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Oklahoma State Board of Education
2500 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105-4599

August 23, 2022

To the Members of the Oklahoma State Board of Education:

PEN America, founded in 1922, is a nonpartisan, nonprofit organization that stands at the intersection of literature and human rights to protect open expression in the United States and worldwide.

We write to express our concern about the recent decisions by the Oklahoma State Board of Education (SBE) to lower the accreditation statuses of both Tulsa Public Schools (TPS) and Mustang Public Schools (MPS) to “accredited with warning.”¹ The Board reached these decisions in response to perceived violations of Oklahoma’s HB 1775, signed into law in February 2021.²

As a free expression advocacy organization, PEN America opposed and continues to oppose HB 1775 as a dangerous legislative restriction on free speech and inquiry in our schools. However, we write today to question not a law that is outside of the Board’s control, but two accreditation decisions that are well within your purview.

Under any reasonable interpretation of HB 1775 and of the emergency rules issued by the Oklahoma State Department of Education (OSDE) in response to the law, neither Tulsa Public Schools nor Mustang Public Schools merited any sanction, let alone the “accredited with warning” designation, harsher than what OSDE had requested, that the Board chose to impose on both schools.³ We urge

¹ Nuria Martinez-Keel, “Tulsa, Mustang Schools’ Accreditation Demoted for HB 1775 Violations,” *Oklahoman*, July 28, 2022, <https://www.oklahoman.com/story/news/education/2022/07/28/tulsa-ok-mustang-schools-demoted-hb-1775-violations/65385030007/>.

² Oklahoma HB 1775 (2021), http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/HB1775%20ENR.PDF.

³ HB 1775 Emergency Rules (2021), <https://sde.ok.gov/sites/default/files/documents/files/HB%201775%20Emergency%20Rules.pdf>

the Board to reverse these erroneous, ill-advised decisions at your next Regular Meeting on August 26, without waiting until next year's accreditation cycle.

First, the TPS case was marred by procedural errors that should themselves have resulted in dismissal of OSDE's claims.

Following investigation into the required staff training at the heart of the TPS complaint, OSDE general counsel Brad S. Clark determined that the slides presented during the training contained "no violation of the Statute and its proscription on the identified concepts being a part of any course." However, Clark wrote that the pre-recorded audio presentation, which OSDE considered separately, differed from the slides in a manner that violated three of the law's provisions – a claim that proved key to the Board's vote to sanction TPS.⁴

We now know this assertion to be false. On August 16, OSDE acknowledged that the audio recording was a word-for-word reading of the text in the visual slides.⁵ Given that OSDE had already found the slides to be in compliance with HB 1775, it is logically impossible for the audio recording to have violated the law.

Even if these procedural disqualifications were not present in the TPS case, however, neither TPS nor MPS actually violated the requirements of HB 1775.

In the case of TPS, OSDE asserts that the recording promoted concepts such as "societal systems, including public schools, were originally solely developed by the majority, who were then predominantly White, middle-class individuals," and "deeply rooted stereotypes, built over time and by history and culture, can still be found in classrooms. These can turn into implicit bias and can eventually lead to discrimination if unchecked."⁶

⁴ Brad S. Clark, HB 1775 Complaint Response, July 7, 2022, <https://www.documentcloud.org/documents/22126332-hb-1775-complaint-response-redacted>.

⁵ Dylan Goforth, "State Department of Education Admits Audio from Training was Same as Slides," *Norman Transcript*, August 16, 2022, https://www.normantranscript.com/news/state-department-of-education-now-admits-audio-from-a-tulsa-teacher-training-was-the-same/article_672c8c8c-1d79-11ed-94ce-e71742c4aa92.html

⁶ Brad S. Clark, HB 1775 Complaint Response, July 7, 2022, <https://www.documentcloud.org/documents/22126332-hb-1775-complaint-response-redacted>.

However, HB 1775 does not prohibit these sorts of general reflections on the concept of implicit bias. Rather, it prohibits attributing bias, blame, or guilt to an *individual* “by virtue of his or her race or sex.” The assertions cited by OSDE do not do this, and therefore do not violate the law.

