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July 13, 2005

By Hand

Mr. Kazuhiko Sakamoto, Chairman
Japanese Educational Institute of New York
180 Lake Avenue
Greenwich, CT 06830

Re: *Westchester Fairfield Hebrew Academy*

Dear Mr. Sakamoto:

This firm represents Westchester Fairfield Hebrew Academy ("WFHA"), the proposed purchaser of the campus of the Greenwich Japanese School ("GJS") in Greenwich, CT. On the instructions of our client, in advance of the filing of any formal legal proceedings and in the hope of avoiding same, we write to set forth clearly the disturbing facts surrounding the failure to date of the Japanese Educational Institute of New York ("JEI") to move forward with the sale to WFHA, and the profound legal implications for JEI and its affiliates should this situation persist.

At the outset, two important points must be emphasized. First, as should be perfectly clear to all involved, WFHA remains ready, willing, able and, indeed, anxious to close the transaction to purchase the campus of GJS on terms wholly consistent with those to which the parties agreed months ago. Central to this agreement, of course, were the purchase price of $20 million and the leaseback provision which will guarantee GJS a home for at least eight more years. WFHA strongly believes that its families and those of GJS *can* co-exist on the same campus in a spirit of mutual respect and cooperation. Indeed, we believe that, given the respective missions of the two schools, and the unique nature of the campus, such coexistence provides important mutual benefits for both institutions. Second, and as also should be clear by now, WFHA's Board believes strongly in the good faith and fundamental fairness of you personally, having, by all outward appearances, dealt with WFHA's Board and representatives honorably for many months.

With that said, the basic facts surrounding the proposed sale are undisputed. Since August of last year, WFHA and the Japanese Educational Institute of New York ("JEI")

have been actively negotiating the purchase/sale of the GJS campus. By October, agreement had been reached as to the material terms of sale – most critically, the $20 million purchase price and the provision permitting GJS to lease back a portion of the campus for up to eight years. WFHA's $20 million bid for the property – made as part of an open, fair and highly competitive bidding process in which other institutions participated – was essentially equal to the appraised cash value of the property, and the fact that there is no capital charge in the lease provides significant economic value to JEI going forward. In addition, WFHA's agreement to an eight-year leaseback that would ensure GJS's continuing existence in Greenwich was unique among all the bidders; no other institution was willing to afford JEI the ability to continue to operate the Greenwich Japanese School on the Greenwich campus. Formal term sheets reflecting the agreed-upon terms were exchanged in December 2004 and January 2005, and every indication was given that JEI's Board would support the transaction, and that the deal would close imminently.

In or about February or March 2005, certain members of the GJS community expressed open opposition to the sale to WFHA on the basis that it is a Jewish day school. These objections – which are in clear violation of federal anti-discrimination laws – have been expressed in a variety of fora, often with startling (and damaging) frankness. For example, there is credible evidence that, at a March 6, 2005 meeting among GJS administrators, parents and certain JEI staff, GJS's principal, Mr. Ryuichiro Toki, explicitly invoked the Jewish character of WFHA and its community in expressing his opposition to the sale. Mr. Toki is reported to have flatly stated that Japanese students could not comfortably coexist on the same campus with Jewish students. Mr. Toki's anti-Semitic comments were evidently echoed and approved by numerous parents opposing the sale. Additionally, we have learned that Mr. Yosio Ishida, JEI's Deputy Executive Secretary, has suggested that the arson of JEI's offices on the GJS campus was the result of "a Jewish conspiracy" – an allegation that is as retrograde and unfortunate as it is unsupported by the evidence.[1] Indeed, so pervasive and so open has been the discriminatory animus emanating from some members of the GJS community toward WFHA as a Jewish day school, and toward Jews in general, that a prominent and highly respected JEI Board member remarked publicly (in a meeting with GJS parents in late May) that many of the GJS parents oppose the sale of the campus due to anti-Semitism. The plan for WFHA to lease some of the campus back to GJS for eight years – a deal point that the JEI Board, initially and quite appropriately, found so appealing – has, itself, provoked ugly and unlawful expressions of discriminatory animus: we understand that Mr. Toki and others have agreed in principle to the idea of a leaseback arrangement – so long as the new owners and co-users of the campus are not Jews.

As you must know, it is a clear violation of American anti-discrimination law for any person or entity to refuse to sell real property to another on the basis of race – a term that has been interpreted in this context to cover those of the Jewish faith. Federal civil rights statutes strictly prohibit the refusal by a property owner to enter into a real estate sales contract or to convey real estate because the prospective purchasers are Jewish. *See* 42 U.S.C.§ 1982 ("All

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[1] Indeed, it is our understanding that the Greenwich police have focussed suspicion for the arson upon a member of GJS's own staff. The suggestion that a member of GJS's leadership sought to blame a "Jewish conspiracy" for a fire allegedly set by one of the school's own trusted employees raises striking and frightening historical parallels.

citizens of the United States shall have the same right . . . as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."); *id.* § 1981 ("All persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens."). Sections 1981 and 1982 protect the right to "purchase both personal and real property without any impairment due to private or public racial discrimination." *Daniels v. Dillard's*, 373 F.3d 885, 887 (8th Cir. 2004). It is well settled that these civil rights statutes prohibit discrimination against Jews, *see Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-18 (1987), and that they prohibit discrimination against organizations and associations, like the WFHA, in addition to individuals. *See Arduini Inc. v. NYNEX*, 129 F. Supp. 2d 162, 169 (N.D.N.Y. 2001); *Rosales v. AT&T Information Systems, Inc.*, 702 F. Supp. 1489 (D. Colo. 1988).

