elementary School in Waterbury calls for the installation of an elevator. The existing school was constructed in 1905. The original design did not incorporate any handicapped accessible features. While some handicapped modifications, which comply with the American with Disabilities Act (ADA), have been put in place, the major impediment to a fully handicapped a ccessible school facility is the lack of a handicapped accessible elevator.

3. **THE PROJECT**

The City of Waterbury proposes the following components for the elevator project. This project will address violations of the ADA Code. The areas adjacent to the elevator will be affected by minor construction. Details of the project are presented below.

THE PROJECT—Entire Facility

There are several aspects of the code update which will impact the facility. This work will include the following:

1. Survey the existing facility and determine an appropriate and cost effective location for an addition containing a three stop, handicapped a ccessible elevator complying with the Americans w ith Disabilities Act (ADA). The elevator a ddition is

anticipated to increase the existing building footprint.

2. Inspect for hazardous containing materials in the area of the addition by an environmental consultant.
3.
4. Abatement of hazardous containing materials, if required.

5. Identify existing building components including mechanical and electrical systems to be demolished in the area of the elevator addition.

6. Identify mechanical and electrical services and systems which will be required for the elevator addition.

7. Determine where electrical and mechanical services/systems are required to support the new elevator are located. Identify requirements for extending those services/systems to the location of the new elevator.

8. Perform necessary work to install an elevator.

9. Any finishes will be of a type similar to that of the existing building.

THE PROJECT—Select Areas

The Code Update-Elevator which will impact only select areas of the existing facility. This work will include the following:

Current space:	TBD
Construction:	After the best location for the elevator is found construct the necessary elements to install the elevator.
Final space:	Three stop elevator
FF&E:	Not applicable.

4. **BUILDING SYSTEMS**

Security:	Not applicable.
Public Address:	Not applicable.
Technology:	Not applicable.
Phone System:	Not applicable.
Clocks:	Not applicable.

5. **INTERIOR BUILDING ENVIRONMENT**

Acoustics:	Ceilings: Ceilings in the construction area will be replaced for fire code reasons. Walls: Interior walls will be patched and repaired as necessary only where construction related to interior accessible route directly impacts existing structure.
Lighting:	Lights in the modified areas for the elevator may need to be reconfigured
HVAC:	Heating, ventilation, and air conditioning modifications maybe required to accommodate the elevator.
Plumbing:	Not applicable.
Windows/Doors:	Not applicable.

6. **SITE DEVELOPMENT**

Site Acquisition:	Not applicable.
Parking:	Not applicable.
Drives:	Not applicable.
Walkways:	Not applicable.
Outdoor Athletic Facilities:	Not applicable.
Landscaping:	Not applicable.
Site Improvements:	Not applicable.

7. **CONSTRUCTION BONUS REQUESTS**

Kingsbury Elementary School does not house any of the special programs eligible for a school construction bonus.

School Readiness:	C.G.S. 10-285a(e)--Not applicable.
Lighthouse Schools:	C.G.S. 10-285a(f)--Not applicable.
CHOICE:	C.G.S. 10-285a(g), as amended--Not applicable.
Full-day Kindergarten:	C.G.S. 10-285a(h)--Not applicable.
Reduced Class Size:	C.G.S. 10-285a(h)--Not applicable.
Regional Vo-Ag Center:	C.G.S. 10-65--Not applicable.
Interdistrict Magnet School:	C.G.S. 10-264h--Not applicable.
Interdistrict Cooperative School:	C.G.S. 10-158a--Not applicable.
Regional Special Education Center:	C.G.S. 10-76e--Not applicable.

8. **COMMUNITY USES**

Kingsbury Elementary School will be designed to facilitate activities during the school hours, before and after school hours, and throughout the calendar year.

- PTO will use the media center and conference rooms for meetings before and after school; as well as, they have an office and storage space within the building
- The Recreation Department will use the gymnasium for evening activities when it is not being used by the students
- Summer Enrichment Programs are held at the school
- Neighborhood and City-wide Community Meetings will take place in the evenings

#17-20

Waterbury Public Schools

EDUCATIONAL SPECIFICATION
For
Sprague Elementary School

Code Update-Elevator Addition

1. **PROJECT RATIONALE**

The installation of a handicapped accessible elevator addition at the Sprague Elementary School will a llow the City of Waterbury to provide a safe and appropriate learning environment accessible to all members of the student body and staff. It is necessary for the C ity of Waterbury to install an elevator at the Sprague Elementary School as the City of Waterbury plans to continue to utilize the S prague Elementary School, as an elementary school, for the next twenty years.

2. **LONG-RANGE PLAN**

The long-range plan for the school buildings in Waterbury calls for full code compliance at all school buildings. While Sprague Elementary School is not designated as an accessible elementary school, a code update will be completed. This will allow Waterbury to move toward compliance at all facilities in accordance with the long-range plan.

Waterbury plans to continue to utilize Sprague Elementary School in its current capacity, and with appropriate maintenance, as an elementary school for the next twenty years.

The long range plan for the Sprague Elementary School in Waterbury calls for the installation of an elevator. The existing school was constructed in 1905. The original design did not incorporate any handicapped accessible features. While some handicapped modifications, which comply with the American with Disabilities Act (ADA), have been put in place, the major impediment to a fully handicapped a ccessible school facility is the lack of a handicapped accessible elevator.

3. **THE PROJECT**

The City of Waterbury proposes the following components for the elevator project. This project will address violations of the ADA Code. The areas adjacent to the elevator will be affected by minor construction. Details of the project are presented below.

THE PROJECT—Entire Facility

There are several aspects of the code update which will impact the facility. This work will include the following:

1. Survey the existing facility and determine an appropriate and cost effective location for an addition containing a three stop, handicapped a ccessible elevator complying with the Americans w ith Disabilities Act (ADA). The elevator a ddition is

anticipated to increase the existing building footprint.

2. Inspect for hazardous containing materials in the area of the addition by an environmental consultant.

3. Abatement of hazardous containing materials, if required.

4. Identify existing building components including mechanical and electrical systems to be demolished in the area of the elevator addition.

5. Identify mechanical and electrical services and systems which will be required for the elevator addition.

6. Determine where electrical and mechanical services/systems are required to support the new elevator are located. Identify requirements for extending those services/systems to the location of the new elevator.

7. Perform necessary work to install an elevator.

8. Any finishes will be of a type similar to that of the existing building.

THE PROJECT—Select Areas

The Code Update-Elevator which will impact only select areas of the existing facility. This work will include the following:

Current space:	TBD
Construction:	After the best location for the elevator is found construct the necessary elements to install the elevator.
Final space:	Three stop elevator
FF&E:	Not applicable.

4. **BUILDING SYSTEMS**

Security:	Not applicable.
Public Address:	Not applicable.
Technology:	Not applicable.
Phone System:	Not applicable.
Clocks:	Not applicable.

5. **INTERIOR BUILDING ENVIRONMENT**

Acoustics:	Ceilings: Ceilings in the construction area will be replaced for fire code reasons. Walls: Interior walls will be patched and repaired as necessary only where construction related to interior accessible route directly impacts existing structure.
Lighting:	Lights in the modified areas for the elevator may need to be reconfigured
HVAC:	Heating, ventilation, and air conditioning modifications maybe required to accommodate the elevator.
Plumbing:	Not applicable.
Windows/Doors:	Not applicable.

6. **SITE DEVELOPMENT**

Site Acquisition:	Not applicable.
Parking:	Not applicable.
Drives:	Not applicable.
Walkways:	Not applicable.
Outdoor Athletic Facilities:	Not applicable.
Landscaping:	Not applicable.
Site Improvements:	Not applicable.

7. **CONSTRUCTION BONUS REQUESTS**

Sprague Elementary School does not house any of the special programs eligible for a school construction bonus.

School Readiness:	C.G.S. 10-285a(e)--Not applicable.
Lighthouse Schools:	C.G.S. 10-285a(f)--Not applicable.
CHOICE:	C.G.S. 10-285a(g), as amended--Not applicable.
Full-day Kindergarten:	C.G.S. 10-285a(h)--Not applicable.
Reduced Class Size:	C.G.S. 10-285a(h)--Not applicable.
Regional Vo-Ag Center:	C.G.S. 10-65--Not applicable.
Interdistrict Magnet School:	C.G.S. 10-264h--Not applicable.
Interdistrict Cooperative School:	C.G.S. 10-158a--Not applicable.
Regional Special Education Center:	C.G.S. 10-76e--Not applicable.

8. **COMMUNITY USES**

Sprague Elementary School will be designed to facilitate activities during the school hours, before and after school hours, and throughout the calendar year.

- PTO will use the media center and conference rooms for meetings before and after school; as well as, they have an office and storage space within the building
- The Recreation Department will use the gymnasium for evening activities when it is not being used by the students
- Summer Enrichment Programs are held at the school
- Neighborhood and City-wide Community Meetings will take place in the evenings

Waterbury Board of Education

THE CITY OF WATERBURY 236 Grand Street ◆ Waterbury, CT 06702 203-574-8009

Elizabeth C. Brown
President

July 15, 2016

Mr. Robert Brenker
Director of Personnel – Education
236 Grand Street
Waterbury, CT 06702

Dear Mr. Brenker:

At its special meeting of July 14, 2016, the Board of Education voted to approve of the addition of the following non-voting members to the Board of Education's Building Committee (Charles E. Pagano, Charles L. Stango, Ann M. Sweeney John E. Theriault, and Jason Van Stone) for the proposed Wendell Cross Extension and Alteration Project:

1. Two (2) members of the Board of Aldermen as recommended by the President of the Board of Aldermen;
2. One (1) Wendell Cross Parent (recommended by the Principal of Wendell Cross School) and/or one (1) East Mountain Community Member (recommended by the Committee's voting members); and
3. Principal of Wendell Cross School.

Respectfully,

Carrie A. Swain, Clerk
Waterbury Board of Education

cc: Joseph Amato, Principal, Wendell Cross School
Paul Pernerewski, President, Board of Aldermen
O & G Industries

#21

MEMORANDUM OF UNDERSTANDING/PROGRAM ACKNOWLEDGEMENT
between
The City of Waterbury, Waterbury Department of Education
and
Connecticut Military Department
for
STARBASE CT, Waterbury
Academic Year 2016-2017

This Memorandum of Understanding/Program Acknowledgement, effective on the date signed by the Connecticut Military Department, is by and between the City of Waterbury, the City of Waterbury Department of Education, 236 Grand Street, Waterbury, Connecticut (the "City") and the Connecticut Military Department, William A. O'Neill, State Armory located at 360 Broad Street, Hartford, Connecticut 06105-3706, a department of the State of Connecticut (the "Connecticut Military Department").

WHEREAS, the Connecticut Military Department administers a program known as STARBASE CT; and

WHEREAS, STARBASE CT offers a positive, proven approach to engendering excitement and interest in Science, Technology, Engineering and Math (STEM). STARBASE CT focuses on elementary students, primarily fifth graders; and

WHEREAS, STARBASE CT traditionally serves students who are historically under-represented in STEM. The program encourages students to set goals and achieve them. STARBASE CT works with school districts to support their standards of learning objectives; and

WHEREAS, The City desires to have its fifth grade school students participate in said STARBASE CT Program; and

WHEREAS, the Connecticut Military Department has agreed to allow the City to have its fifth grade school students to participate in said STARBASE CT Program; and

WHEREAS, in support of the partnership established between the City, it's Waterbury Department of Education and the Connecticut Military Department by and through The Adjutant General, Connecticut National Guard enter into this Memorandum of Understanding (MOU) for the purpose of facilitating a safe, positive learning environment for every student and teacher attending STARBASE CT.

Now therefore, the City and the Connecticut Military Department by and through The Adjutant General, Connecticut National Guard agree to the following:

1. The Connecticut Military Department and STARBASE CT personnel will provide:

1.1 A solid curriculum of Science, Technology, Engineering and Math (STEM) academics for 5th grade students and teachers of Waterbury Department of Education throughout the school year and activities involving STEM, teamwork, hands-on student involvement and self-esteem building for each academy class.

1.2 An academy class consisting of a 25-hour program of instruction, five days of 5-hour instruction. The daily schedule is adapted to facilitate school and transportation schedules and the needs of STARBASE CT.

1.3 All supplies, instructional support materials and assistance associated with the STARBASE CT program.

1.4 Information about STARBASE CT through publications and presentations throughout Waterbury as required.

1.5 A program orientation workshop for all participating classroom teachers to introduce them to STARBASE CT and help them prepare their students for the academy if asked.

1.6 A pre-visit conducted at participating classrooms to help students understand what to expect for the week at STARBASE CT.

1.7 Adequate classroom space for program including regular classroom and computer lab.

1.8 Post-test scores of his/her class to each participating teacher.

1.9 An opportunity for parents to become familiar with STARBASE CT through parent letters or personal visitation to the program site.

1.10 Provide a five-day curriculum of science, technology, engineering and math (STEM) academics for 5th grade students and teachers of Waterbury Department of Education throughout the school year.

2. The City will:

2.1 Select the students for classes for and provide assurance of their attendance during scheduled times.

2.2 Identify, transport and supervise the students participating in STARBASE CT.

2.3 Provide timely notification to the Connecticut Military Department and the STARBASE CT Director of the classes selected (including number of students).

2.4 Complete racial/ethnic/gender data for every participating class.

2.5 Provide for a 45-60 minute time slot before the first day at STARBASE CT for a pre-visit from STARBASE CT staff. If a SMART board is not available in the classroom, a projector will be required for the presentation.

2.6 Provide a sack lunch for each child, including those children on free/reduced lunch program, if needed.

2.7 Be responsible for the behavior of participating students. Classroom teachers shall maintain responsibility for all disciplinary matters with their class. Upon recommendation of a STARBASE CT staff member or the classroom teacher, the school will deny a student who has demonstrated inappropriate behavior while at STARBASE CT for a second time, after being counseled by STARBASE CT staff and their classroom teacher for a first offense.

2.8 When necessary, conduct pre-tests and post-tests and/or student surveys at the home school and return them to STARBASE CT for evaluation.

2.9 Provide assurance that all potential participating teachers attend the introductory workshop if offered.

2.10 Provide assurance that all participating teachers attend STARBASE CT classes with their students and actively participate in assisting STARBASE CT instructors and their students.

2.11 Provide assurance that classroom teacher will be responsible for students' trips to the bathroom/other areas outside of the main classroom and/or computer lab, where student is not in visual view of the rest of the class.

2.12 Provide assurance of at least one additional adult besides the classroom teacher for each day. Teacher aides or parents designed by the Waterbury Department of Education are acceptable.

3. FERPA:

3.1 In the event that STARBASE CT personnel come into possession of education records of City of Waterbury students, as defined in and governed by Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. § 1232g) and related regulations (34 C.F.R. § 99), STARBASE personnel shall comply with the requirements of said statute and regulations, and agrees to use information obtained regarding student education records only for the purposes provided in this Agreement. Without the prior written consent of the student, as required by FERPA, STARBASE CT personnel have no authority to make any other disclosures of any information from education records.

4. Criminal Background Checks:

4.1 The Connecticut Military Department represents and warrants that it and its STARBASE CT employees who may be assigned to perform the services set forth in this Agreement have no history of violations of the laws or regulations of the State of Connecticut pertaining to public health, have not been convicted of a crime and have no criminal investigation pending. The City and Board shall rely upon these representations.

5. City of Waterbury, Ethics Code of Ordinance:

5.1 Interest of City Officials

No member of the governing body of the City, and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

5.2 Prohibition against Gratuities and Kickbacks

No person shall offer, give, or agree to give any current or former public official, employee or member of a board or commission, or for such current or former public official, employee or member of a board or commission to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any of the following pertaining to any program requirement or a contract or purchase order, or to any solicitation.

No person shall make any payment, gratuity, or offer of employment as an inducement for the award of a subcontract or order, by or on behalf of a subcontractor, the prime contractor or higher tier subcontractor or any person associated therewith, under contract or purchase order to the City.

The value of anything transferred or received in violation of the provisions of this Chapter or regulations promulgated hereunder by any person subject to this Chapter may be recovered by the City.

5.3 Prohibition against Contingency Fees

The Connecticut Military hereby represents that it has not retained anyone to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage or contingency fee.

6. Compensation.

6.1 The parties agree that there will be no compensation made to STARBASE CT from the City for the performance of any of the services set forth herein.

7. Independent Contractor Relationship:

7.1 The relationship between the City and the Connecticut Military Department/STARBASE CT personnel is that of an independent contractor. No agent, employee, or servant of the Connecticut Military Department/STARBASE CT shall be deemed to be an employee, agent or servant of the City. The Connecticut Military Department, STARBASE CT and /or its employees shall not be entitled to the usual characteristics of employment, such as income tax withholding, F.I.C.A. deductions, pension or retirement privileges, Workers Compensation coverage, health benefits, etc. STARBASE CT shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants or representatives.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto execute this Memorandum of Understanding on the dates signed below.

WITNESSES:

_____

_____

CITY OF WATERBURY

By:_____
Neil M. O'Leary, Mayor

Date: _____

WITNESSES:

_____

_____

WATERBURY DEPARTMENT OF EDUCATION

By:_____
Dr. Kathleen M. Ouellette,
Superintendent

Date: _____

WITNESSES:

_____

_____

CONNECTICUT DEPARTMENT OF THE MILITARY

By:_____
THADDEUS J. MARTIN
Major General
The Adjutant General

Date: _____

EDUCATION –Draft

#22

GRANTS SPECIALIST
COMPETITIVE GRANTS OFFICE

General Statement of Duties: To provide assistance of a complex and confidential nature, and to provide technical assistance with grants seeking, project and budget development, and document preparation for the Waterbury Public Schools Grant Writer. Reports directly to the Grant Writer.

Specific Examples of Duties:

- Research grant opportunities using office software programs, Internet, email alerts and/or other resources.
- Review and evaluate grant opportunities for fit with district and office priorities.
- Conduct research related to grant proposals, and compile data from various sources, as requested.
- Prepare charts, graphs, and other graphic representations of information for proposals and reports.
- Assist with budget calculations and prepare grant budget documents.
- Maintain a computer database of grant partners and prospective grant prospects.
- Maintain the office grant/project deadline calendar.
- Handle specific requests related to entitlement grants.
- Promote and model respectful professional climate/relationships.
- Utilize excellent customer service/interpersonal skills in dealing with office contacts, other office staff, district and municipal personnel, grantor representatives, grant partner representatives, community agencies, and the community at large.
- Manage reception area. Answer telephones, screen incoming calls, and provide information to callers using in-depth knowledge of the office and its function.
- Handle U.S. mail and inter-office mail. Screen letters, memos, reports, and materials to determine action required; make related recommendations to Grant Writer.
- Type, revise, or otherwise prepare documents including grant applications, revisions and reports.
- Compose routine letters and memos for the Grant Writer.
- Create and maintain grants related logs, records, and files. Maintain grant related electronic and hard copy files as required by the Grant Writer.
- Arrange and coordinate meetings including attendees, meeting space, equipment, refreshments.
- Order and receive all office purchases.
- Manage maintenance and repair of all office equipment.
- Supervise other staff such as interns or temporary help, as directed by the Grant Writer.
- Perform other related work as required by the Grant Writer.

Qualifications:

- **Required:** Associate's Degree or at least thirty college credits; experience working in grants, development, philanthropy, or a related field; proficiency in use of PCs with Microsoft Windows operating system and Office programs including WORD, Excel, PowerPoint, and Outlook; the ability to work independently with great attention to detail; ability to prioritize work, to self-motivate, and to use time effectively; ability to quickly learn new skills; ability to work as part of a team; ability to perform basic mathematical computations with speed and accuracy; ability to interact effectively with all stakeholders; ability to maintain confidentiality and to demonstrate consistent good judgment, tact and courtesy; excellent written and verbal communication skills.
- **Preferred:** Bachelor's Degree; experience with Adobe, and experience in an urban school district and/or a multi-cultural environment.

Work Year/Hours of Work: 12 months, 35 hours per week.

Salary/Benefits: $25-$30 per hour. This is a non-union position. Fringe benefits are governed by the UPSEU Unit #69 Collective Bargaining Agreement. This is a grant funded position that exists as long as funds continue to be available.

Please submit…

Closing Date: Until filled.