Similarly, in the MPS case, OSDE determined that a student “Cross the Line” exercise violated HB 1775 when students were told statements such as, “If you have ever been called names regarding your race, socioeconomic class, gender, sexual orientation, or physical/learning disability and felt uncomfortable, take one step back.”⁷ Reportedly, this exercise caused one student to feel discomfort in that it “was embarrassing” for the student.⁸

However, HB 1775 does not prohibit teachers from teaching about issues that may cause students to feel discomfort, whether on account of their race or any other basis. Rather, it prohibits making part of a course the concept that “any individual *should* feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex.” [emphasis added] At no point in the exercise did the teacher introduce such a concept.

We find the reasoning advanced by OSDE in these cases to be deeply worrisome. In the TPS case, Clark wrote that even though there were no “express statements” or “explicit content” in the training that violated the law, “evidence provided makes it more likely than not that the training incorporated and/or is based on such concepts.” An OSDE spokesman has claimed that TPS “violated the spirit” of the law, even if not the letter.⁹

⁷ Statement From Mustang PS (re: State Board & MPS Accreditation), July 29, 2022, <https://www.mustangps.org/details/~board/district-news/post/statement-from-mustang-ps-re-stat-e-board-mps-accreditation>.

⁸ David Chasanov, “Mustang Public Schools Parent Outraged by Controversial Classroom Activity,” OKC Fox 25, August 2, 2022, <https://okcfox.com/news/local/mustang-public-schools-parent-outraged-after-controversial-classroom-activity-district-school-class-exercise-races-race-white-privilege-walk-step-forward-backward-parents-kids-bullying-statement-oklahoma-transparent-critical-race-theory-house-bill-1775>.

⁹ Lenzy Krehbiel-Burton, “Audio from TPS Implicit Bias Training was a Voice Reading Presentation Slides Verbatim,” *Tulsa World*, August 7, 2022, https://tulsa-world.com/news/local/education/audio-from-tps-implicit-bias-training-was-a-voice-reading-presentation-slides-verbatim/article_140cabde-1524-11ed-b809-1f6eb7ac6c64.html.

These arguments are highly concerning. They suggest that even when Oklahoma public schools explicitly avoid any of the concepts prohibited under HB 1775, they may still face punishment from SBE. Even a factual claim such as “Black students were suspended three times more than White students,” which Clark cited in his report on TPS, are apparently legitimate grounds for punishment. When the law forbids teachers from making factual claims, we suggest that something has gone deeply awry.

Similarly, OSDE’s reasoning in the MPS case suggests that teachers must be on guard to avoid any topic that might cause a student to feel uncomfortable, whether or not the teacher has actually taught material that violates HB 1775. How the state of Oklahoma expects teachers to predict a student’s emotional response in advance is unclear. In the face of such severe penalties as SBE has seen fit to mete out to Mustang, we suspect that most teachers will elect to simply avoid any topic that could even remotely be considered controversial.

According to Board member Estela Hernandez, SBE felt it needed “to send a message.”¹⁰ We fear the wrong message has been sent. As a result of these expansive interpretations of HB 1775, teachers will be less likely to discuss complex and challenging ideas, whether about race, bias, or other important concepts. This would be a deeply unfortunate outcome and would rob Oklahoma students of the quality education they deserve.

SBE’s accreditation decisions for TPS and MPS are serious miscarriages of justice. They should be reversed on August 26. Should you decline to do so, we ask that you reply to this letter with an explanation for your decision, including your rationale for concluding that the school districts were in violation of HB 1775.

¹⁰ Eesha Pendharkar, “Two Okla. Districts Get Downgraded Accreditations for Violating State’s Anti-CRT Law,” *EducationWeek*, August 2, 2022, <https://www.edweek.org/leadership/two-okla-districts-get-downgraded-accreditations-for-violating-states-anti-crt-law/2022/08>.

Sincerely,

A handwritten signature in black ink that reads "Jeremy C. Young". The signature is written in a cursive style with a large, prominent "J" and "Y".

Jeremy C. Young
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JS/JY