The fact that the Greenwich campus also contains at least five residential dwellings further implicates federal anti-discrimination laws – specifically, those designed to ensure fair housing opportunities to all. The federal Fair Housing Act, and its Connecticut state analogue, clearly prohibit JEI from discriminating against WFHA in the sale of the GJS campus on the basis of WFHA's Jewish character: both sets of laws provide that a seller may not "refuse to sell or rent after the making of a bonafide offer, or to refuse to negotiate for the sale or rental of . . . a dwelling because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a); Conn. Gen. Stat. § 46a-64c(a)(1).

The evidence supporting the existence of a discriminatory motive to block the sale are, we believe, well known to the members of JEI's Board. As members – indeed leaders – of that board, and as fiduciaries for the not-for-profit entity that control the property, you and others must decide how to respond to these grotesque expressions of discrimination by certain members of the GJS community. Some have suggested that bowing to the (discriminatory) pressures from some GJS administrators and parents is an appropriate way to minimize conflict and to do what is best for the community as a whole. But such a position is both morally bankrupt and legally untenable. As numerous court cases attest, it simply is not a defense to a claim of discrimination for the leadership of a defendant entity to assert that their refusal to sell to a minority purchaser was merely a response to the discriminatory attitudes of others. The law is clear: a seller may not discriminate in deference to the preferences of others. *See Ames v. Cartier, Inc.*, 193 F.Supp.2d 762, 769 (S.D.N.Y.2002); *Ani v. IMI Systems*, 2002 WL 1888873, at *17 (S.D.N.Y. Aug. 15, 2002); *Feder v. Bristol-Myers Squibb Co.*, 33 F. Supp. 2d 319, 333 (S.D.N.Y.1999); *see also Platner v. Cash & Thomas Contractors*, 908 F.2d 902, 905 n.5 (11th Cir. 1990) (holding that a person "may not illegally discriminate simply because some third party urges or pressures him to do so").[2]

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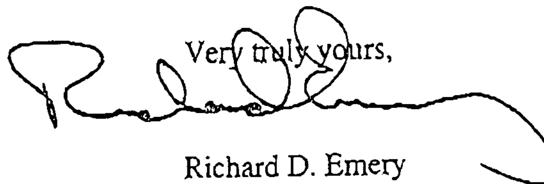
[2] Neither is it a defense that certain administrators and parents have proffered a different rationale for opposing the sale, namely what they claim is the absence of a fiscal need for the sale of the campus. Without presuming to comment on the JEI's fiscal health – a subject that, we are certain, your Board studied closely before deciding to embark upon a sale of the campus to any party – the record is clear that the claim of "no fiscal need to sell" is simply a belated pretext designed to mask the true discriminatory intent of certain segments of your community.

In the event that the JEI Board refuses to go forward with the sale, WFHA and the families that make up its community will have been deprived of a unique opportunity to own and operate a unique campus, as well as to share that campus with others in a spirit of fellowship and mutual respect. Morever, in our professional judgment, WFHA's claims against JEI and its affiliates under federal and state anti-discrimination laws are strong, and we are confident that WFHA would prevail in any ensuing litigation. In such a case, WFHA would be entitled to recover substantial monetary damages. Moreover, because the campus constitutes a unique parcel of real estate, WFHA would also be entitled to an injunction blocking JEI from selling the GJS campus to any other purchaser and compelling JEI to consummate the sale to WFHA. *See* 42 U.S.C. § 3613(c)(1); *Chapp v. Bowman*, 750 F. Supp. 274 (W.D. Mich. 1990); *Cho v. Itco*, 782 F. Supp. 1183 (E.D. Tex. 1991). Additionally, because the civil rights and fair housing statutes upon which we would rely contain fee-shifting provisions, were WFHA to prevail in such a litigation, JEI would be compelled to pay WFHA's attorneys' fees in the litigation, as well as its own. *See* 42 U.S.C. § 1988(b); 42 U.S.C. § 3613(c)(2).

The risks to JEI and its affiliates of *not* closing the transaction with WFHA are enormous. To be sure, there will be other costs as well – costs in time, energy and public good will. But perhaps the greatest cost of all will be to the children – GJS's and WFHA's own – who will become parties to a public dispute that threatens the harmony of the Greenwich community. No one wants that to occur; but neither can the WFHA leadership stand idly by as its rights are trammeled on the basis of the anti-Semitism of a vocal minority of GJS administrators and parents, and as its needs for a new campus go unmet. WFHA sincerely hopes that JEI will complete the transaction so that all of this can be avoided, and the two schools and two communities can move forward in a positive vein.

I look forward to hearing from you or your counsel soon.

Very truly yours,



Richard D. Emery

c: Ambassador Hiroyasu Ando, Consul General of Japan–New York
Mr. Hiroaki Hoshino, Member, JEI Executive Committee
Mr. Motoatsu Sakurai, Member, JEI Executive Committee
Mr. Yoshihiko Yamada, Member, JEI Executive Committee
Mr. Motokazu Yoshida, Member, JEI Executive Committee
Mr. Shigehiko Matsumura, JEI Executive Secretary