#23

COMMITTEE ON SCHOOL FACILITIES & GROUNDS

WORKSHOP: **Thursday, July 28, 2016 (Maloney)**
BOARD MEETING: **Thursday, August 4, 2016**

TO THE BOARD OF EDUCATION
WATERBURY, CONNECTICUT

LADIES AND GENTLEMEN:

With the approval of the Committee on School Facilities and Grounds, the Superintendent of Schools recommend approval of the use of school facilities, at no charge, by the following school organizations and/or City departments:

GROUP	FACILITIES AND DATES/TIMES
Linda Franzese	WAMS café: Tues.,Aug. 16th 4:00:7:30 pm (meeting with state,local farmers & CT.food service directors)
Wtby.Fire Dept.	Kennedy classrm.: Mon.thru Fri. 8/1-8/26 8:30am-4:30pm (CPR recertification training for firefighters)
J.Reed	Wallace media ctr.: Thurs.,Aug. 25th 7:30am – 1:00pm (Professional Development)
Gladys Wright	Reed lobby: Tues.,Sept. 20th 5:00-7:00pm (Title I district parent council meeting)
K. Effes	WAMS atrium: Tues.,Sept. 27th 6:00-7:30pm (Financial Aid Night) WAMS atrium & lib.: Tuesdays 6:00-9:00 pm (Book club mtgs.)
PTSO	WAMS café: Thurs.,Sept. 8th 5:00-8:00pm (ice cream social) WAMS lib.: Sept.-June 2nd Tues of the month (PTSO mtgs.)
M. Vagnini	WAMS café: Sat.,Nov. 5th 7am-6pm (hosting & auditioning for Southern Region Music Festival)
C. Wirth	WAMS dance studios: April 17th -27th 2:05-5:00pm dance rehearsals) and Thurs.,May 25th 2:05-9:00pm (choreography showcase)
E. DeSilva	WAMS: Thurs,, May 25th 5-9 pm (High School awards night to be held in the Palace) WAMS café: Thurs., May 18th 3:00-8:00 pm (Super senior dinner)
Human Resources Mary Ann Bunnell	Wilby café: Wed., Aug. 17th 8:30am-2:00pm (Customer Service Rep. exam)

Approved:

John Theriault

Kathleen M. Ouellette, Ed. D.
Superintendent of Schools

JUL 25 2016

Please give form to Nicole Steck

SCHOOL PERSONNEL USE ONLY

DATE: 7/25/16

TO: SCHOOL BUSINESS OFFICE

FROM: LINDA FLANAGAN / FOOD SERVICES

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☑ Café/Rooms

DATES REQUESTED: 8/16/16

FROM: 4 am/pm TO: 7:30 am/pm

FOR THE FOLLOWING PURPOSES:

MEETING WITH THE STATE, LOCAL FARMERS AND CT FOOD SERVICE DIRECTORS TO LEARN MORE ABOUT A PROGRAM FOR SCHOOL CAFES THAT FEATURES LOCALLY GROWN FRUITS + VEGETABLES.

APPLICANT

Please note the following provisions:

When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

Book

SCHOOL PERSONNEL USE ONLY

JUL - 5 2016

DATE: July 1, 2016

TO: SCHOOL BUSINESS OFFICE

FROM: Waterbury Fire Department

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: John F. Kennedy High School

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☐ Cafe/Rooms

DATES REQUESTED: August 1st thru August 26th Mon. thru Fri.

FROM: 8:30 am/pm TO: 4:30 am/pm

FOR THE FOLLOWING PURPOSES:

To conduct CPR recertification training for firefighters. For security purposes, a room overlooking the lot where apparatus would park is preferred.

James Peplau, Director of Training

APPLICANT

Asst Chief

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

JUL 13 2016

Book
12

SCHOOL PERSONNEL USE ONLY

DATE: 7/13/16

TO: SCHOOL BUSINESS OFFICE

FROM: John Reed

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: Wallace Media Center

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☐ Café/Rooms

DATES REQUESTED: 8/25/16

FROM: 7:30 (am/pm) TO: 1:00 am/pm

FOR THE FOLLOWING PURPOSES:

CTE Professional development

John Reed
APPLICANT

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

2016-17

JUL - 6 2016

SCHOOL PERSONNEL USE ONLY

DATE: _July 6, 2016

TO: SCHOOL BUSINESS OFFICE

FROM: _Gladys Wright_____

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: __Reed

X☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☐ Café/Rooms

DATES REQUESTED: _
_September 20,2016_____

FROM: _5pm_____ am/pm TO: _7pm_____ am/pm

FOR THE FOLLOWING PURPOSES:

_____Title I District Parent Advisory Council Meeting

Gladys
Wright_____
APPLICANT

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

Please give form to Nicole Steck

APR 25 2016

SCHOOL PERSONNEL USE ONLY

DATE: 4/25/16

TO: SCHOOL BUSINESS OFFICE

FROM: ~~Kim Effs~~/Jackie Baraca

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☐ Café/Rooms

☒ ~~Atrium~~

DATES REQUESTED: Tuesday, Sept 27

FROM: 6 am/pm TO: 7:30 am/pm

FOR THE FOLLOWING PURPOSES:

Financial Art Night

Kim Effs
APPLICANT

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

Please give form to Nicole Steck

Book

SCHOOL PERSONNEL USE ONLY

MAY 11 2016

DATE: 5.10.16

TO: SCHOOL BUSINESS OFFICE

FROM: Kim Effs

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☐ Café/Rooms

☒ Library & Atrium

DATES REQUESTED: 10/18, 11/15, 12/20, 1/17/17, 2/14/17, 3/21/17, 4/18/17, 5/16/17

FROM: 6 am/(pm) TO: 9 am/(pm)

FOR THE FOLLOWING PURPOSES:

Literacy Book Club

Kim Effs
APPLICANT

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified.
These arrangements *must* be made in person at the police and fire headquarters.

JUN 14 2016

Book

Please give form to Nicole Steck

SCHOOL PERSONNEL USE ONLY

DATE: June 8th 16

TO: SCHOOL BUSINESS OFFICE

FROM: PTSO

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☑ Café/Rooms

DATES REQUESTED: Sept 8th 2016

FROM: 5 ~~am~~/pm TO: 8 ~~am~~/pm

FOR THE FOLLOWING PURPOSES:

Welcome back Ice cream social

APPLICANT

Please note the following provisions:

When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

JUN 14 2016

Please give form to Nicole Steck

SCHOOL PERSONNEL USE ONLY

DATE: June 8th 16

TO: SCHOOL BUSINESS OFFICE

FROM: WAMS PTSO

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☑ Café/Rooms Library

DATES REQUESTED: 9/8 10/13 11/10 12/8 1/12 2/9 3/9 4/6th 5/11th 6/8th

FROM: 6:00 ~~am~~/pm TO: 8 ~~am~~/pm

FOR THE FOLLOWING PURPOSES:

PTSO Monthly meetings

APPLICANT

Please note the following provisions:

When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

JUN 14 2016

RETURN TO MS SARNATARO

Book

SCHOOL PERSONNEL USE ONLY

DATE: June 9 2016

TO: SCHOOL BUSINESS OFFICE

FROM: M Vaquini-Dadamo

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: Witby Arts Magnet School

☒ Auditorium ☐ Gymnasium ☐ Swimming Pool ☒ Café/Rooms

DATES REQUESTED: Saturday November 5 2016

FROM: 7 (am)/pm TO: 6 am/(pm)

FOR THE FOLLOWING PURPOSES:

Our Students will be auditioning as Well as hosting students from the Southern Region to perform for the CT Southern Region Music Festival

M Vaquini Dadamo
APPLICANT

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

Book

JUN 14 2016

Please give form to Nicole Steck

SCHOOL PERSONNEL USE ONLY

DATE: June 14, 2016

TO: SCHOOL BUSINESS OFFICE

FROM: WAMS Dance
Cheryl Wirth

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☐ Café/Rooms

☒ Large Dance Studio & Small Dance Studio

DATES REQUESTED: April 17, 18, 20, 24, 25, 27

FROM: 2:05 am/pm TO: 5 am/pm

FOR THE FOLLOWING PURPOSES:

Rehearsal for Spring Dance Concert

APPLICANT

Please note the following provisions:

When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

JUN 14 2016

Please give form to Nicole Steck

Book

SCHOOL PERSONNEL USE ONLY

DATE: June 14, 2016

TO: SCHOOL BUSINESS OFFICE

FROM: WAMS – Dance Dept
Cheryl Wirth

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☐ Café/Rooms

Large Dance Studio & Small Dance Studio

DATES REQUESTED: May 25 ~~205 9pm~~

FROM: 205 am/pm TO: 9 am/pm

FOR THE FOLLOWING PURPOSES:

Choreography Showcase at WAMS

APPLICANT

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

JUN 14 2016

Please give form to Nicole Steck

SCHOOL PERSONNEL USE ONLY

DATE: 6-14-16

TO: SCHOOL BUSINESS OFFICE

FROM: E. DaSilva
M. Ieronimo

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ ~~Auditorium~~ ☐ Gymnasium ☐ Swimming Pool ☐ Café/Rooms

Palace

DATES REQUESTED: Thursday, May 25, 2017

FROM: 5 am/pm TO: 9 am/pm

FOR THE FOLLOWING PURPOSES:

High School awards night.

E

APPLICANT
M Ieronimo

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

JUN 14 2016

Please give form to Nicole Steck

SCHOOL PERSONNEL USE ONLY

DATE: 6-14-16

TO: SCHOOL BUSINESS OFFICE

FROM: E. DaSilva
M. Ieronimo

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: WAMS

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☒ Café/Rooms

DATES REQUESTED: Thursday, May 18, 2017

FROM: 3 am/pm TO: 8 am/pm

FOR THE FOLLOWING PURPOSES:

Super senior dinner.

E. DaSilva
APPLICANT
M. Ieronimo

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

JUL 22 2016

SCHOOL PERSONNEL USE ONLY

DATE: July 22, 2016

TO: SCHOOL BUSINESS OFFICE

FROM: Mary Ann Bunnell

The undersigned hereby makes application for use of school facilities (after regular school hours) as follows:

NAME OF SCHOOL REQUESTED: Wilby High School Cafeteria

☐ Auditorium ☐ Gymnasium ☐ Swimming Pool ☒ Café/Rooms

DATES REQUESTED: Wednesday, August 17, 2016

FROM: 8:30 (am)/pm TO: 2:00 am/(pm)

FOR THE FOLLOWING PURPOSES:

Customer Service Rep. Exam # 2114 for 90 people,
Exam will be from 10 a.m. to 12:30 p.m.
- will need podium, fans & microphones.

Mary Ann Bunnell
APPLICANT

Please note the following provisions:
When the public is invited to an activity, police and fire departments must be notified. These arrangements *must* be made in person at the police and fire headquarters.

#24

COMMITTEE ON SCHOOL FACILITIES & GROUNDS

WORKSHOP: **Thursday, July 28, 2016 (Maloney)**
BOARD MEETING: **Thursday, August 4, 2016**

TO THE BOARD OF EDUCATION
WATERBURY, CONNECTICUT

LADIES AND GENTLEMEN:

With the approval of the Committee on School Facilities and Grounds, the Superintendent of Schools recommends approval of the use of school facilities by groups and organizations, subject to fees and insurance as required.

GROUP	FACILITIES AND DATES/TIMES
REQUESTING WAIVERS:	
Community Tabernacle Paul Gladding	Reed gym: Sat., July 30, 2016 9am-6pm (basketball tournament) ($756.) ***needs approval at workshop due to date of use)***
Wtby.Knights Cheerleaders Shenquaya Clements	Crosby gym,aud.,café: Sat., Oct. 22nd 8am-6pm (annual cheerleading competition) ($1,386.)
GROUPS NOT SUBJECT TO FEES OR WAIVER DUE TO TIME OF USE OR PREVIOUS WAIVER:	
Main Street,Waterbury Carl Rosa	WAMS courtyard: Wed., Aug. 24th 5:00-8:30 pm (Fulton American Band Free Concert)
CT. Rivers Boy Scouts Diane Drake	WSMS café, classrms.: Modays Oct. 2016 thru Dec. 2017 6-9 pm (boy scouts round table meetings)
Wtby. Knights Cheerleaders Shenquaya Clements	Kingsbury gym: Mon.-Fri. Aug.29th –Dec.9th 5:45-8:00 pm Driggs gym: Mon.-Fri. Aug. 29th-Dec. 9th 5:45-8:00 pm (cheerleading program)

MONIES COLLECTED TO DATE: **$ 91,248.50**

Approved:

John Theriault

Kathleen M. Ouellette, Ed. D.
Superintendent of Schools

These activities are completed and have been billed:

Yeshiva Chabab
Taft Pointe Condo Assoc.

DEPARTMENT OF EDUCATION - WATERBURY, CONNECTICUT
SCHOOL BUSINESS OFFICE
236 GRAND ST., WATERBURY, CT 06702
USE OF BUILDING PERMIT
TYPE OR USE PEN AND PRESS FIRMLY

JUL 13 2016

CONTRACT#

APPLICANT Paul Gladding NAME OF ORGANIZATION Community Tabernacle

ADDRESS 12 Hewlett st (street) waterbaury (city) Ct (state) 06710 (zip code) TELEPHONE # 203-756-5981

SCHOOL REQUESTED Reed DATES July 30, 2016 ROOM(S) gym

OPENING TIME 9am CLOSING TIME 6pm PURPOSE basketball tournament

ADMISSION (if any) none CHARGE TO BE DEVOTED TO

APPROXIMATE NUMBER OF PEOPLE TO BE PRESENT: ADULTS 100 CHILDREN 100

SIGNATURE OFAPPLICANT Paul Gladding DATE 7-13-16

PERSON(S) NAME, ADDRESS & PHONE NUMBER RESPONSIBLE FOR SUPERVISION:
(SAME)

In the event that the Board of Education should need to resort to legal proceedings to collect any outstanding balances, the lessee is responsible for any and all attorney's fees, sheriff's fees and court costs associated with said proceedings. pg (PLEASE INITIAL)

SCHEDULE OF RATES: CUSTODIAL FEES: $42/HR plus 1 HR SERVICE PER CUST.

RENTAL FEES:

MISCELLANEOUS FEES:

SECURITY DEPOSIT $ $250 INSURANCE COVERAGE yes YES NO

PLEASE READ THE FOLLOWING CAREFULLY

APPLICATION MUST BE RECEIVED AT LEAST THREE (3) WEEKS PRIOR TO THE ACTIVITY.

A COPY OF YOUR INSURANCE MUST ACCOMPANY YOUR APPLICATION (IF APPLICABLE)

IF SCHOOL IS CANCELLED FOR SNOW OR ANY OTHER REASON - ALL ACTIVITIES ARE CANCELLED ALSO.

THERE WILL BE NO ACTIVITIES DURING SCHOOL OPEN HOUSE.

CANCELLATIONS MUST BE MADE AT LEAST 48 HOURS IN ADVANCE OR YOU WILL BE CHARGED.

POLICE AND FIRE PROTECTION MUST BE ARRANGED AND/OR CANCELLED BY THE RENTER. PLEASE CALL EACH DEPARTMENT FOR INFORMATION. POLICE DEPT. 574-6963 FIRE DEPT. 597-3452

CALL THE SCHOOL CUSTODIAN AT LEAST ONE WEEK PRIOR TO YOUR ACTIVITY FOR ANY ARRANGEMENTS RE: PA SYSTEM, LIGHTING, ETC. (FOR WHICH THERE WILL BE AN EXTRA CHARGE).

KITCHEN FACILITIES CAN NOT BE USED BY GROUPS WITHOUT SUPERVISION - PLEASE CALL THE FOOD SERVICE DEPT. AT 574-8210 TO ARRANGE FOR A FOOD SERVICE PERSON (FOR WHICH THERE WILL BE AN EXTRA CHARGE)

PLEASE SEE REVERSE FOR ADDITIONAL RULES AND REGULATIONS.

IT IS AGREED THAT REGULATIONS ADOPTED BY THE BOARD OF EDUCATION FOR USE OF SCHOOL BUILDINGS WILL BE RIGIDLY ENFORCED.

9AM TO 6PM Saturday July 30

APPROVAL DATE

SCHOOL BUSINESS OFFICE

CHECKS OR MONEY ORDERS FOR FEES SHOULD BE MADE OUT TO THE BOARD OF EDUCATION AND MAILED TO THE SCHOOL BUSINESS OFFICE. NO CASH WILL BE ACCEPTED.

White-Permittee Goldenrod-School Business Office Pink-Principal Blue-Custodian

USE OF SCHOOL FACILITIES
WAIVER REQUEST
(to be submitted with Use of Building Permit)

APPLICANT/ORGANIZATION: community tabernacle outreach center (c.t.o.c)

Please check below specific item(s):

Building Usage Fees ☐ Custodial Fees ☑

SCHOOL/ROOMS REQUESTED: Gym

DATE(S): July 30, 2016 TIMES: 9am-6pm

DATE(S): _____ TIMES: _____

DATE(S): _____ TIMES: _____

DATE(S): _____ TIMES: _____

DATE(S): _____ TIMES: _____

DATE(S): _____ TIMES: _____

7-13-16
Date

Paul Gladding
Signature

OFFICE USE ONLY

List total cost of fees being requested to be waived:

$ _____ Building Usage Fees

$ 756.- Custodial Fees

$ _____ Security Deposit

BOARD USE ONLY

The Board of Education approved/denied the above referenced waiver request(s) at their regular meeting of _____.

ATTEST: _____
Clerk, Board of Education

COMMUNITY TABERNACLE OUTREACH CENTER

12 Hewlett Street
Waterbury, CT 06710
(203) 756-5981
Reverend W. James Johnson, Pastor
Email: Community_Tabernacle@yahoo.com

Dear Community Partner,

Community Tabernacle Outreach Center is excited to announce our 2nd Annual Hoop to Help basketball tournament being held **July 30th, 2016** at the Waterbury Police Athletic League (PAL) gym and Johnathan Reed Gym. This annual event is a critical component of our strategic plan aimed at securing our community's support and passion for our mission…

To provide pro social activities, basic needs and school supplies to youth and families.

The Hoop to Help basketball tournament uses the game of basketball as a way to bring communities together from across the state to raise funds for our annual back to school giveaway where we provide book bags and school supplies to those in need. In our first year we were able to have a fifteen-team tournament with over 500 people in attendance. The proceeds from the tournament allowed us to organize two back to school giveaways where over 450 book bags were distributed to the community and three economically disadvantaged schools in the city of Waterbury (Jonathan Reed, Woodrow Wilson, & Walsh Elementary).

We'd like to invite you to invest in the success of the 2nd Annual Hoop to Help basketball tournament as one of our treasured sponsors and a vital part of this very important day. Your participation as a sponsor will help us reach our goal expanding our giveaway and reaching more schools and youth in need. With the generous support of contributors like you, we will continue to grow and make a difference in someone's time of need.

Please include us in your 2016 budget! We are looking for team sponsors, $150.00 per team but not limited to. We are looking for gift card donations, food donations, items that may be raffled, volunteers, and other items that will be needed to make this event a success. You can make payment right away or pledge your sponsorship to be paid before the event on July 30th. Whatever makes the most sense for you and your business is what makes *cents* for us. The success of this event is a key fundraising priority and we are committed to making it the best possible experience.

In closing, we would appreciate you being a part of our events' success and allowing us to help our community. If your company requires proof of nonprofit status, it will be provided upon request. Thank you for your time and attention to this important matter and please note that **we are grateful for whatever you may contribute**. If you have any questions or concerns, please don't hesitate to contact us (203)808-7745 or via email at hoopforcommunity@gmail.com.

Sincerely,

Community Tabernacle Outreach Center
Hoop to Help

1900

DEPARTMENT OF EDUCATION - WATERBURY, CONNECTICUT
SCHOOL BUSINESS OFFICE
236 GRAND ST., WATERBURY, CT 06702
USE OF BUILDING PERMIT
TYPE OR USE PEN AND PRESS FIRMLY

JUL 25 2016

CONTRACT#

APPLICANT Shenquaya Clements NAME OF ORGANIZATION Wthy Knights

ADDRESS 129 Washington Street Wthy CT 06706 TELEPHONE # 203-814-3766
(street) (city) (state) (zip code)

2nd FL. Crosby OR

SCHOOL REQUESTED ~~Crosby~~ DATES October 27, 2016 ROOM(S) Gym & Auditorium & Cafe

OPENING TIME 8a CLOSING TIME Cop PURPOSE Cheerleading Competition

ADMISSION (if any) CHARGE TO BE DEVOTED TO

APPROXIMATE NUMBER OF PEOPLE TO BE PRESENT: ADULTS CHILDREN

SIGNATURE OFAPPLICANT Clement DATE 7/25/16

PERSON(S) NAME, ADDRESS & PHONE NUMBER RESPONSIBLE FOR SUPERVISION:

(SAME)

In the event that the Board of Education should need to resort to legal proceedings to collect any outstanding balances, the lessee is responsible for any and all attorney's fees, sheriff's fees and court costs associated with said proceedings. (SC) (PLEASE INITIAL)

SCHEDULE OF RATES: CUSTODIAL FEES: $42/HR plus 1 HR service per cust. 3 ($138.)

RENTAL FEES:

MISCELLANEOUS FEES:

SECURITY DEPOSIT $ / INSURANCE COVERAGE YES NO

PLEASE READ THE FOLLOWING CAREFULLY

Crosby
8 a.m - 6p.m
Sat.
Oct. 22

APPLICATION MUST BE RECEIVED AT LEAST THREE (3) WEEKS PRIOR TO THE ACTIVITY.

A COPY OF YOUR INSURANCE MUST ACCOMPANY YOUR APPLICATION (IF APPLICABLE)

IF SCHOOL IS CANCELLED FOR SNOW OR ANY OTHER REASON - ALL ACTIVITIES ARE CANCELLED ALSO.

THERE WILL BE NO ACTIVITIES DURING SCHOOL OPEN HOUSE.

CANCELLATIONS MUST BE MADE AT LEAST 48 HOURS IN ADVANCE OR YOU WILL BE CHARGED.

POLICE AND FIRE PROTECTION MUST BE ARRANGED AND/OR CANCELLED BY THE RENTER. PLEASE CALL EACH DEPARTMENT FOR INFORMATION. POLICE DEPT. 574-6963 FIRE DEPT. 597-3452

CALL THE SCHOOL CUSTODIAN AT LEAST ONE WEEK PRIOR TO YOUR ACTIVITY FOR ANY ARRANGEMENTS RE: PA SYSTEM, LIGHTING, ETC. (FOR WHICH THERE WILL BE AN EXTRA CHARGE).

KITCHEN FACILITIES CAN NOT BE USED BY GROUPS WITHOUT SUPERVISION - PLEASE CALL THE FOOD SERVICE DEPT. AT 574-8210 TO ARRANGE FOR A FOOD SERVICE PERSON (FOR WHICH THERE WILL BE AN EXTRA CHARGE)

PLEASE SEE REVERSE FOR ADDITIONAL RULES AND REGULATIONS.

IT IS AGREED THAT REGULATIONS ADOPTED BY THE BOARD OF EDUCATION FOR USE OF SCHOOL BUILDINGS WILL BE RIGIDLY ENFORCED.

APPROVAL DATE

SCHOOL BUSINESS OFFICE

CHECKS OR MONEY ORDERS FOR FEES SHOULD BE MADE OUT TO THE BOARD OF EDUCATION AND MAILED TO THE SCHOOL BUSINESS OFFICE. NO CASH WILL BE ACCEPTED.

White-Permittee Goldenrod-School Business Office Pink-Principal Blue-Custodian

USE OF SCHOOL FACILITIES
WAIVER REQUEST

(to be submitted with Use of Building Permit)

APPLICANT/ORGANIZATION: Shenquriya C. (Kitty Knights)

Please check below specific item(s):

Building Usage Fees ☐ Custodial Fees ☐

SCHOOL/ROOMS REQUESTED: Crosby (Gym + Auditorium + cafe)

DATE(S): Saturday October — TIMES: 8-6

DATE(S): 22, 2016 — TIMES:

DATE(S): — TIMES:

DATE(S): — TIMES:

DATE(S): — TIMES:

DATE(S): — TIMES:

7/25/16
Date

Shenquriya
Signature

OFFICE USE ONLY

List total cost of fees being requested to be waived:

$ _____ Building Usage Fees

$ 1380.- Custodial Fees

$ _____ Security Deposit

BOARD USE ONLY

The Board of Education approved/denied the above referenced waiver request(s) at their regular meeting of _____.

ATTEST: _____
Clerk, Board of Education

DEPARTMENT OF EDUCATION - WATERBURY, CONNECTICUT
SCHOOL BUSINESS OFFICE
236 GRAND ST., WATERBURY, CT 06702
USE OF BUILDING PERMIT
TYPE OR USE PEN AND PRESS FIRMLY

CONTRACT# JUL 25 2016

APPLICANT Carl Rosa NAME OF ORGANIZATION Main Street Waterbury

ADDRESS 83 Bank St (street) Waterbury (city) CT (state) 06702 (zip code) TELEPHONE # 203-757-0701 ext. 302

SCHOOL REQUESTED WAMS DATES 8-24-16 ROOM(S) Outdoor Courtyard (Atrium as Back-up)

OPENING TIME 5:00 P.M. CLOSING TIME 8:30 P.M. PURPOSE Concert - Fulton American Band

ADMISSION (if any) Free CHARGE TO BE DEVOTED TO N/A

APPROXIMATE NUMBER OF PEOPLE TO BE PRESENT: ADULTS 100-150 CHILDREN est - 20-30

SIGNATURE OF APPLICANT Carl Rosa DATE 7-21-16

PERSON(S) NAME, ADDRESS & PHONE NUMBER RESPONSIBLE FOR SUPERVISION:
Carl Rosa 203-757-0701 ext. 302

In the event that the Board of Education should need to resort to legal proceedings to collect any outstanding balances, the lessee is responsible for any and all attorney's fees, sheriff's fees and court costs associated with said proceedings. CR (PLEASE INITIAL)

SCHEDULE OF RATES: CUSTODIAL FEES:

RENTAL FEES:

MISCELLANEOUS FEES:

SECURITY DEPOSIT $ INSURANCE COVERAGE ✓ YES NO

PLEASE READ THE FOLLOWING CAREFULLY

APPLICATION MUST BE RECEIVED AT LEAST THREE (3) WEEKS PRIOR TO THE ACTIVITY.

A COPY OF YOUR INSURANCE MUST ACCOMPANY YOUR APPLICATION (IF APPLICABLE)

IF SCHOOL IS CANCELLED FOR SNOW OR ANY OTHER REASON - ALL ACTIVITIES ARE CANCELLED ALSO.

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CANCELLATIONS MUST BE MADE AT LEAST 48 HOURS IN ADVANCE OR YOU WILL BE CHARGED.

POLICE AND FIRE PROTECTION MUST BE ARRANGED AND/OR CANCELLED BY THE RENTER. PLEASE CALL EACH DEPARTMENT FOR INFORMATION. POLICE DEPT. 574-6963 FIRE DEPT. 597-3452

CALL THE SCHOOL CUSTODIAN AT LEAST ONE WEEK PRIOR TO YOUR ACTIVITY FOR ANY ARRANGEMENTS RE: PA SYSTEM, LIGHTING, ETC. (FOR WHICH THERE WILL BE AN EXTRA CHARGE).

KITCHEN FACILITIES CAN NOT BE USED BY GROUPS WITHOUT SUPERVISION - PLEASE CALL THE FOOD SERVICE DEPT. AT 574-6210 TO ARRANGE FOR A FOOD SERVICE PERSON (FOR WHICH THERE WILL BE AN EXTRA CHARGE)

PLEASE SEE REVERSE FOR ADDITIONAL RULES AND REGULATIONS.

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APPROVAL DATE

SCHOOL BUSINESS OFFICE

CHECKS OR MONEY ORDERS FOR FEES SHOULD BE MADE OUT TO THE BOARD OF EDUCATION AND MAILED TO THE SCHOOL BUSINESS OFFICE. NO CASH WILL BE ACCEPTED.

White-Permittee Goldenrod-School Business Office Pink-Principal Blue-Custodian

JUL 15 2016

DEPARTMENT OF EDUCATION - WATERBURY, CONNECTICUT
SCHOOL BUSINESS OFFICE
236 GRAND ST., WATERBURY, CT 06702
USE OF BUILDING PERMIT
TYPE OR USE PEN AND PRESS FIRMLY

CONTRACT# Boy Scouts

APPLICANT Diane Drake, NAME OF ORGANIZATION Connecticut Rivers

ADDRESS 60 Darlin St. E. Hartford 06108 TELEPHONE # 860-341-2929
(street) (city) (state) (zip code)

SCHOOL REQUESTED West Side Middle DATES See attached sheet ROOM(S) Cafeteria, Plus 2 class rooms

OPENING TIME 6pm CLOSING TIME 9pm PURPOSE Roundtable Cub-Boy Scouts

ADMISSION (if any) — CHARGE TO BE DEVOTED TO —

APPROXIMATE NUMBER OF PEOPLE TO BE PRESENT: ADULTS 60-80 CHILDREN 10-15

SIGNATURE OF APPLICANT Diane Drake DATE

PERSON(S) NAME, ADDRESS & PHONE NUMBER RESPONSIBLE FOR SUPERVISION:

Same,

In the event that the Board of Education should need to resort to legal proceedings to collect any outstanding balances, the lessee is responsible for any and all attorney's fees, sheriff's fees and court costs associated with said proceedings. _____ (PLEASE INITIAL)

SCHEDULE OF RATES: CUSTODIAL FEES:

RENTAL FEES:

MISCELLANEOUS FEES:

SECURITY DEPOSIT $ _____ INSURANCE COVERAGE _____ YES _____ NO

PLEASE READ THE FOLLOWING CAREFULLY

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APPROVAL DATE _____ _____
SCHOOL BUSINESS OFFICE

CHECKS OR MONEY ORDERS FOR FEES SHOULD BE MADE OUT TO THE BOARD OF EDUCATION AND MAILED TO THE SCHOOL BUSINESS OFFICE. NO CASH WILL BE ACCEPTED.

White-Permittee Goldenrod-School Business Office Pink-Principal Blue-Custodian

SCHOOL/ROOMS REQUESTED: Cafeteria plus 2 class room

DATE(S): Oct 3, 2016	TIMES: May 1, 2017
DATE(S): Nov 7, 2016	TIMES: June 5, 2017
DATE(S): Dec 5, 2016	TIMES: Oct 2, 2017
DATE(S): Feb 6, 2017	TIMES: Nov 6, 2017
DATE(S): March 6, 2017	TIMES: Dec 4, 2017
DATE(S): April 3, 2017	TIMES:

JUL 25 2016

DEPARTMENT OF EDUCATION - WATERBURY, CONNECTICUT
SCHOOL BUSINESS OFFICE
236 GRAND ST., WATERBURY, CT 06702 CONTRACT#
USE OF BUILDING PERMIT
TYPE OR USE PEN AND PRESS FIRMLY

APPLICANT Shenyuuya Clements NAME OF ORGANIZATION Wby Knights

ADDRESS 124 Washington St Wtby CT 06706 TELEPHONE # 203-819-3766
2nd FL. (street) (city) (state) (zip code)

SCHOOL REQUESTED Kingsbury DATES 8/29/16-12/9/16 ROOM(S) Gym

OPENING TIME 5:45 CLOSING TIME 8pm PURPOSE Cheerleading Practice

ADMISSION (if any)_____ CHARGE TO BE DEVOTED TO_____

APPROXIMATE NUMBER OF PEOPLE TO BE PRESENT: ADULTS_____ CHILDREN_____

SIGNATURE OFAPPLICANT Shenyuuya Clements DATE 7/25/16

PERSON(S) NAME, ADDRESS & PHONE NUMBER RESPONSIBLE FOR SUPERVISION:
Courtney Jones 203-982-1842

In the event that the Board of Education should need to resort to legal proceedings to collect any outstanding balances, the lessee is responsible for any and all attorney's fees, sheriff's fees and court costs associated with said proceedings. SJ (PLEASE INITIAL)

SCHEDULE OF RATES: CUSTODIAL FEES:_____

RENTAL FEES:_____

MISCELLANEOUS FEES:_____

SECURITY DEPOSIT $ ✓ INSURANCE COVERAGE_____YES_____NO

PLEASE READ THE FOLLOWING CAREFULLY

APPLICATION MUST BE RECEIVED AT LEAST THREE (3) WEEKS PRIOR TO THE ACTIVITY.

A COPY OF YOUR INSURANCE MUST ACCOMPANY YOUR APPLICATION (IF APPLICABLE)

IF SCHOOL IS CANCELLED FOR SNOW OR ANY OTHER REASON - ALL ACTIVITIES ARE CANCELLED ALSO.

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CANCELLATIONS MUST BE MADE AT LEAST 48 HOURS IN ADVANCE OR YOU WILL BE CHARGED.

POLICE AND FIRE PROTECTION MUST BE ARRANGED AND/OR CANCELLED BY THE RENTER. PLEASE CALL EACH DEPARTMENT FOR INFORMATION. POLICE DEPT. 574-6963 FIRE DEPT. 597-3452

CALL THE SCHOOL CUSTODIAN AT LEAST ONE WEEK PRIOR TO YOUR ACTIVITY FOR ANY ARRANGEMENTS RE: PA SYSTEM, LIGHTING, ETC. (FOR WHICH THERE WILL BE AN EXTRA CHARGE).

KITCHEN FACILITIES CAN NOT BE USED BY GROUPS WITHOUT SUPERVISION - PLEASE CALL THE FOOD SERVICE DEPT. AT 574-8210 TO ARRANGE FOR A FOOD SERVICE PERSON (FOR WHICH THERE WILL BE AN EXTRA CHARGE)

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APPROVAL DATE_____ _____
SCHOOL BUSINESS OFFICE

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White-Permittee Goldenrod-School Business Office Pink-Principal Blue-Custodian

DEPARTMENT OF EDUCATION - WATERBURY, CONNECTICUT
SCHOOL BUSINESS OFFICE
236 GRAND ST., WATERBURY, CT 06702
USE OF BUILDING PERMIT
TYPE OR USE PEN AND PRESS FIRMLY

JUL 25 2016

CONTRACT#

APPLICANT Shenquaya Clements NAME OF ORGANIZATION Wby Knights

ADDRESS 129 Washington St 2nd FL. (street) Wby (city) CT (state) 06706 (zip code) TELEPHONE # 203-819-3766

SCHOOL REQUESTED Driggs DATES 8-29-16 → 12-9-16 ROOM(S) Gym

OPENING TIME 545 CLOSING TIME 8pm PURPOSE Cheerleading Practice

ADMISSION (if any) _____ CHARGE TO BE DEVOTED TO _____

APPROXIMATE NUMBER OF PEOPLE TO BE PRESENT: ADULTS 6 CHILDREN 30

SIGNATURE OF APPLICANT S Clement DATE 7/25/16

PERSON(S) NAME, ADDRESS & PHONE NUMBER RESPONSIBLE FOR SUPERVISION:
Courtney Jones 203-982-1842

In the event that the Board of Education should need to resort to legal proceedings to collect any outstanding balances, the lessee is responsible for any and all attorney's fees, sheriff's fees and court costs associated with said proceedings. SC (PLEASE INITIAL)

SCHEDULE OF RATES: CUSTODIAL FEES: _____

RENTAL FEES: _____

MISCELLANEOUS FEES: _____

SECURITY DEPOSIT $ _____ INSURANCE COVERAGE _____ YES _____ NO

PLEASE READ THE FOLLOWING CAREFULLY

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APPROVAL DATE _____ _____
SCHOOL BUSINESS OFFICE

CHECKS OR MONEY ORDERS FOR FEES SHOULD BE MADE OUT TO THE BOARD OF EDUCATION AND MAILED TO THE SCHOOL BUSINESS OFFICE. NO CASH WILL BE ACCEPTED.

White-Permittee Goldenrod-School Business Office Pink-Principal Blue-Custodian

Communications

Packet week ending: 7/26/16

236 Grand Street
Waterbury, CT 06702

(203) 574-6761

The City of Waterbury
Connecticut
Department of Human Resources
Office of the Civil Service Commission

July 13, 2016

George Walters, III
926 Pearl Lake Rd.
Waterbury, CT 06706

Dear Mr. Walters, III:

Welcome to employment with the City of Waterbury. Your name is being certified to the Education Department for the position of Maintainer I (Req. #2016239) at $14.48 per hour. Please contact Shannon Sullivan, Acting School Inspector at (203) 574-8013 with any questions you may have in regards to this position.

We have scheduled your orientation for Friday, July 7, 2016 at 9:30 a.m. at the Department of Human Resources located at 236 Grand Street in Waterbury. You must attend this orientation session in order to work for the City. Your first day reporting to your new department/supervisor will be July 8, 2016 at your regular scheduled time.

At the orientation, we will provide you with a brief overview of the City, review its employment practices and complete all required paperwork. You will also be required to provide documentation, mandated by the federal government, to establish your right to work in this country. We have included a sheet that outlines the documents that are acceptable to meet this requirement. You cannot start work without providing us these documents. In addition, if you are an employee eligible for benefits, it is useful to bring the social security numbers and birth dates of your spouse and children in order to complete the insurance enrollment forms.

Please call us prior to the orientation session if you should have any questions regarding the process.

Your new probationary period in accordance with your applicable contract will be 9 months in duration. The department head will be responsible for executing your probationary evaluation no later than 9 months from your first day in your new position.

Again, welcome to the City of Waterbury.

Sincerely,

Scott Morgan
Director of Human Resources
SM/sd
cc Board of Education
Shannon Sullivan, Acting Schl Inspector
Dr. Ouellette, Supt. of Schools

Carrie Swain

From: Robert Goodrich <rgoodrich@racce.net>
Sent: Thursday, July 14, 2016 6:34 PM
To: ANN SWEENEY; Carrie Swain; CHARLES L. STANGO; CHARLES PAGANO; ELIZABETH BROWN; FELIX RODRIGUEZ; JUANITA HERNANDEZ; JOHN THERIAULT; JASON VAN STONE; KAREN HARVEY; Kathleen Ouellette; noleary@waterburyct.org; THOMAS VAN STONE SR.; Robert Brenker; smorgan@waterburyct.org; Shuana K. Tucker
Cc: Arlene Arias
Subject: Minority Teacher Recruitment and Retention Performance Advisory Council and Implementation of Rooney Rules
Attachments: Communityletterforsuuport.pdf; 2016PA-00041-R00SB-00379-PA.pdf; rooneyrules.pdf

Mayor Neil O' Leary, Dr. Ouellette, and Board of Education Commissioners

I have attached a document that outlines two recommendations R.A.C.C.E. believes will eventually lead to an increase of the hiring and retention of non-white educators for the Waterbury Public Schools. The Minority Teacher Recruitment and Retention Performance Advisory Council is a replica of what will be implemented at the state level via Public Act 16-41 . We expect your support and immediate implementation of both recommendations.

Sincerely,
--
Robert M. Goodrich
R.A.C.C.E.
Radical Advocates for Cross-Cultural Education
(203) 597-7456
rgoodrich@racce.net
Like us on Facebook: www.facebook.com/RACCEWtby
Twitter: @raccewtby
Website: **racce.net**

"The obligation of anyone who thinks of himself as responsible is to examine society and try to change it and to fight it – at no matter what risk. This is the only hope society has. This is the only way societies change…"

~James Baldwin~

RADICAL ADVOCATES FOR CROSS-CULTURAL EDUCATION

OUR MISSION IS TO CHALLENGE SYSTEMS OF OPPRESSION BY ADVOCATING FOR CULTURALLY COMPETENT EDUCATIONAL PRACTICES.

Over the last year **R. A. C. C. E.** has worked hard to gain an understanding of the practices that guide Waterbury Public Schools' educator staffing demographics; teacher and administrator hiring practices; and the results of recent efforts to increase the amount non-white educators in our schools. Our efforts, including Dr. Arias's service on a state legislative task force concerned with minority teacher recruitment and retention, have revealed that the staffing levels suffer due to ineffective hiring practices, which are primary contributor to low-level of non-white educators being hired and promoted by the Waterbury Public Schools; and a small pipeline of certified non-white candidates. Waterbury Public Schools educator staffing levels reveal that only 8% of the educator workforce is black or Hispanic. It is important to note that having race congruent student-teacher relationships improves student performance, lowers discipline sanction rates, and increases school connectedness for non-white students as much as it does for white students. Considering the persistent disparities in performance, discipline, and graduation rates for non-white students more resources and more effective strategies to hire more black and Hispanic educators must be embraced by the Waterbury Public Schools. Therefore, we ask you or your organization to support these (2) actions we are requesting the Waterbury Public Schools take, which we believe will immediately impact hiring and retention rates of non-white educators:

1. **The Waterbury Public Schools should implement Rooney Rules.** This practice would require at least one non-white candidate be interviewed for each new teacher hire position and promotional opportunity. Legal experts have proclaimed the positive impact and legality of such rules. It's a reasonable, as well as a good faith effort for Waterbury Public Schools to take.

2. **Create a Minority Teacher Recruitment and Retention Performance Advisory Council.** This council would be a local body that works collaboratively with the Waterbury Public Schools. It would be charged with reviewing current strategies to increase the effective recruitment and hiring of non-white educators; make recommendation on how to improve recruitment and hiring of non-white educators; would create accountability standards for recruitment and retention efforts in partnership with the Waterbury Public Schools; would work with Waterbury Public Schools to engage private and public enterprises to increase awareness about the efficacy of race-congruent student/teacher dyads; search for and procure additional funding for effective practices that result in an increase in non-white educators being hired and retained; finally the council will act independently to market Waterbury as a preferred destination for non-white educator candidates. These strategies will be multifaceted and could include: housing, tuition reimbursement, social networks and community service opportunities. The members of this council shall consists of (1) member of private sector that exhibits proficiency in the area of increasing workplace diversity; (1) Board of Education member; (1) Board of Alderman member; (1) state legislator from the Waterbury delegation; (1) WTA appointee; (2) WPS students; and (4) community stakeholders who have content knowledge and/or an established record of working with students or parents.

We ask that you or your organization sign this document and show your support for these practices to be implemented immediately. Send it back to us via mail Robert Goodrich 14 Stanrod Ave, Waterbury, CT. 06704 or we will come pick it up.

Name_____

Signature_____

Organization_____

Sincerely,

Robert M. Goodrich, Co-founder R.A.C.C.E.

rgoodrich@racce.net or (203) 597-7456 RACCE.net

Senate Bill No. 379

Public Act No. 16-41

AN ACT CONCERNING THE RECOMMENDATIONS OF THE MINORITY TEACHER RECRUITMENT TASK FORCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 5 of public act 15-108 is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There is established a task force to study and develop strategies to increase and improve the recruitment, preparation and retention of minority teachers, as defined in section 10-155*l* of the general statutes, in public schools in the state. Such study shall include, but need not be limited to, (1) an analysis of the causes of minority teacher shortages in the state, (2) an examination of current state-wide and school district demographics, and (3) a review of best practices.

(b) The task force shall consist of the following members:

(1) One appointed by the speaker of the House of Representatives;

(2) One appointed by the president pro tempore of the Senate;

(3) One appointed by the majority leader of the House of Representatives, who shall be a member of the Black and Puerto Rican Caucus of the General Assembly;

(4) One appointed by the majority leader of the Senate;

(5) One appointed by the minority leader of the House of Representatives;

(6) One appointed by the minority leader of the Senate;

(7) The Commissioner of Education, or the commissioner's designee;

(8) The president of the Board of Regents for Higher Education, or the president's designee;

(9) The executive director of the Latino and Puerto Rican Affairs Commission, or the executive director's designee;

(10) The executive director of the African-American Affairs Commission, or the executive director's designee; [and]

(11) The executive director of the Commission on Children, or the executive director's designee; and

(12) The executive director of the Asian Pacific American Affairs Commission, or the executive director's designee.

(c) Any member of the task force appointed under subdivision (1), (2), (3), (4), (5) or (6) of subsection (b) of this section may be a member of the General Assembly.

(d) All appointments to the task force shall be made not later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(e) The speaker of the House of Representatives and the president pro tempore of the Senate shall select the chairpersons of the task force from among the members of the task force. Such chairpersons shall schedule the first meeting of the task force, which shall be held not

later than sixty days after the effective date of this section.

(f) The administrative staff of the joint standing committee of the General Assembly having cognizance of matters relating to education shall serve as administrative staff of the task force.

(g) Not later than [February 1, 2016] June 30, 2017, the task force shall submit a report on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to education, in accordance with the provisions of section 11-4a of the general statutes. [The task force shall terminate on the date that it submits such report or February 1, 2016, whichever is later.]

(h) The task force shall terminate on January 1, 2026.

Sec. 2. (NEW) (*Effective July 1, 2016*) There is established a Minority Teacher Recruitment Policy Oversight Council within the Department of Education. The council shall consist of (1) the Commissioner of Education, or the commissioner's designee, (2) two representatives from the minority teacher recruitment task force, established pursuant to section 5 of public act 15-108, as amended by this act, (3) one representative from each of the exclusive bargaining units for certified employees, chosen pursuant to section 10-153b of the general statutes, (4) the president of the Board of Regents for Higher Education, or the president's designee, and (5) a representative from an alternate route to certification program, appointed by the Commissioner of Education. The council shall hold quarterly meetings and advise, at least quarterly, the Commissioner of Education, or the commissioner's designee, on ways to (A) encourage minority middle and secondary school students to attend institutions of higher education and enter teacher preparation programs, (B) recruit minority students attending institutions of higher education to enroll in teacher preparation programs and pursue teaching careers, (C) recruit and retain minority

teachers in Connecticut schools, (D) recruit minority teachers from other states to teach in Connecticut schools, and (E) recruit minority professionals in other fields to enter teaching. The council shall report, annually, in accordance with the provisions of section 11-4a of the general statutes, on the recommendations given to the commissioner, or the commissioner's designee, pursuant to the provisions of this section, to the joint standing committee of the General Assembly having cognizance of matters relating to education. For purposes of this section, "minority" means individuals whose race is defined as other than white, or whose ethnicity is defined as Hispanic or Latino by the federal Office of Management and Budget for use by the Bureau of Census of the United States Department of Commerce.

Sec. 3. (NEW) (*Effective July 1, 2016*) Not later than January 1, 2017, and annually thereafter, the Department of Education shall conduct a survey of students participating in minority teacher recruitment programs offered by regional educational service centers or at a public institution of higher education in the state. Such survey shall include questions relating to the components and effectiveness of the minority teacher recruitment program. The department shall report, annually, in accordance with the provisions of section 11-4a of the general statutes, on the results and findings of the survey to the joint standing committee of the General Assembly having cognizance of matters relating to education.

Sec. 4. Subsections (a) and (b) of section 10-145f of the 2016 supplement to the general statutes are repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(a) [No] Each person [shall be] formally admitted to a State Board of Education approved teacher preparation program [until such person has achieved satisfactory scores on] shall take the state reading, writing and mathematics competency examination, prescribed by and administered under the direction of the State Board of Education. [, or

has qualified for a waiver of such test based on criteria established by the State Board of Education] Each person's results shall be used as a diagnostic tool, in accordance with the guidelines adopted by the State Board of Education pursuant to section 5 of this act, for purposes of providing any necessary remedial instruction to such person while he or she is enrolled in such teacher preparation program.

(b) (1) Any person who does not hold a valid certificate pursuant to section 10-145b, as amended by this act, shall [(A) achieve satisfactory scores on the state reading, writing and mathematics competency examination prescribed by and administered under the direction of the State Board of Education, or qualify for a waiver of such test based on criteria approved by the State Board of Education, and (B)] achieve a satisfactory evaluation on the appropriate State Board of Education approved subject area assessment in order to be eligible for a certificate pursuant to said section unless such assessment has not been approved by the State Board of Education at the time of application, in which case the applicant shall not be denied a certificate solely because of the lack of an evaluation on such assessment. [A person who holds a valid school administrator certificate in another state that is at least equivalent to an initial educator certificate, pursuant to section 10-145b, as determined by the State Board of Education, and has successfully completed three years of experience as a school administrator in a public school in another state or in a nonpublic school approved by the appropriate state board of education during the ten-year period prior to the date of application for a certificate in a school administration endorsement area shall not be required to meet the state reading, writing and mathematics competency examination.]

(2) Any person applying for an additional certification endorsement shall achieve a satisfactory evaluation on the appropriate State Board of Education approved subject area assessment in order to be eligible for such additional endorsement, unless such assessment has not been

approved by the State Board of Education at the time of application, in which case the applicant shall not be denied the additional endorsement solely because of the lack of an evaluation on such assessment.

(3) On and after July 1, 1992, any teacher who held a valid teaching certificate but whose certificate lapsed and who had completed all requirements for the issuance of a new certificate pursuant to section 10-145b, except for filing an application for such certificate, prior to the date on which the lapse occurred, may file, within one year of the date on which the lapse occurred, an application with the Commissioner of Education for the issuance of such certificate. Upon the filing of such an application, the commissioner may grant such certificate and such certificate shall be retroactive to the date on which the lapse occurred, provided the commissioner finds that the lapse of the certificate occurred as a result of a hardship or extenuating circumstances beyond the control of the applicant. If such teacher has attained tenure and is reemployed by the same board of education in any equivalent unfilled position for which the person is qualified as a result of the issuance of a certificate pursuant to this subdivision, the lapse period shall not constitute a break in employment for such person reemployed and shall be used for the purpose of calculating continuous employment pursuant to section 10-151. If such teacher has not attained tenure, the time unemployed due to the lapse of a certificate shall not be counted toward tenure, except that if such teacher is reemployed by the same board of education as a result of the issuance of a certificate pursuant to this subdivision, such teacher may count the previous continuous employment immediately prior to the lapse towards tenure. Using information provided by the Teachers' Retirement Board, the Department of Education shall annually notify each local or regional board of education of the name of each teacher employed by such board of education whose provisional certificate will expire during the period of twelve months following such notice. Upon receipt of such

notice the superintendent of each local and regional board of education shall notify each such teacher in writing, at such teacher's last known address, that the teacher's provisional certificate will expire.

(4) Notwithstanding the provisions of this subsection to the contrary, to be eligible for a certificate to teach subjects for which a bachelor's degree is not required, any applicant who is otherwise eligible for certification in such endorsement areas shall be entitled to a certificate without having met the requirements of the competency examination and subject area assessment pursuant to this subsection for a period not to exceed two years, except that for a certificate to teach skilled trades or trade-related or occupational subjects, the commissioner may waive the requirement that the applicant take the competency examination. The commissioner may, upon the showing of good cause, extend the certificate.

(5) On and after July 1, 2011, any person applying for a certification in the endorsement area of elementary education shall achieve a satisfactory evaluation on the appropriate State Board of Education approved mathematics assessment in order to be eligible for such elementary education endorsement.

Sec. 5. (*Effective from passage*) Not later than January 1, 2017, the State Board of Education shall adopt guidelines relating to the use of scores on the state reading, writing and mathematics competency examination, prescribed by and administered under the direction of the State Board of Education pursuant to subsection (a) of section 10-145f of the general statutes, as amended by this act. Such guidelines shall establish standards for using such scores as a diagnostic tool for the purpose of providing any remedial instruction in areas identified by such scores to students enrolled in a State Board of Education approved teacher preparation program. The state board may revise and update such guidelines as necessary.

Sec. 6. (NEW) (*Effective July 1, 2016*) Not later than July 1, 2017, and annually thereafter, the Department of Education shall submit a report using results-based accountability measures to assess the effectiveness of minority teacher recruitment programs in the state to the joint standing committees of the General Assembly having cognizance of matters relating to education and appropriations, in accordance with the provisions of section 11-4a of the general statutes. Such minority teacher recruitment programs shall include, but not be limited to, any program administered by a regional educational service center pursuant to section 10-155*l* of the general statutes, and the minority teacher incentive program administered by the Office of Higher Education pursuant to section 10a-168a of the general statutes.

Sec. 7. (NEW) (*Effective July 1, 2016*) (a) For purposes of this section, "school support staff" means any person employed by a local or regional board of education as a board certified behavior analyst or board certified assistant behavior analyst, as such terms are defined in section 20-185i of the general statutes, athletic coach, as defined in section 10-149d of the general statutes, or school paraprofessional.

(b) The Department of Education shall review and approve proposals for alternate route to certification programs for persons employed as school support staff. In order to be approved, a proposal shall provide that the alternate route to certification program (1) be provided by a public or independent institution of higher education, a local or regional board of education, a regional educational service center or a private, nonprofit teacher or administrator training organization approved by the State Board of Education; (2) accept only those participants who (A) hold a bachelor's degree from an institution of higher education accredited by the Board of Regents for Higher Education or the Office of Higher Education or regionally accredited, (B) have been employed as school support staff by a local or regional board of education for at least forty school months, and (C) are

recommended by the immediate supervisor or district administrator of such person on the basis of such person's performance; (3) require each participant to complete a one-year residency that requires such person to serve (A) in a position requiring professional certification, and (B) in a full-time position for ten school months at a local or regional board of education in the state under the supervision of (i) a certified administrator or teacher, and (ii) a supervisor from an institution or organization described in subdivision (1) of this subsection; and (4) meet such other criteria as the department requires.

(c) Notwithstanding the provisions of subsection (d) of section 10-145b of the general statutes, on and after July 1, 2016, the State Board of Education, upon receipt of a proper application, shall issue an initial educator certificate, which shall be valid for three years, to any person who (1) successfully completed the alternate route to certification program under this section, and (2) meets the requirements established in subsection (b) of section 10-145f of the general statutes, as amended by this act.

(d) Notwithstanding any regulation adopted by the State Board of Education pursuant to section 10-145b of the general statutes, as amended by this act, any person who successfully completed the alternate route to certification program under this section and was issued an initial educator certificate in the endorsement area of administration and supervision shall obtain a master's degree not later than five years after such person was issued such initial educator certificate. If such person does not obtain a master's degree in such time period, such person shall not be eligible for a professional educator certificate.

Sec. 8. Subdivision (3) of subsection (h) of section 10-145b of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(3) Except as otherwise provided in section 10-146c, upon receipt of a proper application, the State Board of Education shall issue to a teacher from another state, territory or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico who (A) [is nationally board certified by an organization deemed appropriate by the Commissioner of Education to issue such certifications, (B)] has taught in another state, territory or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico for a minimum of two years in the preceding ten years, [and (C) holds a master's degree in an appropriate subject matter area, as determined by the State Board of Education, related to such teacher's certification endorsement area, a professional] (B) has received at least two satisfactory performance evaluations while teaching in such other state, territory or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico, and (C) has fulfilled post-preparation assessments as approved by the commissioner, a provisional educator certificate with the appropriate endorsement, subject to the provisions of subsection (i) of this section relating to denial of applications for certification. [Applicants who have] An applicant who has taught under an appropriate certificate issued by another state, territory or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico for two or more years shall be exempt from completing the beginning educator program based upon such teaching experience upon a showing of effectiveness as a teacher, as determined by the State Board of Education, which may include, but need not be limited to, a demonstrated record of improving student achievement. An applicant who has successfully completed a teacher preparation program or an alternate route to certification program in another state, territory or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico and holds an appropriate certificate issued by another state, territory or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico shall not

be required to complete a course of study in special education, pursuant to subsection (d) of this section. An applicant with two or more years of teaching experience in this state at a nonpublic school, approved by the State Board of Education, in the past ten years shall be exempt from completing the beginning educator program based upon such teaching experience upon a showing of effectiveness as a teacher, as determined by the State Board of Education, which may include, but need not be limited to, a demonstrated record of improving student achievement.

Sec. 9. Section 10-146c of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(a) As used in this section:

(1) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or territories or possessions of the United States; and

(2) "Educator preparation program" means a program designed to qualify an individual for professional certification as an educator provided by institutions of higher education or other providers, including, but not limited to, an alternate route to certification program.

(b) The Commissioner of Education, or the commissioner's designee, as agent for the state shall establish or join interstate agreements with other states to facilitate the certification of qualified educators from other states. [, territories or possessions of the United States, or the District of Columbia or the Commonwealth of Puerto Rico, provided] Any such interstate agreement shall include provisions requiring candidates for certification to, at a minimum, (1) hold a bachelor's degree from a regionally accredited college or university, (2) have

fulfilled post preparation assessments as approved by the commissioner, [have taught under an appropriate certificate issued by another state, territory or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico and meet all conditions as mandated by such interstate agreement] and (3) have successfully completed an approved educator preparation program. Notwithstanding the provisions of sections 10-145b and 10-145f, as amended by this act, the State Board of Education shall issue [an initial educator] the appropriate professional certificate to any [person] applicant, based on such applicant's qualifications, who satisfies the requirements of [this section and] the appropriate interstate agreement.

(c) If the commissioner is unable to establish or join an interstate agreement with another state, the commissioner may create and make available a recognition statement that specifies the states, assessments and educator preparation programs that the commissioner will recognize for purposes of issuing professional certification under sections 10-145b and 10-145f, as amended by this act.

Approved May 27, 2016

HOW DIVERSITY CAN REDEEM THE *MCDONNELL DOUGLAS* STANDARD: MOUNTING AN EFFECTIVE TITLE VII DEFENSE OF THE COMMITMENT TO DIVERSITY IN THE LEGAL PROFESSION

*Stacy Hawkins**

INTRODUCTION

This Article undertakes an analysis, both quantitative and qualitative, of the developing body of Title VII diversity law.[1] The jurisprudence of

* Assistant Professor, Rutgers School of Law–Camden. I would like to thank the Rutgers Camden Junior Faculty for their helpful comments and suggestions on an earlier draft of this Article, as well as the participants of the colloquium on *The Challenge of Equity and Inclusion in the Legal Profession: An International and Comparative Perspective* held at Fordham University School of Law. For an overview of the colloquium, see Deborah L. Rhode, *Foreword: Diversity in the Legal Profession: A Comparative Perspective*, 83 FORDHAM L. REV. 2241 (2015).

1. The term "diversity law" or "diversity jurisprudence" is meant to refer to the developing body of law in which an interest in racial, ethnic, gender, and other types of demographic diversity as a means of achieving instrumental goals, such as improved student learning or better preparation for, or performance of, work, is asserted as a legal justification or defense for the consideration of race, ethnicity, and/or gender in contexts and under circumstances where such consideration would otherwise be prohibited by law. *See* Stacy L. Hawkins, *A Deliberative Defense of Diversity: Moving Beyond the Affirmative Action Debate to Embrace a 21st Century View of Equality*, 2 COLUM. J. RACE & L. 75 (2012) (discussing the development of the U.S. Supreme Court's diversity jurisprudence in equal protection law). The two most common legal proscriptions on the use of race, ethnicity, and/or gender in response to which an interest in "diversity" has been asserted as a legal justification for permitting the use of race, ethnicity, and/or gender are the prohibitions on their use under the Equal Protection Clause and under Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. §§ 2000e to 2000e-17 (2012) (prohibiting the consideration of race, color, religion, sex, and national origin in employment); Craig v. Boren, 429 U.S. 190, 197 (1976) (prohibiting gender classifications under equal protection except when justified by important government interests); Korematsu v. United States, 323 U.S. 214, 216 (1944) (declaring the uses of race and national origin constitutionally "suspect" under the Equal Protection Clause and generally proscribing their use). Generally, the most common justification for permitting the use of race, ethnicity, and/or gender in these contexts is remedying past discriminatory conduct. *See, e.g.*, Johnson v. Transp. Agency, 480 U.S. 616, 639–42 (1987) (permitting the use of gender in selection for employment to correct for past exclusionary practices); United Steelworkers, Inc. v. Weber, 443 U.S. 193, 208 (1979) (permitting the use of race in selection for a workplace training program to correct for past discriminatory practices); Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 328 (1978) (Blackman, J., concurring) (acknowledging that remedying past institutional discrimination could justify the use of race in admissions); Califano v. Webster, 430 U.S. 313, 316–18 (1977) (permitting the consideration of gender in the calculation of social security benefits to

diversity was first developed by the U.S. Supreme Court in equal protection cases,[2] but it has not been confined to that context. In particular, lower federal courts have been adjudicating cases asserting an interest in diversity as a means of challenging or justifying race/ethnicity- or gender-conscious policies and/or practices under Title VII.[3] These cases have given rise to a body of Title VII diversity law that has remained largely unexplored in the scholarly literature.[4] Because these cases have gone largely unnoticed, they

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correct for past discrimination in employment). Under both of these bodies of law (equal protection and Title VII), courts have begun to develop a diversity jurisprudence adjudicating the permissibility of using race/ethnicity and/or gender as a means of achieving instrumental, rather than remedial, institutional goals. *See* Grutter v. Bollinger, 539 U.S. 306, 328–33 (2003) (asserting that an interest in student body diversity should sustain the use of race/ethnicity in college and university admissions, notwithstanding the fact that race is a "suspect classification" and therefore generally proscribed under equal protection, because of the educational benefits that flow from such diversity); Mlynczak v. Bodman, 442 F.3d 1050, 1054 (7th Cir. 2006) (asserting that the interest in ensuring a diverse applicant pool justified active recruitment of women and minority candidates notwithstanding the prohibitions on the use of race and gender under Title VII); Petit v. City of Chicago, 352 F.3d 1111, 1114–15 (7th Cir. 2003) (asserting that an interest in a diverse police force, which enhances operational efficacy in racially and ethnically diverse neighborhoods, should permit the consideration of race in the selection of police offers by the Chicago Police Department notwithstanding the prohibitions on the use of race under equal protection). These cases form the body of developing "diversity law."

2. *See Grutter*, 539 U.S. at 326; Metro Broad., Inc. v. FCC, 497 U.S. 547, 552 (1990); *Bakke*, 438 U.S. at 281. In *Bakke*, a white male plaintiff challenged the race-conscious admissions program employed by the University of California Davis Medical School as a violation of his right to equal protection. *Bakke*, 438 U.S. at 269–70. Although a majority of the Court voted to strike down the race-conscious admissions program because it amounted to an impermissible racial quota system, Justice Powell's plurality opinion suggested that race could be a legitimate factor in college admissions decisions if the purpose was to obtain the educational benefits that flow from student body diversity, if the consideration of race were sufficiently individualized, and if other safeguards ensured that its use was consistent with equal protection. *See id.* at 311–15. In *Metro Broadcasting*, a majority-owned broadcast station challenged the minority preference policies, adopted by the FCC to increase the diversity of programming content, as a violation of equal protection. *Metro Broad.*, 497 U.S. at 552. The Court upheld the minority preference policies finding that the interest in programming diversity was sufficiently important to justify the use of race under the Equal Protection Clause. *Id.* at 567–68. Although *Metro Broadcasting* has been overruled insofar as the Court applied an intermediate standard of review in that case, *see* Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995) (finding that the strict scrutiny standard of review applies to all uses of race under the Equal Protection Clause), the Court has not had any occasion to consider the question of whether the interest in programming diversity might satisfy the higher strict scrutiny standard of review. In *Grutter*, a white female plaintiff challenged the race-conscious admissions program employed by the University of Michigan Law School as a violation of her right to equal protection. *Grutter*, 539 U.S. at 316. Adopting the reasoning articulated by Justice Powell in *Bakke*, a majority of the Court found that the interest in student body diversity is sufficiently compelling to justify the use of race in college and university admissions so long as the use of race otherwise satisfies the strict scrutiny requirement that it be narrowly tailored to achieve that interest. *Id.* at 329–33. For further discussion of the jurisprudence of diversity developed in these three cases, see Hawkins, *supra* note 1.

3. *See* discussion *infra* Part II.

4. There are some student notes that, in trying to predict the impact of *Grutter* on Title VII law, analyzed some of the employment cases decided in the immediate aftermath of *Grutter*. *See, e.g.*, Daniela M. de la Piedra, Note, *Diversity Initiatives in the Workplace: The Importance of Furthering the Efforts of Title VII*, 4 MOD. AM. 43 (2008) (discussing post-

have not been mined for any guidance they might offer to employers generally, and legal employers specifically, on how best to structure workplace diversity efforts to minimize the risk of legal liability under Title VII and, conversely, to maximize their Title VII defense. This Article surveys these cases and offers an analysis that seeks to: (1) situate this developing body of diversity law within the existing Title VII landscape, and (2) inform the development of legally defensible workplace diversity programs.

This analysis is motivated by, and responsive to, three intersecting concerns. The first concern is the continuing debate within the legal community about how we ought to define and justify the profession's commitment to diversity. Despite a longstanding commitment to diversity, we continue to debate the justifications for this commitment.[5] This debate often pits the "moral case" for diversity against the "business case" for diversity.[6] Notwithstanding this debate, an analysis of the decided Title VII diversity cases reveals that it matters less, in terms of legal defensibility, how diversity efforts are justified in principle than how they operate in practice.[7] In light of this, it bears considering whether we ought to refocus some of our deliberation away from the ongoing debate about *why* we should be committed to diversity in the profession and toward consideration of *how* we should operationalize that commitment. Rather than, or perhaps in addition to, focusing on why we pursue diversity, the suggestion here is that we engage ourselves more actively in exploring how we might pursue the commitment to diversity in the legal profession in ways that do not unnecessarily increase the risk of legal liability, which might dampen these efforts.[8]

Grutter cases in defense of employer diversity efforts); Jared M. Mellott, Note, *The Diversity Rationale for Affirmative Action in Employment After* Grutter*: The Case for Containment*, 48 WM. & MARY L. REV. 1091 (2006) (discussing post-*Grutter* cases addressing consideration of diversity interest under Title VII and suggesting limitation of Title VII to remedial rationale). However, legal scholars have not yet turned their attention to this developing body of law as a whole.

5. *See, e.g.*, Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079 (2011); David B. Wilkins, *From "Separate Is Inherently Unequal" to "Diversity Is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004).

6. *See* Wald, *supra* note 5, at 1081. The primary arguments in this debate are: (1) the legal profession should be committed to diversity in the profession because it is the "right thing to do" in view of the profession's long history of exclusion, particularly of women and racial/ethnic minorities, and (2) the legal profession ought to pursue diversity because it is the "smart thing to do" in view of a changing marketplace and increasing demands by corporate clients for diverse teams capable of responding to that changing marketplace. Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. LEGAL PROF. 1, 9–10 (2009). These two arguments are often referred to in shorthand as the "moral case" for diversity, i.e., it is the "right thing" to do, and the "business case," i.e., it is the "smart thing" to do. *Id.* at 3 ("Moral arguments for diversity are shifting to market-based arguments. . . . that diversity is good for business.").

7. *See* discussion *infra* Part II.

8. *See* discussion *infra* Part II.

The second concern follows from the first. Regardless of how the commitment to diversity is justified, there is significant uncertainty and confusion about the legality of workplace diversity efforts as they have been articulated and/or adopted by the legal profession.[9] In particular, the commitment to diversity within the legal profession in large part entreats legal employers to adopt policies and practices that foster the hiring, retention, promotion, and advancement of women and minority attorneys, among others.[10] Attendant to this commitment, legal employers face increasing demands from external stakeholders to produce demonstrable evidence of success in achieving these diversity goals.[11] The need and/or

9. In my twelve years of diversity practice prior to teaching law, I commonly encountered two extreme, contradictory, and almost certainly wrong perceptions about the legal defensibility of workplace diversity efforts generally. The first is that workplace diversity efforts are not subject to the prohibitions of Title VII, which are presumed to extend only to more traditional affirmative action efforts and otherwise remedial uses of race, ethnicity, and/or gender in the workplace, rather than the more instrumental uses of race, ethnicity, and/or gender proffered in support of diversity. See Hawkins, *supra* note 1, at 80–90 for a discussion of the difference between affirmative action and diversity. The second perception is that diversity efforts are categorically prohibited under Title VII unless they can be defended under the standards applicable to traditional affirmative action plans. *See* Curt A. Levey, *The Legal Implications of Complying with Race- and Gender-Based Client Preferences*, 8 ENGAGE 14, 16 (2007), *available at* http://www.fed-soc.org/library/doclib/20080314_CivRightsCurtLevey.pdf. It seems likely that neither of these perspectives is entirely right but that the reality of the legal defensibility of workplace diversity efforts lies somewhere between these extremes. This Article attempts to respond to these opposing views by outlining the contours of the legal analysis applicable to workplace diversity efforts.

10. The American Bar Association (ABA) adopted Goal IX in 1986 to promote the "full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities." *Goal III Report*, ABA, http://www.americanbar.org/groups/disabilityrights/initiatives_awards/goal_3.html (last visited Mar. 25, 2015). Since that time, various state and local bar associations, as well as other professional associations of lawyers, have adopted similar commitments to enhance the full and equal participation by women and racial and ethnic minority attorneys, among others, in the legal profession, including, for instance, the Pennsylvania Bar Association, the Association of the Bar of the City of New York, the Bar Association of San Francisco, the Boston Bar Association, and the Colorado Bar Association, just to name a few. *See, e.g.*, ASS'N OF THE BAR OF THE CITY OF N.Y., STATEMENT OF DIVERSITY PRINCIPLES (2003), *available at* http://www.nycbar.org/images/stories/pdfs/diversity/statement-of-diversity-principles.pdf. In 1999, then–BellSouth General Counsel Charles Morgan, on behalf of roughly 500 corporate counsel, urged outside law firms to embrace this commitment to diversity. *See Charles R. Morgan: Leading General Counsel—And Their Law Firms—Up the Path to Diversity*, METRO. CORP. COUNS., Mar. 2006, at 47. In 2004, then Sara Lee General Counsel, Roderick Palmore, extended this commitment by asking his fellow corporate counsel to "pledg[e to] make decisions regarding which law firms represent [their] companies based in significant part on the diversity performance of the firm" and, likewise, to "end or limit [their] relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse." RICK PALMORE, A CALL TO ACTION: DIVERSITY IN THE LEGAL PROFESSION 1 (2004), *available at* http://www.acc.com/vl/public/Article/loader.cfm?csModule=security/getfile&pageid=16074. Within a year, seventy-two companies had signed on to the more aggressive proposal. *See* Melanie Lasoff Levs, *Call to Action—Sara Lee's General Counsel: Making Diversity a Priority*, DIVERSITY & B., Jan./Feb. 2005, *available at* http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=803.

11. These pressures emanate from a number of sources, including the organized bar (Austin Minority Bar Association Law Firm Diversity Report Card), law students (Law

desire to satisfy these external demands for diversity has created considerable pressure on legal employers, law firms in particular, and has sometimes caused them to engage in questionable diversity practices.[12] Some of these practices have generated widespread concern for, and in some cases outright threats of litigation challenging, their legality under Title VII.[13] So the second aim of this Article is to determine the legal defensibility of the various practices employed most often by law firms, among others, to increase their diversity.

The final aim of this Article is to engage those scholars who have criticized Title VII, in particular the prevailing *McDonnell Douglas* standard.[14] This critique condemns the *McDonnell Douglas* standard for its

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Students for a Better Profession), the legal media (The American Lawyer Diversity Scorecard), and in-house counsel (A Call to Action). For example, Wal-Mart, which is well known for its commitment to the diversity of outside counsel, has been both lauded and criticized for its requirement that each of its outside law firms identify both a woman and a minority for consideration as the relationship partner for its business. *See* Angela Brouse, Comment, *The Latest Call for Diversity in Law Firms: Is It Legal?*, 75 UMKC L. REV. 847, 848 (2007); Clare Tower Putnam, Comment, *When Can a Law Firm Discriminate Among Its Own Employees to Meet a Client's Request? Reflections on the ACC's Call to Action*, 9 U. PA. J. LAB. & EMP. L. 657 (2007). This demand is likely related to Palmore's Statement of Principle, *see* PALMORE, *supra* note 10, urging corporate counsel to make decisions about outside counsel based on their diversity performance. The proliferation of diversity surveys on behalf of bar associations and the legal media have also contributed to these external pressures, which are not necessarily limited to law firms. *See, e.g.*, PA. BAR ASS'N, COMMISSION ON WOMEN IN THE PROFESSION: 19TH ANNUAL REPORT CARD (2013), *available at* http://www.pabar.org/pdf/PBAWIPReportCard19Apr2013.pdf (reporting the gender diversity of various sectors of the legal profession, including the state and federal judiciary, the bar association, and private practice). There additionally have been calls by the organized bar and others for law firms to tie diversity management to partner compensation in an effort to ensure adequate accountability for improving workplace diversity. *See, e.g.*, PRESIDENTIAL DIVERSITY INITIATIVE, ABA, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 16 (2011), *available at* http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf (acknowledging with approval that "some law firms have begun to tie employees' compensation to their demonstrated commitment to diversity in recruiting, mentoring, and work assignments); Roy Strom, *Strengthening the Business Case for Diversity*, CHI. LAW. (July 2012), http://www.chicagolawyermagazine.com/Archives/2012/07/Business-Case-For-Diversity.aspx (indicating that a client request for production inquired whether outside counsel was willing to "tie a portion of your compensation to achieving diversity staffing commitments"). I discuss the legal defensibility of these various efforts below. *See* discussion *infra* Part II.

12. The pressure is particularly intense as the demand increasingly comes from clients. *See supra* note 10.

13. Curt Levey has sent letters to a number of law firms demanding that they refrain from certain diversity practices or risk the threat of litigation. *See also* Charles A. Sullivan, *Circling Back to the Obvious: The Convergence of Traditional and Reverse Discrimination in Title VII Proof*, 46 WM. & MARY L. REV. 1031, 1035 (2004) (acknowledging that "EEOC filings increasingly challenge reverse discrimination").

14. *See, e.g.*, Lauren B. Edelman et al., *Diversity Rhetoric and the Managerialization of the Law*, 106 AM. J. SOC. 1589, 1591 (2001) [hereinafter Edelman et al., *Diversity Rhetoric*] (citing diversity as both a potential benefit and a threat to the extension of legal protections for groups who have traditionally experienced discrimination in the workplace and for whose benefit civil rights laws, such as Title VII, were presumably enacted); Lauren B. Edelman et al., *When Organizations Rule: Judicial Deference to Institutionalized Employment Structures*, 117 AM. J. SOC. 888, 901 (2011) (studying the wide berth of judicial deference to

increasing failure to protect women and racial/ethnic minorities from workplace discrimination.[15] It also rejects the developing jurisprudence of diversity for its perceived inability to fill the growing gap between the workplace harms suffered by women and racial/ethnic minorities and the protection of law afforded to them under Title VII.[16] This Article attempts to redeem the *McDonnell Douglas* standard by demonstrating that it is a viable means of defending workplace diversity efforts, which are often viewed as beneficial for women and racial/ethnic minorities, against reverse discrimination challenges.[17] The successful defense of these voluntary workplace diversity efforts has become a critical strategy for vindicating the employment rights of women and racial/ethnic minorities as the success of more traditional litigation strategies has waned.[18]

This Article is divided into three parts. Part I provides an overview of the existing landscape of Title VII law, identifying those places where there is critical intersection with the developing body of diversity law. Part II then surveys the developing Title VII diversity law, offering both a quantitative and qualitative analysis of relevant cases in an effort to synthesize this area of the law before applying it to the issue of law firm diversity efforts. Part II then offers some practical guidance for how law firms might structure their diversity efforts to minimize the risk of legal liability and maximize their legal defense. Finally, Part III forecasts how this developing body of diversity law might redeem the *McDonnell Douglas* standard by altering the legal landscape of Title VII in a way that favors the interests of racial/ethnic minorities and women in the workplace.

I. THE PREVAILING LEGAL STANDARDS

To situate the developing Title VII diversity law within the existing Title VII landscape, it is necessary to first survey the existing landscape. Title VII is the federal law that makes it an "unlawful employment practice" for any employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."[19] A plaintiff alleging a violation of Title VII may prove discrimination by the direct

employers in Title VII cases); Natasha T. Martin, *Pretext in Peril*, 75 MO. L. REV. 313, 315, 388 (2010) (complaining that "[p]laintiffs have a hard row to hoe in proving unlawful discrimination" and that "[c]ourts protect employers from the stigma of discrimination . . . [c]asting employers as inclusive, benevolent, and fair").

15. *See* Martin, *supra* note 14.

16. *See* Edelman et al., *Diversity Rhetoric*, *supra* note 14.

17. Workplace diversity efforts are not universally viewed as beneficial for woman and racial/ethnic minorities. *See, e.g.*, Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2223 (2013) (lamenting that diversity tokenizes minority groups for the sake of financial gain largely for the benefit of white male individuals and institutions). *But see* Stacy L. Hawkins, *Selling Diversity Short: An Essay Responding to Nancy Leong's "Racial Capitalism,"* 40 RUTG. L. REC. 68, 74 (2013) (responding to Leong by arguing that diversity is, or at least has the potential to be, more beneficial than harmful to minorities).

18. *See supra* note 14.

19. 42 U.S.C. § 2000e-2(a)(1) (2012).

method of proof, in which case the plaintiff must offer evidence from which a trier of fact could conclude without inference that the challenged employment action was taken because of unlawful discrimination.[20] This direct method of proof, however, is difficult to sustain, and plaintiffs rarely pursue it.[21] Alternatively, the plaintiff may prove unlawful discrimination using the indirect method of proof. Pursuant to this method of proof, the plaintiff must offer evidence from which a trier of fact could infer that unlawful discrimination more likely than not motivated the challenged employment action.[22] If the plaintiff offers proof of unlawful discrimination under Title VII using the indirect method, the *McDonnell Douglas* burden-shifting framework applies.[23] This burden-shifting framework operates as follows. First, the plaintiff/employee is required to establish a prima facie case of discrimination.[24] This burden is minimal; the plaintiff/employee need only offer evidence that: (1) he/she is in a protected class or, in the case of some reverse discrimination claims, that background circumstances demonstrate that the defendant is the unusual employer who discriminates against the majority;[25] (2) he/she was qualified for the position sought (in the case of failure to hire/promote) or met the employer's legitimate expectations (in the case of termination or discipline); and (3) similarly situated employees were treated differently or

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20. *See* Frank v. Xerox Corp., 347 F.3d 130, 137 (5th Cir. 2003); Sinio v. McDonald's Corp., No. 04 C 4161, 2007 WL 869553, at *7 (N.D. Ill. Mar. 19, 2007) ("The direct method of proving unlawful discrimination requires that the plaintiff offer evidence [that] . . . if believed, proves that the employer's actions were motivated by discriminatory intent without reliance on inference or presumption.").

21. *See infra* Table 1 (demonstrating that only three of forty-four cases studied involved claims of direct evidence of discrimination). However, as demonstrated by the survey of decided diversity cases below, plaintiffs were more likely to pursue this direct method of proof when there was evidence that the challenged employment action was taken pursuant to an affirmative action plan (AAP). *See infra* Table 1. This is because affirmative action plans, particularly when they arise from litigation resulting in a consent or settlement decree, often permit the conscious consideration of race/ethnicity or gender by employers in hiring or promotion decisions. *See Xerox*, 347 F.3d at 137 ("The existence of an affirmative action plan . . . when combined with evidence that the plan was followed in an employment decision is sufficient to constitute direct evidence of the unlawful discrimination unless the plan is valid." (quoting Bass v. Bd. of Cnty. Comm'rs, 256 F.3d 1095, 1110 (11th Cir. 2001))); *see also* Humphries v. Pulaski Cnty. Special Sch. Dist., 580 F.3d 688, 693 (8th Cir. 2009); Murray v. Vill. of Hazel Crest, 2011 WL 382694, at *4 (N.D. Ill. Jan. 31, 2011); Rogers v. Haley, 421 F. Supp. 2d 1361, 1365 (M.D. Ala. 2006).

22. DeBiasi v. Charter Cnty. of Wayne, 537 F. Supp. 2d 903, 921 (E.D. Mich. 2008) ("[T]he plaintiff must present evidence 'which tends to prove that an illegal motivation was *more* likely than that offered by the defendant.'" (quoting Manzer v. Diamond Shamrock Chem. Co., 29 F.3d 1078, 1084 (6th Cir. 1994))).

23. *See* McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

24. *See id.*

25. Only some jurisdictions require that reverse discrimination plaintiffs demonstrate "background circumstances" in order to establish a prima facie case. *See, e.g.*, Mastro v. PEPCO, 447 F.3d 843, 851 (D.C. Cir. 2006) (holding that a reverse discrimination plaintiff "must show 'additional background circumstances that support the suspicion that the defendant is that unusual employer who discriminates against the majority'" (quoting Parker v. Balt. & Ohio R.R., 652 F.2d 1012, 1017 (D.C. Cir.1981))); *see also* Sullivan, *supra* note 13, at 1065–71 (discussing the origins of the "background circumstances" requirement and its adoption and rejection by various courts).

the adverse action was taken under circumstances giving rise to an inference of discrimination.[26] Assuming the plaintiff/employee establishes a prima facie case of discrimination, the burden then shifts to the defendant/employer, who must offer some legitimate, nondiscriminatory reason for the challenged employment action.[27] This is a burden of production, not of proof.[28] Thus, at this stage, the defendant/employer need only articulate a reason for the challenged employment action and need not convince the trier of fact that this was the real reason for the challenged action.[29] If the defendant/employer satisfies this burden of production, the burden shifts back to the plaintiff/employee, who must prove by a preponderance of the evidence that the reason articulated by the defendant/employer is a mere pretext for unlawful discrimination.[30] The plaintiff/employee maintains the ultimate burden of persuading the trier of fact that unlawful discrimination more likely than not animated the employer's action.[31] The plaintiff may satisfy this burden by once again proffering either direct evidence or indirect/circumstantial evidence of the employer's discriminatory intent.[32] As during the initial stage of proof, direct evidence of discriminatory intent, or the proverbial "smoking gun," is often lacking, and plaintiffs are forced to rely on indirect or circumstantial evidence of the employer's discriminatory intent at this third stage of proof.[33] Evidence that the employer's proffered legitimate, nondiscriminatory business reason for the challenged action is unworthy of belief, otherwise known as proof of "pretext," may be sufficient indirect evidence to infer discrimination.[34]

At the second stage of the *McDonnell Douglas* burden-shifting framework, the defendant-employer can assert as a legitimate, nondiscriminatory business reason for the challenged employment action either that some consideration other than race, ethnicity, and/or gender motivated the challenged action or that the employer acted pursuant to a valid affirmative action plan (AAP) when considering race/ethnicity or

26. *McDonnell Douglas*, 411 U.S. at 802.
27. *Id.*
28. *Id.* at 803.
29. *Id.* at 804.
30. *Id.*
31. *Id.* at 807.
32. *Id.*
33. Here again, however, if plaintiffs have relied on the existence of an AAP as a basis for the challenged employment action, the plaintiff may well proffer the AAP as direct evidence of unlawful discrimination where the defendant/employer is unable to demonstrate the validity of the AAP pursuant to the *Weber* standard. *See* Frank v. Xerox Corp., 347 F.3d 130, 137 (5th Cir. 2003) ("The existence of an affirmative action plan . . . when combined with evidence that the plan was followed in an employment decision is sufficient to constitute direct evidence of the unlawful discrimination unless the plan is valid." (quoting Bass v. Bd. of Cnty. Comm'rs, 256 F.3d 1095, 1110 (11th Cir. 2001))).
34. *McDonnell Douglas*, 411 U.S. at 806; *see also* Plumb v. Potter, 212 F. App'x 472, 479 (6th Cir. 2007) ("[Plaintiff] can show pretext . . . by showing that the proffered reason had no basis in fact; . . . did not actually motivate the [employer's] conduct; or . . . was insufficient to warrant the challenged conduct.").

gender.[35] If the defendant/employer asserts that it acted pursuant to an AAP, the defendant/employer will be required to prove the validity of the AAP by meeting the standard first set out in *United Steelworkers of America v. Weber*[36] and later affirmed in *Johnson v. Transportation Agency*.[37]

In *Weber*, a white steelworker was passed over for a union training program that reserved half of the available training slots for black steelworkers in an attempt to remedy past discriminatory union practices.[38] In upholding the voluntary affirmative action plan against a Title VII challenge, the Supreme Court declared that, notwithstanding the general prohibition on the consideration of race in making employment decisions, Title VII does permit employers to voluntarily adopt affirmative action plans that seek to eliminate traditional patterns of racial segregation in the workplace.[39] To do so, the employer must satisfy the predicate burden of proving that there is a "manifest racial imbalance" in the composition of the workforce.[40] Then the employer must demonstrate that such affirmative action has been undertaken in a manner that does not "unnecessarily trammel the interests of the [nonminority] employees."[41] The *Johnson*

35. *See* United States v. Brennan, 650 F.3d 65, 94 (2d Cir. 2011) (recognizing that "[t]he Supreme Court has explicitly stated that the 'affirmative action' defense . . . is properly raised at the second step of the *McDonnell Douglas* framework").

36. 443 U.S. 193 (1979). *Weber* addressed the use of voluntary affirmative action to cure a racial imbalance in the employer's workforce. *Id.* at 208.

37. 480 U.S. 616 (1987). *Johnson* extended to gender the principles announced in *Weber*. *Id.* at 627.

38. *Weber*, 443 U.S. at 198–99.

39. *Id.* at 208.

40. *Id.*

41. *Id.* In *Weber* the manifest imbalance was established by proving that despite a local labor force that was 39 percent black, the composition of the skilled workforce at Kaiser was only 1.83 percent black. *Id.* at 198–99. The Court found that the plan did not unnecessarily trammel the interests of nonminorities by reserving half of the skilled craft training slots for blacks, because it did not "create an absolute bar to the advancement of white employees." *Id.* at 208. The Court further noted that the plan was permissible because it was only a temporary measure "not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance." *Id.* The *Weber* standard is analogous to the equal protection strict scrutiny standard applicable to race-conscious action pursuant to a voluntary AAP, and courts have often treated such claims arising under both Title VII and equal protection the same. *See, e.g.*, Oerman v. G4S Gov't Solutions, No. 1:10–1926–TLW–PJG, 2012 WL 3138174, at *4 (D.S.C. July 17, 2012) (noting that, although the constitutional principles are stricter than those of Title VII, "some of the tenets overlap and they are often addressed together"); Murray v. Vill. of Hazel Crest, No. 06 C 1372, 2011 WL 382694, at *2 (N.D. Ill. Jan. 31, 2011) (observing that "the standards for proving discrimination that apply to Title VII are essentially the same as those applicable to [equal protection] employment discrimination claims"); Perrea v. Cincinnati Pub. Sch., 709 F. Supp. 2d 628, 646 (S.D. Ohio 2010) (determining that on an equal protection challenge to an AAP "a plaintiff asserting a Fourteenth Amendment equal protection claim . . . must prove the same elements required to establish a disparate treatment claim under Title VII" (quoting Perry v. McGinnis, 209 F.3d 597, 601 (6th Cir. 2000) (internal quotation marks omitted))). The strict scrutiny standard requires that any race-conscious action challenged under equal protection first be justified by some "compelling interest" and second be "narrowly tailored" to meet that interest. *See* United States v. Paradise, 480 U.S. 149, 167 (1987) (applying standards analogous to *Weber* despite the case being considered under equal protection rather than Title VII). For instance,

Court affirmed this standard and broadened the permissible scope of voluntary AAPs to include gender affirmative action.[42] Although the Supreme Court has consistently reinforced this standard, the likelihood of success in defending these voluntary AAPs has arguably diminished under the Court's most recent precedent.[43] Although the Court expressly disclaimed that the more rigorous standard of proof announced in *Ricci v. DeStefano*[44] was intended to eliminate voluntary, affirmative action such as

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the "compelling interest" proffered in support of a voluntary affirmative action plan under equal protection is usually an interest in "remedying past . . . discrimination," which is comparable in kind and proof to the "manifest imbalance" standard of *Weber*/*Johnson*. *Id.* at 166. Similarly, the "narrow tailoring" requirement under equal protection often has been defined as coextensive with the Title VII prohibition on "unnecessarily trammeling." *Id.* at 177–78 (finding that the one-for-one promotion requirement at issue was permissible because it was "flexible," not serving as a bar to the advancement of whites, and "temporary"); *see also* Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 294 (1986) (considering the burden imposed on nonminorities from the preferential layoff policy at issue and finding the burden too heavy, especially where it was designed to "maintain" rather than attain racial balance). Thus the *Weber*/*Johnson* and equal protection standards can fairly be considered together when evaluating the legitimacy of an employer's voluntarily adopted AAP.

42. *Johnson*, 480 U.S. at 641–42. Johnson was denied a promotion by his employer, who defended the selection of a woman on the ground that the employer was operating pursuant to a voluntary AAP designed to cure the gender imbalance of its workforce. *Id.* at 619–24. The imbalance was proven with evidence that none of the positions in the job category sought by Johnson were held by a woman. *Id.* at 636. The voluntary AAP adopted to cure this imbalance satisfied the requirement that it not "unnecessarily trammel the rights of [other] employees" by not setting aside any particular number of positions for women, but fixing both long- and short-term goals for improving the gender representation of the workforce and only permitting the consideration of gender, among other qualifications, in selecting for the position. *Id.* at 637–38.

43. *See, e.g.*, *Paradise*, 480 U.S. 149; *Wygant*, 476 U.S. 267. *But see* Ricci v. DeStefano, 557 U.S. 557 (2009). In *Ricci*, the Court ratcheted up the predicate burden of proof for sustaining an employer's race-conscious action, including arguably when such action is taken to avoid a manifest imbalance in the workforce. *Ricci*, 557 U.S. at 585. The New Haven Fire Department chose to adopt an affirmative, race-conscious remedy to redress what the employer believed would be a manifest imbalance in the promotion of firefighters to the positions of lieutenant and captain based on the administration of a written exam having a disparate impact on black and Hispanic candidates. *Id.* at 561–62. As a predicate for the race-conscious action, the Court in *Ricci* ruled that the fire department was required to both offer proof of a manifest imbalance between the composition of the workforce and those eligible for promotion based on the written exam, and also establish by a "strong basis in evidence" that the written exam, despite its racially disparate impact, was not job-related or consistent with business necessity and that there were less discriminatory means of selecting for the promotion which the fire department had failed to implement. *Id.* at 582. The *Ricci* Court acknowledged the intersection of its holding with the standard applicable to voluntary affirmative action by proclaiming that the heightened standard of proof announced in *Ricci* "leaves ample room for employers' voluntary compliance efforts" as sanctioned in *Weber* and *Johnson*. *Id.* at 583. In an attempt to sort out the distinction between the new standard announced in *Ricci* and the prevailing *Weber* and *Johnson* standards, the Second Circuit in *United States v. Brennan*, 650 F.3d 65 (2011), distinguished between prospective affirmative action, which that court said is governed by the *Weber*/*Johnson* standard, and retroactive affirmative action, which it said is governed by the *Ricci* standard. *Id.* at 102. Nevertheless, it remains to be seen whether the Supreme Court would similarly cabin the effect of its holding in *Ricci*.

44. 557 U.S. 557 (2009).

that permitted under the prevailing *Weber* and *Johnson* standards,[45] legal scholars have criticized this decision as leaving little room for employers to engage in voluntary affirmative action without incurring legal liability under Title VII.[46]

Within the context of this legal landscape, federal courts have begun to adjudicate claims challenging employers' efforts to improve the "diversity" of their workforces.[47] These challenges largely have been in the form of "reverse discrimination" cases prosecuted by white and/or male employees asserting that their employers' interest in diversity caused them to unlawfully consider race, ethnicity, and/or gender in hiring, termination, and/or promotion decisions.[48] These cases have been considered under the prevailing Title VII standards, including both the *McDonnell Douglas* and the *Weber/Johnson* standards.[49]

II. ANALYSIS OF THE DECIDED DIVERSITY CASES

There have been forty-four cases challenging workplace "diversity" efforts decided by federal district and circuit courts since *Grutter v. Bollinger*.[50] Of these, twenty-two have been decided favorably to

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45. *Id.* at 583.

46. *See, e.g.*, Cheryl I. Harris & Kimberly West-Faulcon, *Reading* Ricci*: Whitening Discrimination, Racing Test Fairness*, 58 UCLA L. REV. 73, 159–60 (2010); Ann C. McKinley, Ricci v. DeStefano*: Diluting Disparate Impact and Redefining Disparate Treatment*, 12 NEV. L.J. 626, 629 (2012). Some scholars have even suggested that *Ricci* is an ominous sign for the Court's treatment of diversity under Title VII. *See* Patrick Shin & Mitu Gulati, *Showcasing Diversity*, 89 N.C. L. REV. 1017, 1049 (2011) ("*Ricci* should chasten any expectation that the Court will take its next available opportunity to extend the diversity rationale for affirmative action to justify race-conscious employment action under Title VII.").

47. For a discussion of the difference between the interest in "diversity" and traditional AAPs, see Hawkins, *supra* note 1.

48. Only four of the forty-four diversity cases identified did not involve a reverse discrimination challenge. *See* Moranski v. Gen. Motors Corp., 433 F.3d 537, 539 (7th Cir. 2005) (involving suit by a Christian employee arguing that the employer's denial of a Christian affinity group constituted religious discrimination where the employer permitted affinity groups for women and minorities); Peterson v. Hewlett-Packard Co., 358 F.3d 599, 601–02 (9th Cir. 2004) (involving argument by Christian employee that an employer discriminated against him on the basis of his religious beliefs by terminating him for condemning homosexuality in response to workplace diversity posters); Frank v. Xerox Corp., 347 F.3d 130, 133 (5th Cir. 2003) (involving suit by black employees against Xerox alleging that their balance workforce program, which identified blacks as overrepresented in some job categories, resulted in unlawful discrimination against blacks in promotion and pay); Sinio v. McDonald's Corp., No. 04 C 4161, 2007 WL 869553, at *1, *7 (N.D. Ill. Mar. 19, 2007) (involving suit by an Asian American female alleging that her employer treated black employees more favorably by providing affinity groups for black employees to assist in their professional development but not providing a similar resource for Asian American employees). The remaining forty cases involved reverse discrimination challenges by white and/or male employees alleging that the employer's interest in workplace diversity resulted in unlawful discrimination.

49. Some have also been considered under equal protection, but for the reasons previously discussed, these cases can be analogized to those considered under the Title VII *Weber/Johnson* standard. *See supra* note 41.

50. 539 U.S. 306 (2003); *see infra* Tables 1–2. A note on methodology: these cases were identified by conducting a Westlaw search of employment discrimination cases

defendants, and nineteen have been decided favorably to plaintiffs, with three having mixed results.[51] Of the twenty-two cases favorable to defendants, eighteen involved challenges to diversity plans pursuant to the *McDonnell Douglas* standard; while of the nineteen cases favorable to plaintiffs, fifteen involved challenges to voluntary AAPs (including those adopted pursuant to settlement/consent decrees), which are most commonly subject to the *Weber/Johnson* standard.[52] Nineteen of the twenty-two cases involving challenges to diversity plans under the *McDonnell Douglas* standard were decided favorably to the defendant, which represents an 86 percent success rate for employers.[53] By contrast, of the twenty cases

involving challenges to or defenses of ostensibly race/ethnicity- or gender-conscious action on the basis of the employer's interest in workplace diversity. Because of the overlap between the legal standards applicable to cases involving AAPs under both Title VII and equal protection, as discussed *supra* note 41, equal protection cases were included in this analysis if they involved race/ethnicity- or gender-conscious actions challenged or defended on the basis of the employer's interest in workplace diversity. Multiple cases involving the same parties were counted only once. This analysis considers only those cases decided after the Supreme Court's decision in *Grutter v. Bollinger*, 539 U.S. 306, because that case marks an important point in the Court's diversity jurisprudence. It is also used as the point of demarcation because it is the standard against which many predictions about the Court's treatment of diversity efforts in the employment context have been measured. *See, e.g.*, Cynthia Estlund, *Taking* Grutter *to Work*, 7 GREEN BAG 2D 215 (2004); Helen Norton, *Stepping Through* Grutter*'s Open Door: What the University of Michigan Affirmative Action Cases Mean for Race-Conscious Government Decisionmaking*, 78 TEMP. L. REV. 543 (2005); Ronald Turner, Grutter, *the Diversity Justification, and Workplace Affirmative Action*, 43 BRANDEIS L.J. 199 (2004); Rebecca Hanner White, *Affirmative Action in the Workplace: The Significance of* Grutter*?*, 92 KY. L.J. 263 (2003).

51. *See infra* Table 1. This simple quantitative analysis does not account for any selection bias arising from cases settled before decision.

52. *See id.* Not all of these cases were decided exclusively under the *Weber/Johnson* standard. Some were decided under the *McDonnell Douglas* test, and still others were decided under equal protection. Nevertheless, all were understood to involve voluntary affirmative action and, therefore, invoke a more substantial burden of proof on the defendant employer to justify the use of race, ethnicity, and/or gender in the challenged employment decision than would otherwise be required under the *McDonnell Douglas* standard. One notable observation from this analysis is the discrepancy between courts in how they treat and analyze claims of employment discrimination arising under both Title VII and equal protection. It appears that, notwithstanding clear guidance and longstanding precedent in this area of law, there remain many courts that fail to fully comprehend how this law should be applied in individual cases. *Compare* Rudin v. Lincoln Land Comm. Coll., 420 F.3d 712, 719 (7th Cir. 2005) (assessing reverse discrimination challenge under *McDonnell Douglas* standard even where evidence demonstrated the existence of an AAP), *with* Rogers v. Haley, 421 F. Supp. 2d 1361, 1369 (M.D. Ala. 2006) (applying *McDonnell Douglas* standard to reverse discrimination challenge to an AAP, but finding the AAP to constitute "direct evidence" of discriminatory intent), *and* Humphries v. Pulaski Cnty. Special Sch. Dist., 580 F.3d 688, 692–93 (8th Cir. 2009) (acknowledging that an AAP might constitute "direct evidence" under the *McDonnell Douglas* standard but also permitting defendant to demonstrate the validity of the AAP under the equal protection and/or *Weber/Johnson* standard), *and* Finch v. City of Indianapolis, 886 F. Supp. 2d 945, 961, 966 (S.D. Ind. 2012) (requiring employer to satisfy equal protection and/or *Weber/Johnson* standard to defend an AAP in reverse discrimination case). Notwithstanding these different standards of proof applied to the defendants, courts are uniformly more likely to hold the defendant/employer to a higher standard of proof in discrimination cases involving AAPs and are also more likely to sustain reverse discrimination challenges to AAPs when they allow for race- and/or gender-conscious action.

53. *See infra* Table 1.

involving challenges to AAPs (including settlement/consent decrees), fifteen were decided favorably to the plaintiff, which represents a 75 percent loss rate for employers.[54]

Table 1: Outcomes of Federal Cases Challenging Workplace Diversity Efforts			
	Plaintiff	**Defendant**	**Mixed**
Favorable Decision	19	22	3
AAP	8	3	1
Consent Decree	7	0	1
Diversity Plan	4	19	1
Direct Evidence	2 (both AAP)	0	1
McDonnell Douglas	8 (5 CD/AAP)	18	1
Weber/Johnson	3	0	1
Other	6	4	3

Notably, eleven of the nineteen decisions favorable to plaintiffs were denial or reversal of summary judgment to defendant and not a final verdict or judgment in the plaintiffs' favor.[55] Whereas, twenty of the twenty-two decisions favorable to defendants were grants or affirmances of summary judgment/dismissal for defendants, and therefore reflect a more final disposition of the case in favor of defendants than those decisions favorable to plaintiffs.[56] It also is notable that each circuit (either by district or circuit court opinion) has adjudicated a case involving an employer diversity plan, whether analyzed as a voluntary AAP or otherwise considered pursuant to the *McDonnell Douglas* burden-shifting framework.[57]

Table 2: Disposition in Federal Cases Challenging Workplace Diversity Efforts			
	Plaintiff	**Defendant**	**Mixed**
Reverse SJ	6	0	0
Affirm SJ	0	7	0
Grant SJ	3	9	0.5
Deny SJ	5	1	1.5
Reverse Verdict	2	0	0
Sustain Verdict	3	1	1
Dismissal	0	3	0
Other Disposition	0	1	0
TOTAL	19	22	3

54. *See infra* Table 1.
55. *See infra* Table 2.
56. *See infra* Table 2.
57. *See infra* Table 3.

Table 3: Circuit Decisions in Federal Cases Challenging Workplace Diversity Efforts			
	Plaintiff	**Defendant**	**Mixed**
D.C. Circuit	0	2	1
1st Circuit	2	0	0
2d Circuit	1	3	0
3d Circuit	1	4	1
4th Circuit	1	1	0
5th Circuit	4	1	0
6th Circuit	1	4	0
7th Circuit	7	4	0
8th Circuit	1	0	0
9th Circuit	0	1	0
10th Circuit	0	1	0
11th Circuit	0	1	1
Supreme Court	1	0	0
TOTAL	19	22	3

There are several general observations to be drawn from these cases. First, employers must sustain a high burden of proof when defending diversity efforts (often pursuant to an AAP) that involve the explicit consideration of race, ethnicity, and/or gender,[58] whereas employers face a relatively low burden of proof when defending diversity efforts that are not explicitly race/ethnicity- or gender-conscious.[59] The former often must be defended under the rigorous *Weber/Johnson* standard, whereas the latter most often will be considered under the *McDonnell Douglas* burden-shifting framework, which requires the employer only to demonstrate some legitimate, nondiscriminatory business reason for the challenged action.[60] This difference in proof produces a disparity in an employer's likelihood of success when defending its diversity efforts against a reverse discrimination challenge, as demonstrated by the Tables above.

Take, for example, the case of *Finch v. City of Indianapolis*,[61] in which white police officers challenged the City of Indianapolis's promotion of three African-American police officers out of rank order as unlawful under

58. Although the presumptive standard applicable to voluntary AAPs under Title VII is the *Weber/Johnson* standard, the lower federal courts have been inconsistent in their treatment of AAPs (including consent and settlement decrees) by applying the direct evidence standard, the equal protection standard, and sometimes even the *McDonnell Douglas* standard to these claims. *See supra* note 52. However, notwithstanding the inconsistency in the standard applied, courts have uniformly demanded more rigorous proof by employers in defense of these race- and gender-conscious efforts than the proof demanded in defense of diversity efforts that are not viewed or classified as voluntary AAPs and that do not involve race- or gender-conscious efforts.

59. *See infra* note 77.

60. *See supra* note 27 and accompanying text.

61. 886 F. Supp. 2d 945 (S.D. Ind. 2012).

Title VII.[62] The city attempted to defend the promotion decisions by pointing to a prior consent decree requiring that black candidates comprise at least 25 percent of appointments to officer training until parity is reached in the workforce.[63] The problem, however, was that the consent decree required the city to take affirmative steps to increase only the recruitment and hiring of minority officers, but not their promotion.[64] Declining to find the prior consent decree applicable to the challenged promotion decisions, the court instead required the city to establish a separate predicate under the *Weber/Johnson* standard for the race-conscious promotion decisions.[65] Finding that the city could not satisfy the high burden of proof required to validate the AAP as it related to the promotion decisions, the court granted summary judgment to the plaintiffs.[66]

Finch stands in contrast to *Mlynczak v. Bodman*,[67] which involved a challenge by white employees to certain hiring and promotion decisions favoring women and minority candidates. Although the plaintiffs in *Mlynczak* alleged that the hiring and promotion decisions were made pursuant to an AAP designed to promote workplace diversity, the outcome in this case was very different where the employer did not concede, as in *Finch*, that the promotion decisions were made on the basis of the race, ethnicity, and/or gender of the candidates.[68] Rather, the employer in *Mlynczak* asserted that the AAP, although designed to promote diversity, involved only efforts to expand the pool of candidates for hiring and/or promotion and explicitly prohibited decision makers from basing hiring and/or promotion decisions on the forbidden characteristics of race, ethnicity, and/or gender, even as it encouraged and rewarded managers for their efforts to improve workplace diversity.[69] The employer, therefore, was not subjected to the very high burden under *Weber/Johnson* of establishing the validity of the AAP, as the employer was in *Finch*. Instead,

62. *Id.* at 952–53. The officers also challenged this employment action under the Equal Protection Clause, but the court's analysis of these two claims relies on the same evidence and similar legal burdens insofar as the requirement to offer both predicate proof of a remedial justification for the implementation of a voluntary AAP and to demonstrate that the plan does not inflict undue harm to the interests of whites. *Id.* at 974–77.

63. *Id.* at 956.

64. *Id.* at 955–56.

65. *Id.* at 960 (requiring separate proof of a manifest imbalance regarding promotions to sustain the plan).

66. *Id.* at 976 (noting only a "carefully designed" AAP can be sustained as valid and finding that the defendant employed an AAP "with no tie to any perceived past discrimination, no analysis of the present effects of any past discrimination, no evaluation of its necessity as a remedial measure, and no careful consideration of its impact on white candidates passed over for promotion").

67. 442 F.3d 1050 (7th Cir. 2006).

68. *Id.* at 1058.

69. *Id.* at 1058–59. The court noted that "[t]he existence of [an AAP] alone is not enough to permit a trier of fact to attribute [discrimination] to the decisionmakers," finding instead that plaintiffs "must establish a link between the [AAP] and the [challenged] employment decision." *Id.* at 1058. The court concluded that such a connection was lacking in this case, where the evidence demonstrated both that the policy prohibited the consideration of race, ethnicity, and/or gender in hiring and promotion decisions and that the candidates chosen were selected on the basis of their superior qualifications. *Id.* at 1058–59.

the employer in *Mlynczak* was only required to proffer some legitimate, nondiscriminatory business reason for the challenged promotion decisions under the *McDonnell Douglas* standard.[70] The employer was readily able to meet this standard by demonstrating the superior qualifications of the chosen candidates, notwithstanding the fact that they were all women and/or minorities.[71]

As these two cases demonstrate, an employer is much less likely to prevail in a reverse discrimination challenge when the employer is required to meet the high burden of proof under the *Weber/Johnson* standard, because it has taken race/ethnicity- and/or gender-conscious action pursuant to an AAP.[72] Conversely, an employer is much more likely to prevail in a reverse discrimination case when the employer is subject only to the *McDonnell Douglas* standard and is able to demonstrate that, notwithstanding an interest in improving workplace diversity, the challenged employment action can be defended on the basis of some legitimate, nondiscriminatory business reason unconnected to the candidate's race, ethnicity, and/or gender.

Another general observation that can be drawn from an analysis of the decided Title VII diversity cases is that even cases subject to the *McDonnell Douglas* standard are not immune from reverse discrimination liability if they involve impermissible race/ethnicity- or gender-conscious actions. In other words, it is the fact that an employment action is race/ethnicity- or gender-conscious, and not necessarily that it is taken pursuant to an AAP, that makes the action vulnerable to liability under Title VII. Although those cases involving general policies or practices of promoting workplace diversity that were subject to review under the *McDonnell Douglas* standard were much more likely to withstand challenge than those involving AAPs and adjudicated under the *Weber/Johnson* standard (82 percent decided favorably to defendant/employer versus the 75 percent of decisions involving race/ethnicity- or gender-conscious AAPs that were decided unfavorably to the defendant/employer), there were cases in which employers were held liable even under Title VII's *McDonnell Douglas*

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70. *Id.* at 1058.

71. *Id.* at 1059 ("[W]here an employer's proffered non-discriminatory reason for its employment decision is that it selected the most qualified candidate, evidence of the applicant's competing qualifications does not constitute evidence of pretext unless those differences are so favorable to the plaintiff that there can be no dispute among reasonable persons of impartial judgment that the plaintiff was clearly better qualified for the position at issue." (quoting Millbrook v. IBP, Inc., 280 F.3d 1169, 1180 (7th Cir. 2002))). This burden was easily met by the employer because courts have routinely declined to subject an employer's legitimate, nondiscriminatory business reason to rigorous scrutiny, citing as a concern that "the court . . . not degenerate into . . . [a] super personnel department." *Id.* at 1060.

72. This is true even when those efforts are styled as, or defended on the basis of, an interest in diversity. *See, e.g.*, Decorte v. Jordan, 497 F.3d 433, 441 (5th Cir. 2007) (affirming a jury verdict in favor of white plaintiffs challenging a diversity plan and finding it was not error for the trial court to treat the diversity plan as an invalid AAP because it was focused on achieving a desired racial balance within the workforce and took race-conscious action toward that goal).

standard for pursuing an interest in diversity in an impermissibly race/ethnicity- or gender-conscious way.[73] Most of these cases turn on whether the plaintiff can demonstrate that the employer's legitimate, nondiscriminatory business reason for the challenged action is a pretext for discrimination.[74] Consequently, ensuring that the reasons for employment decisions are well-supported in fact, even when they are not race/ethnicity- or gender-conscious, can substantially improve the likelihood of success in defending those decisions against a reverse discrimination challenge.

In addition to these general observations, there are several more discrete observations that are also worthy of note and that offer some practical guidance to employers, particularly law firms, on how to structure legally defensible workplace diversity efforts. The sections below address several practices that are commonly employed by law firms, among other employers, as a part of their workplace diversity efforts. These sections assess the likelihood of success in defending these practices against reverse discrimination challenges based on the decided Title VII diversity cases. After discussing their legal defensibility generally, I offer some additional guidance on how best to structure these practices to maximize a defense under Title VII and minimize the risk of employer liability associated with these practices.

A. AAPs

Employers, including law firms, might be obligated to maintain AAPs or may voluntarily adopt AAPs because of a commitment to diversity.[75]

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73. *See, e.g.*, Clements v. Fitzgerald's Miss., Inc., 128 F. App'x 351, 352–53 (5th Cir. 2005) (finding employer liable under Title VII *McDonnell Douglas* standard where no evidence black woman was more qualified than the white male the employer was contractually obligated to hire); Sinio v. McDonald's Corp., No. 04 C 4161, 2007 WL 869553, at *13–16 (N.D. Ill. Mar. 19, 2007) (denying summary judgment in part to the defendant/employer and finding that the plaintiff could proffer direct evidence of discrimination based on: (1) the suspicious timing of the employer's actions in terminating the plaintiff and replacing her with a black employee, (2) the systematically better treatment of black employees, and (3) the implausibility of the employer's asserted reason for termination); Groesch v. City of Springfield, No. 04-3162, 2006 WL 3842085, at *6–16 (C.D. Ill. Dec. 29, 2006) (finding triable issues of fact, notwithstanding diversity interests, as to whether the reasons for disparate treatment of black and white officers in granting retroactive seniority upon rehiring was pretext for discrimination where circumstantial evidence included statements made in support of disparate treatment of an officer because of his race, additional evidence that the decision was made because of the officer's race, and evidence demonstrating that favorable treatment could have been given to white officers without impairing the interest in diversity), *rev'd on other grounds*, 635 F.3d. 1020 (7th Cir. 2011).

74. The suits in *Groesch* and *Sinio* were allowed to proceed to a jury on the question of the employer's liability for reverse discrimination. *See Sinio*, 2007 WL 869553, at *6; *Groesch*, 2006 WL 3842085, at *16. *Clements* upheld a verdict for the plaintiff where the employer, because of a contractual obligation to hire the plaintiff, was unable to proffer a legitimate, nondiscriminatory business reason for hiring a black woman in lieu of the white male plaintiff. *See Clements*, 128 F. App'x at 352–53.

75. A law firm, or other legal employer, may be obligated to maintain an AAP if it is a "government contractor," as defined in Executive Order 11,246, subject to oversight and

AAPs can be ordered along a continuum ranging from set aside programs, as in *Weber*, to expanded outreach and recruiting programs, as in *Mlynczak*, with varying degrees of legal proof and defensibility associated with each, as outlined above. Regardless of whether they are formally designated as AAPs, employment policies or practices that involve the conscious consideration of race, ethnicity, and/or gender in making employment decisions in an effort to achieve some identified numerical representation of women and/or minorities in the workforce must satisfy the very high *Weber/Johnson* burden of proof and are the least likely to be sustained against challenge.[76] AAPs, however, that merely involve expanding outreach and recruiting to women and/or minorities, regardless of whether the impetus is to cure a manifest imbalance in the workforce or simply to promote diversity, are likely to be subject to the relatively low burden of

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reporting by the Office of Federal Contract Compliance Programs (OFCCP). 41 C.F.R. § 60-2 (2014).

76. Recall that this burden arguably has been increased under *Ricci v. DeStefano*, 557 U.S. 557 (2009), for AAPs involving race- and/or gender-conscious actions as a means of achieving a desired representation of women and/or minorities in the workforce. *See supra* note 43; *see also* United States v. Brennan, 650 F.3d 65, 134–40 (2d Cir. 2011) (reversing and remanding the decision of the district court finding the AAP valid under the *Weber/Johnson* standard in order to apply the additional requirements of *Ricci* in determining whether the AAP is valid); Dean v. Shreveport, 438 F.3d 448, 456–65 (5th Cir. 2006) (reversing summary judgment for an employer that maintained separate, racial eligibility lists for entry-level firefighter positions, and finding that consent decree could not justify the AAP where there was no evidence of "lingering effects" during the relevant period to demonstrate predicate proof of a need for race-conscious hiring); Lomack v. City of Newark, 463 F.3d 303, 310–12 (3d Cir. 2006) (reversing judgment for the employer where the employer acted pursuant to a consent decree that was inapplicable to the challenged race-conscious transfer policy and could not otherwise demonstrate predicate for the AAP); Mastro v. PEPCO, 447 F.3d 843, 852–55, 860 (D.C. Cir. 2006) (reversing summary judgment for the employer where plaintiff proffered evidence of a prior consent decree and the employer admitted that it acted out of fear over controversy concerning black employees in terminating the plaintiff); Rudin v. Lincoln Land Comm. Coll., 420 F.3d 712, 722–28 (7th Cir. 2005) (reversing summary judgment for the defendant and finding triable issues of fact where the employer acted pursuant to an AAP in hiring a minority candidate and failed to follow its own hiring procedures in doing so, resulting in inconsistent justifications for the hiring decision); Frank v. Xerox Corp., 347 F.3d 130, 137 (5th Cir. 2003) (reversing summary judgment for the employer and finding the jury may consider the use of explicit racial goals as proof of an AAP, and placing the burden on the employer to demonstrate the validity of the AAP); Oerman v. G4S Gov't Solutions, Inc., No. 1:10-1926-TLW-PJG, 2012 WL 3138174, at *7–9 (D.S.C. July 17, 2012) (denying the employer's motion for summary judgment alleging that it acted pursuant to a valid AAP when using race as a "tiebreaker" in selecting a black employee over the plaintiff where both the AAP and OFCCP regulations expressly prohibited the use of race in hiring and promotion decisions); Rogers v. Haley, 421 F. Supp. 2d 1361, 1369–70 (M.D. Ala. 2006) (finding a triable issue on the plaintiff's reverse discrimination claim where employer erroneously believed that it was required to promote a less-qualified black applicant over the white plaintiff pursuant to the consent decree); White v. Alcoa, Inc., No. 3:04-CV-78 RLY/WGH, 2006 WL 769753, at *1–3 (S.D. Ind. Mar. 27, 2006) (denying summary judgment to employer where evidence proffered by male plaintiff that woman was hired to cure the underutilization of women in the job category); Travers v. City of Newton, No. Civ.A.04-12635 RWZ, 2005 WL 3008660, at *3–4 (D. Mass. Nov. 9, 2005) (granting summary judgment to the plaintiff where the defendant continued to adhere to race-conscious hiring under an AAP even after parity was achieved).

proof under the *McDonnell Douglas* standard and, as a result, are more likely to be sustained.[77]

B. Tying Compensation to Diversity Goals

The practice of tying executive or partner compensation to diversity goals, while promoted by some within the legal profession, carries a danger of liability under Title VII.[78] In particular, employers can incur liability under Title VII if these compensation practices are viewed as impermissibly injecting the unlawful consideration of race, ethnicity, and/or gender into an employer's decision making. In *Frank v. Xerox Corp.*,[79] Xerox adopted a balanced workforce initiative (BWF) to "insur[e] that all racial and gender groups were proportionately represented at all levels of the company."[80] Black employees sued Xerox alleging that the BWF resulted in unlawful discrimination against black employees, who were determined to be overrepresented in certain job categories.[81] In reversing summary judgment for the employer, the Fifth Circuit held that the BWF was an AAP and that, unless the BWF was lawful, evidence that Xerox operated pursuant to the BWF in making the challenged employment decisions would constitute direct evidence of unlawful discrimination.[82] The court further held that evidence that managers were evaluated and compensated on how well they complied with the goals and objectives of the BWF could be considered in determining whether Xerox managers likely operated pursuant to the BWF in making the challenged employment decisions.[83] Thus, the practice of tying management performance evaluations and/or compensation to numerical hiring goals increased Xerox's exposure to liability under Title VII.

However, holding managers accountable for supporting the employer's diversity commitment, and evaluating them on that basis, is not per se unlawful. For example, *Xerox* stands in contrast to the outcome and reasoning in *Coppinger v. Wal-Mart Stores, Inc.*[84] In *Coppinger*, the white, male plaintiff alleged that Wal-Mart engaged in unlawful discrimination when it promoted a Hispanic female over him.[85] In support of his claim of

77. AAPs that do not involve the conscious consideration of race, ethnicity, and/or gender, and do not seek to achieve a particular numerical representation within the workforce, are more likely to be sustained under the *McDonnell Douglas* burden. *See, e.g.*, Mlynczak v. Bodman, 442 F.3d 1050, 1058–59 (7th Cir. 2006) (affirming summary judgment for the employer where the AAP was only designed to expand the pool of candidates, not permit race/gender preference in hiring or selection).

78. *See supra* note 11.

79. 347 F.3d 130 (5th Cir. 2003).

80. *Id.* at 133.

81. *Id.*

82. *Id.* at 137.

83. *Id.*

84. No. 3:07cv458/MCR/MD, 2009 WL 3163211 (N.D. Fla. Sept. 30, 2009); *see also* Bajor v. Wal-Mart Corp., No. 08-12401, 2010 WL 779240, at *6–8 (E.D. Mich. Mar. 8, 2010) (granting summary judgment to the employer on a reverse discrimination claim, finding no evidence that managers had their bonuses reduced for failing to meet goals).

85. *Coppinger*, 2009 WL 3163211, at *1–2.

pretext under the third stage of the *McDonnell Douglas* burden-shifting framework, he asserted that, despite Wal-Mart's assertions that the woman chosen had superior qualifications, Wal-Mart's diversity policy and practices were the real reason for his non-selection.[86] He pointed in particular to two aspects of the diversity policy as motivating the unlawful promotion decision: (1) diversity placement goals and (2) the evaluation of managers on their good faith efforts to support diversity.[87] As to the latter, the plaintiff asserted that managers' evaluations were based, in part, on their achievement of the diversity placement goals.[88] However, in rejecting this evidence as proof of pretext, the court reasoned that, "[a]lthough ten percent of a manager's job evaluation was based on attending one annual diversity event," no evidence was presented demonstrating that managers were "influenced by [the diversity] policies" in making the challenged employment decisions.[89]

These cases demonstrate that, while tying executive performance and compensation to diversity goals is not per se unlawful under Title VII, doing so may carry an increased risk of liability for the employer if an employee can demonstrate that the incentives under the compensation policy caused a decision maker to impermissibly consider race, ethnicity, and/or gender when making a hiring, promotion, or termination decision.

C. Affinity Groups/ERGs

Affinity Groups or Employee Resource Groups (ERGs) are an increasingly common feature of workplace diversity efforts.[90] These programs often serve as a valuable resource for employees and generally will not subject employers to Title VII liability in the absence of some other proof of discriminatory conduct by the employer.[91] However, if ERGs operate as a pathway to leadership, rather than merely fostering mutual support among employees and/or providing targeted training opportunities, they should be open to all employees, lest they increase an employer's risk of liability under Title VII for failing to provide equal access to resources

86. *Id.* at *6.
87. *Id.*
88. *Id.* at *6–7.
89. *Id.*
90. *See* Deborah L. Rhode, *From Platitude to Priorities: Diversity and Gender Equality in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1069 (2011).
91. *Compare* Moranski v. Gen. Motors Corp., 433 F.3d 537, 541–42 (7th Cir. 2005) (holding that a failure to permit a Christian affinity group was not unlawful where no religious groups permitted); Filozof v. Monroe Comm. Coll., 583 F. Supp. 2d 393, 403–04 (W.D.N.Y. 2008) (finding that providing minorities and women with faculty development opportunities was "de minimis" and did not constitute disparate treatment), *with* Sinio v. McDonald's Corp., No. 04 C 4161, 2007 WL 869553 (N.D. Ill. Mar. 19, 2007) (finding existence of African American employee resource group, when combined with other evidence of more favorable treatment of African Americans, sufficient to raise triable issue of fact on Asian American employee's disparate treatment claim).

bearing directly on employees' opportunities for advancement and promotion.[92]

D. Diversity Statements

The most common practice among employers committed to workplace diversity is publication of a diversity statement. These statements are often printed and published in various forms that are made available to both employees and the public.[93] In addition to publishing these statements in writing, these statements are often reinforced by leaders in remarks, both formal and informal, with employees, administrators, and even external stakeholders.[94] Although these diversity statements are likely to be cited in cases alleging reverse discrimination, they are very unlikely to constitute actionable proof of unlawful discrimination in the absence of a direct connection between the diversity statement and the challenged employment action.[95] In fact, diversity statements that are neither made by the relevant decision maker, nor connected to the challenged employment action, are most likely to constitute "stray comments/remarks" under Title VII and cannot serve as the basis for legal liability.[96] Moreover, general statements

92. *See Sinio*, 2007 WL 869553 (finding that the existence of an African American employee resource group, which was designed to help them achieve promotions, could support Asian American employee's claim for disparate treatment).

93. Examples include diversity statements on the employer's webpage, diversity brochures that might be distributed to prospective employees and others, and some employers even produce diversity reports containing detailed information about the employer's efforts to promote workplace diversity. All of these would qualify as "diversity statements."

94. *See supra* note 11 for a discussion of these external stakeholders.

95. *See, e.g.*, Johnson v. Metro. Gov't of Nashville, 502 F. App'x 523, 535 (6th Cir. 2012) ("[S]tatements reflecting a desire to improve diversity do not equate to direct evidence of unlawful discrimination."); Bissett v. Beau Rivage Resorts, 442 F. App'x 148, 152–153 (5th Cir. 2011) (finding that a diversity policy did not support an inference of discrimination where the policy stated that the employer "'values diversity and considers it an important and necessary tool that will enable [the employer] to maintain a competitive edge,' and that the employer 'is committed to maintaining a workforce that reflects the diversity of the community'"); Mlynczak v. Bodman, 442 F.3d 1050, 1057–58 (7th Cir. 2006) (finding that comments not connected to hiring nor made by a decision maker were insufficient to establish discrimination); Harkola v. Energy E. Util. Shared Svs., No. 09-CV-6318 (MAT), 2011 WL 3476265, at *11 (W.D.N.Y. Aug. 9, 2011) (finding that a general diversity policy was insufficient to raise an inference of discrimination); Opsatnik v. Norfolk S. Corp., No. 06-81, 2008 WL 763745, at *10 (W.D. Pa. Mar. 20, 2008) (holding that pointing to the defendant's diversity policy, without more, is not sufficient evidence of discrimination); Keating v. Paulson, 2007 WL 3231437, at *9 (N.D. Ill. Oct. 25, 2007) (holding that a statement by one manager that "he used the announcement of the vacancy as a means of addressing [diversity] concerns . . . by itself . . . is insufficient to establish the requisite intent to discriminate"); Jones v. Bernanke, 493 F. Supp. 2d 18, 29 (D.D.C. 2007) ("[A]n employer's statement that it is committed to diversity 'if expressed in terms of creating opportunities for employees of different races and both genders . . . is not proof of discriminatory motive with respect to any specific hiring decision. Indeed, it would be difficult to find today a company of any size that does not have a diversity policy.'" (quoting Bernstein v. St. Paul Cos., 134 F. Supp. 2d 730, 739 n.12 (D. Md. 2001))).

96. *See, e.g.*, Plumb v. Potter, 212 F. App'x 472, 477–78 (6th Cir. 2007) (finding stray comments in support of diversity not direct evidence of discrimination). *But see* Murray v. Vill. of Hazel Crest, No. 06 C 1372, 2011 WL 382694, at *4–6 (N.D. Ill. Jan. 31, 2011)

in support of diversity have been found to constitute neither direct evidence of discrimination, nor to raise an inference of discrimination sufficient to rebut an employer's legitimate nondiscriminatory business reason for a challenged employment action.[97] In fact, such general statements in support of diversity have been viewed favorably by courts as a demonstration of the employer's commitment to equal opportunity.[98] Consequently, diversity statements, by themselves and when unconnected to an individual employment decision, present very little, if any, risk of legal liability under Title VII.

E. Tiebreakers

Given the permissive use of race as a "plus factor" in the college and university admissions context, including in an effort to increase student body diversity as recognized by the Supreme Court in *Grutter*, the question is often posed whether such plus factor or "tiebreaker" considerations are permitted in the employment context under Title VII.[99] An analysis of the decided Title VII diversity cases suggests that consideration of race, ethnicity, and/or gender in making employment decisions, unless done pursuant to a valid AAP, carries a substantial risk of liability under Title VII and may only be permissible, if at all, as a tiebreaker when two candidates are virtually indistinguishable or so closely matched on objective qualifications that the selection decision is purely subjective and not subject to second-guessing by the court.[100]

(holding that statements by the mayor that he wanted an African American promoted and more diversity in his administration generally, when combined with evidence of an AAP and testimony that race was considered in the decision making, were sufficient to constitute direct evidence of unlawful discrimination); Groesch v. City of Springfield, No. 04-3162, 2006 WL 3842085, at *10 (C.D. Ill. Dec. 29, 2006) (finding that, while "statements relating to the City's increased efforts to recruit minorities in the Police Department are not direct evidence of discriminatory intent," they could provide circumstantial evidence where other evidence also supports inference of discrimination), *rev'd on other grounds*, 635 F.3d 1020 (7th Cir. 2011); White v. Alcoa, Inc., No. 3:04-CV-78 RLY/WGH, 2006 WL 769753 at *1–2 (S.D. Ind. Mar. 27, 2006) (holding that the plaintiff was entitled to submit evidence to the jury where reasons for hiring a female over the plaintiff were "unconvincing" and further that the "HR Manager . . . advised . . . that if there was an opportunity to hire a qualified female, they should do so").

97. *See supra* note 97.

98. *See Groesch*, 2006 WL 3842085, at *11 ("Having a racially diverse [workforce] is a worthy goal."); Bullen v. Chaffinch, 336 F. Supp. 2d 342, 348 (D. Del. 2004) ("[A] generalized effort to achieve more minority representation in the [workforce] . . . may be admirable.").

99. *See* Estlund, *supra* note 50, at 219 (suggesting that employers could defend race-conscious hiring based on business justifications); Shin & Gulati, *supra* note 46, at 1049 (predicting that the Supreme Court would soon consider the possibility of whether an interest in diversity might justify race-conscious action under Title VII). *But see* Rhode, *supra* note 90, at 1068–69 (questioning "how far [the *Grutter*] rationale would extend to employment contexts").

100. *See Mlynczak*, 442 F.3d at 1054 ("Race or sex may be considered only in the unlikely event that two candidates are so equally qualified that there is no other meaningful distinction between them."); Coppinger v. Wal-Mart Stores, Inc., No. 3:07cv458/MCR/MD, 2009 WL 3163211, at *8 (N.D. Fla. Sept. 30, 2009) (finding that the fact that an employer bases a hiring or promotion decision on purely subjective criteria will rarely if ever prove

In structuring hiring and selection processes, therefore, it is important to ensure that, unless employment decisions are being made pursuant to a valid AAP, decision makers refrain from considering race, ethnicity, and/or gender in selecting candidates for hire or promotion. Instead, selection decisions should be made on the basis of objective and/or subjective considerations about the candidates' relative credentials and qualifications.[101] When selection decisions are made on these bases, they are most likely to withstand challenge under Title VII. This is particularly true, even when selection decisions are based on nominal differences in credentials or qualifications, or even entirely subjective considerations, because courts are loathe to second guess the decisions of employers when they involve no apparent consideration of such impermissible factors as race, ethnicity, or gender.[102] This limitation on the consideration of race, ethnicity, and/or gender in the hiring/selection process can be contrasted with the consideration of race, ethnicity, and/or gender in the recruitment process.

F. Expanded Recruitment—The "Rooney Rule"

Although expanded recruitment and outreach to women and minority applicants are often required components of formal AAPs, they are also common features of less formal diversity programs.[103] To the extent that these recruitment and outreach efforts are aimed at ensuring that women and minority candidates are well represented among those considered for

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pretext under Title VII); Maples v. City of Columbia, No. 3:07-3568-CMC-JRM, 2009 WL 483818, at *6 n.6 (D.S.C. Feb. 23, 2009) (finding that, where a plaintiff asserts job qualifications that are similar or only slightly superior to those of the person eventually selected, the promotion decision remains vested in the sound business judgment of the employer). *But see* Dietz v. Baker, 523 F. Supp. 2d 407 (D. Del. 2007) (denying summary judgment to the defendant where a triable issue existed as to whether it may use race as a "plus factor" to support operational need and whether its use was narrowly tailored); *White*, 2006 WL 769753, at *2–3 (finding the employer not entitled to summary judgment where the human resources manager advised an HR employee that she should hire a qualified female if the opportunity arose and told another manager to hire a female applicant over a more highly qualified male).

101. Overly subjective considerations may operate to the disadvantage of women and minorities in the selection process, thus giving rise to disparate impact and/or disparate treatment claims, and so ought to be limited in their use. *See* Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1180 (9th Cir. 2007) (finding that subjective criteria for promotion and compensation decisions could support liability for disparate impact), *rev'd on other grounds*, 131 S. Ct. 2541 (2011).

102. *See* Opsatnik v. Norfolk S. Corp., No. 06-81, 2008 WL 763745, at *10 (W.D. Pa. 2008) ("[W]e do not sit as a super-personnel department that reexamines an entity's business decisions." (quoting Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326. 332 (3d Cir. 1995) (alteration in original) (internal quotation marks omitted))). Critics might argue that this standard allows employers to engage in subterfuge to mask the real motives for their selection decisions. This deferential standard also operates in favor of employers when they are accused of engaging in unlawful discrimination against women and minorities rather than in their favor. *See* Martin, *supra* note 14, at 368. There is no reason to distinguish between these two circumstances in assuming employers are engaged in suppressing their real motives nor to apply differing standards of proof.

103. *See* 41 C.F.R. § 60-2 (2014) (requiring affirmative recruitment plans); *see also supra* note 10 and accompanying text (discussing voluntary recruitment efforts).

hiring and promotion opportunities, they are among the most legally defensible practices when challenged under Title VII.[104]

In fact, expanded recruitment and outreach is the practice most often encouraged as a part of the legal profession's commitment to diversity.[105] It is also a practice that, while it carries minimal legal risk, can generate demonstrable results when implemented effectively.[106] One of the most frequently cited examples of the efficacy of expanded recruitment and outreach from diversity hiring programs is the National Football League's (NFL) Rooney Rule.[107] Some commentators even have encouraged legal employers to adopt the Rooney Rule as a part of their own diversity commitments.[108] Even if legal employers do not formally adopt the Rooney Rule as a part of their recruitment and hiring practices, understanding how and why the Rooney Rule works, and in particular why it helps shield employers from legal liability under Title VII, might help inform the development of more effective and legally defensible recruitment and hiring practices.

The Rooney Rule was adopted by the NFL in 2003 in response to public criticism about the dearth of minority head coaches.[109] The Rooney Rule requires that NFL teams expand their recruitment of and outreach to minorities, and in particular requires that all teams interview at least one minority candidate for each head coaching or front office position.[110] This effort has been widely lauded for increasing the number of minority head coaches from one in 2002 (just before the rule was adopted) to an all-time

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104. *See Mlynczak*, 442 F.3d at 1053–54, 1061 (finding that an AAP that expanded the employer's applicant pool but did not permit preference in hiring was not sufficient to establish discrimination); Rogers v. Haley, 421 F. Supp. 2d 1361, 1366 (M.D. Ala. 2006) ("[W]hile ADOC may have operated an 'expanded' recruitment program . . . there is no evidence that it has operated a program that excluded . . . white applicants."); Bullen v. Chaffinch, 336 F. Supp. 2d 342, 348 (D. Del. 2004) ("[A] generalized effort to achieve more minority representation . . . does not prove . . . that a quota was established. In fact, under certain circumstances such an effort may be admirable.").

105. *See supra* note 10.

106. *See infra* notes 107, 111–12 and accompanying text.

107. *See, e.g.*, N. Jeremi Duru, *Call in the Feds: Title VI As a Diversifying Force in the Collegiate Head Football Coaching Ranks*, 2 WAKE FOREST J.L. & POL'Y 143, 148–49 (2012) (touting the success of the NFL's Rooney Rule in increasing the diversity of head coaches); *see also* Brian W. Collins, *Tackling Unconscious Bias in Hiring Practices: The Plight of the Rooney Rule*, 82 N.Y.U. L. REV. 870, 870 (2007) (explaining the basis for the Rooney Rule's "uncharted success"). The Rooney Rule, so named for Pittsburgh Steelers' owner Dan Rooney, who was its driving force, was adopted by the NFL in 2003 following allegations by high-profile plaintiffs' attorneys Cyrus Mehri and Johnnie Cochran that the hiring and termination of head coaches in the NFL was racially discriminatory. *See* Duru, *supra*, at 147–48. At the time the Rooney Rule was adopted there was one minority head coach in the NFL, within two years there were six, and as of 2011 there were an all-time high number of eight minority head coaches in the NFL, including five that had made Super Bowl appearances. *Id.* at 147–48 & n.21.

108. Allegheny Cnty. Bar Ass'n, *Could a Variation of the NFL's Rooney Rule Work for Law Firms?*, LAW. J., 2012, at 1.

109. *See* Duru, *supra* note 107, at 143. This was seen as a particularly troubling phenomenon given the significant concentration of minority players (70 percent) in the league. *Id.* at 147.

110. *Id.* at 143.

high of eight in 2011.[111] The reason why the Rooney Rule works is because it allows teams to expand the pool of candidates from which they select coaches, but the reason why it is lawful is because ultimately the coaches are selected on the basis of their credentials, not their color.[112] Expanding the pool of candidates to include more women and racial/ethnic minorities would similarly allow legal employers to identify both more diverse candidates and possibly those with a broader range of talents, skills, and abilities than might otherwise be identified when relying on narrow recruitment strategies. Selecting candidates from among this expanded pool on the basis of their unique skills, abilities, experiences, and perceived contributions, rather than on the basis of prohibited characteristics, is what helps shield the decision from legal liability.[113] This results in a win-win for legal employers, who are able to expand their diversity while also minimizing their legal risk.

III. REDEEMING *MCDONNELL DOUGLAS*

Title VII's *McDonnell Douglas* standard has often been criticized for its failure to protect women and racial/ethnic minorities from workplace discrimination.[114] This critique focuses largely on the very low burden (of production) applicable to employers at the second stage of the *McDonnell*

111. *Id.* at 148–49 ("[T]he rule has been more effective in expanding NFL head coaching opportunities than any other equal opportunity initiative in league history."). It should be noted that this recruiting and hiring effort has not come at the expense of talent. Five of the eight head coaches in the league as of 2011 had made Super Bowl appearances in the previous five years. *Id.* at 148.

112. *Id.* at 149. Expanding the pool of candidates allows the teams to identify more candidates than might otherwise be identified using narrow recruitment practices. Within this expanded pool there are likely to be talents that had previously gone unnoticed.

113. *See* DeBiasi v. Charter Cnty. of Wayne, 537 F. Supp. 2d 903, 922 (E.D. Mich. 2008) (crediting defendant's assertion that the woman selected was more qualified than plaintiff, and reasoning that, "in the case in which there is little or no other probative evidence of discrimination, to survive summary judgment the rejected applicant's qualifications must be so significantly better than the successful applicant's qualifications that no reasonable employer would have chosen the latter applicant over the former" (quoting Bender v. Hecht's Dep't Stores, 455 F.3d 612, 627 (6th Cir. 2006)); Plumb v. Potter, 212 F. App'x 472, 480 (6th Cir. 2007) (rejecting evidence that the plaintiff was objectively more qualified for the promotion than the woman chosen, even where the plaintiff alleged that he had more managerial experience, more education and training, and a higher pay grade, finding that their "qualifications . . . were comparable, and [the employer] chose [the woman] based on her better interview and her superior performance during the temporary detail"); Jones v. Bernanke, 493 F. Supp. 2d 18, 31 (D.D.C. 2007) (finding that the plaintiff had not even offered a prima facie case of discrimination where, notwithstanding the allegations by the plaintiff that he was more qualified than the woman chosen, "this [was] a situation in which the defendant chose between two equally qualified candidates," and therefore the plaintiff did not raise any inference of discrimination); *see also* Mlynczak v. Boldman, 442 F.3d 1050, 1059 (7th Cir. 2006) ("[W]here an employer's proffered non-discriminatory reason for its employment decision is that it selected the most qualified candidate, evidence of the applicants' competing qualifications does not constitute evidence of pretext unless those differences are so favorable to the plaintiff that there can be no dispute among reasonable persons of impartial judgment that the plaintiff is clearly better qualified for the position at issue." (citations omitted)).

114. *See supra* note 14 and accompanying text.

Douglas burden-shifting framework, when the employer need only proffer some legitimate, nondiscriminatory business reason for taking the challenged employment action, as compared to the very high burden (of proof) plaintiffs must satisfy at the third stage of this burden-shifting framework, when they must demonstrate that this reason is actually a pretext for unlawful discrimination, or must otherwise offer direct proof of the employer's discriminatory motive.[115] However, it is precisely these burdens that operate to the advantage of employers when defending their diversity efforts from reverse discrimination challenges. Given the increasing hostility by courts to traditional discrimination claims, litigation has become a less effective strategy for advancing the interests of women and racial/ethnic minorities in the workplace.[116] Conversely, voluntary efforts by employers to improve workplace diversity are growing.[117] As these efforts have grown, however, they too have encountered resistance, especially in the form of reverse discrimination litigation.[118] In order to sustain and promote these efforts, including within the legal profession, it is necessary that they be structured in legally defensible ways and that employers are aware of the most effective legal strategies for defending these efforts. For the reasons discussed herein, Title VII's *McDonnell Douglas* burden-shifting framework may ironically provide that strategy, redeeming Title VII as a vehicle for the protection of women and racial/ethnic minorities and for ensuring their effective participation in the workplace.

115. *See supra* notes 23–31 and accompanying text.

116. *See supra* notes 14–15 and accompanying text.

117. *See* Moranski v. Gen. Motors Corp., 433 F.3d 537, 540 (7th Cir. 2005) ("Employer-sponsored diversity initiatives have become increasingly popular.").

118. *See supra* note 50 (noting that forty of forty-four cases challenging diversity efforts have been reverse discrimination cases).

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The City of Waterbury
Connecticut
Department of Human Resources
Office of the Civil Service Commission

July 15, 2016

Bobbie Richardson
126 Cedar Ave.
Waterbury, CT 06705

Dear Mr. Richardson:

Welcome to employment with the City of Waterbury. Your name is being certified to the Department of Education for the position of Maintainer I (Req. #2016268) at $14.48 per hour. Please contact Shannon Sullivan, Acting School Inspector at (203) 574-8013 with any questions you may have in regards to this position.

We have scheduled your orientation for Thursday, July 21, 2016 at 9:30 a.m. at the Department of Human Resources located at 236 Grand Street in Waterbury. You must attend this orientation session in order to work for the City. Your first day reporting to your new department/supervisor will be July 22, 2016 at your regular scheduled time.

At the orientation, we will provide you with a brief overview of the City, review its employment practices and complete all required paperwork. You will also be required to provide documentation, mandated by the federal government, to establish your right to work in this country. We have included a sheet that outlines the documents that are acceptable to meet this requirement. You cannot start work without providing us these documents. In addition, if you are an employee eligible for benefits, it is useful to bring the social security numbers and birth dates of your spouse and children in order to complete the insurance enrollment forms.

Please call us prior to the orientation session if you should have any questions regarding the process.

Your new probationary period in accordance with your applicable contract will be 9 months in duration. The department head will be responsible for executing your probationary evaluation no later than 9 months from your first day in your new position.

Again, welcome to the City of Waterbury.

Sincerely,

Scott Morgan
Director of Human Resources
SM/sd
cc Board of Education
Dr. Ouellette, Supt. of Schools
Shannon Sullivan, Acting Schl Insp