

MICHIGAN DEPARTMENT OF CIVIL RIGHTS

ARGUMENT IN SUPPORT OF DISCRIMINATION COMPLAINT

Naming

Athens Indians	Morley-Stanwood Mohawks
Bay City Western Warriors	New Boston Huron Chiefs
Belding Redskins	Newberry Indians
Birmingham Brother Rice Warriors	Paw Paw Redskins
Brownstown Woodhaven Warriors	Plymouth Canton Chiefs
Camden-Frontier Redskins	Port Huron Big Reds
Capac Chiefs	Remus Chippewa Hills Warriors
Cheboygan Chiefs	Sandusky Redskins
Chesaning Indians	Saranac Redskins
Chippewa Valley Big Reds	Saugatuck Indians
Clinton Redskins	Tawas (City) Area Braves
Dowagiac Chieftains	Tecumseh Indians
Gladstone Braves	Tekonsha Indians
Grass Lake Warriors	Utica Chieftains
Hartford Indians	Walled Lake Western Warriors
Kinde-North Huron Warriors	White Cloud Indians
Lansing Sexton Big Reds	White Pigeon Chiefs
Marquette Redmen/Redettes	

Filed with:

U.S. Department of Education
Office of Civil Rights

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INTRODUCTION AND SUMMARY

The Michigan Department of Civil Rights (MDCR) has wrestled for many years with the issues raised when schools use American Indian mascots, names, nicknames, logos, slogans, chants and/or other imagery. (Unless specifically noted otherwise the terms “imagery” and “mascots” will be used interchangeably in this document to refer to all of the above collectively.) MDCR has taken individual complaints, conducted studies, and passed resolutions, all relating to the Indian imagery issue. We have successfully worked with students, communities and schools to facilitate change when it was possible, but we have also seen schools that are determined to maintain their mascot as a “symbol of honor” and an expression of their identity.

We are not alone. Nationally, the issues surrounding the appropriation of American Indian images and names by sports teams has been a source of much heated discussion, but little resolution. Schools and communities, large and small, have addressed and readdressed the same questions with contentious processes that often produce long-term divisiveness.

MDCR is filing this complaint today because we believe that we have arrived at a unique point in time. Until very recently, the only way to analyze the questions presented when American Indian images and names were adopted by sports teams was to assess whether it constituted discriminatory conduct or created a hostile environment. This analysis required consideration of the intent behind the use, and of how universally the imagery was viewed as having a negative meaning. Courts have been disinclined to rule that a sports team’s appropriation of American Indian imagery constitutes illegal discrimination, because they have proven to be either unwilling or unable to conclude that the imagery was used maliciously, and because there is no universally held perception that using the imagery is offensive.

The contentiousness and frequency of public discussion seems also to have ebbed and flowed over the years. Communities that have addressed the question have sometimes changed and sometimes not, but almost always leave many members feeling hurt by the process and often resolved to bring the issue back up soon to “correct” whatever “final decision” was made. The resulting stalemate between those who see American Indian mascots as complementary and those who see them as offensive has, to date, proven to be as unresolvable as the question of whose mother baked the best apple pie.

As long as the question remains whether the conduct itself is discriminatory, the issue is subjective and will likely remain unresolvable. However, this is no longer the end of the story. Neither the good intentions of mascot proponents nor the general acceptance of their usage should matter if actual harm results -- and recent studies objectively establish that actual harm does result.

It has long been MDCR’s position that schools should not use American Indian imagery because so many found it to be offensive. With much effort, MDCR persuaded schools to make changes, but we have also recognized that we could not prove that any of the schools intended for their mascots to be offensive, and furthermore, none were so egregious that they were universally seen as offensive. We have to date not alleged that there was a sufficient legal basis for prohibiting the use of American Indian imagery by elementary and high schools. We do so today.

A sincere, thorough, and fair examination of the use of American-Indian imagery by schools must begin by understanding, and accepting, two underlying and indisputable truths.

First, mascot advocates see their actions as positive reflections of the admirable strengths of American Indians as a People, and therefore as something opponents should look at with great pride. They believe the positive effects of the unity and identity achieved through the use of the imagery far outweighs what they see as the overly sensitive reactions of those who are easily disturbed. While they do not view the images as a form of racism, they see the

argument that their use of the imagery is discrimination as an attempt to label all who support such use as racists, something they know they are not.

Mascot supporters do not intend to cause harm, and they believe that if only they were able to open their hearts for others to see, opponents would come around to seeing the appropriated imagery as positive.

Second, mascot opponents do see the imagery's use as offensive. They know the word redskins in particular has a long history as a racial slur that they do not believe can be erased simply by using it so often that it loses its sting. They see some of the imagery used (particularly eagle feathers) as holy objects, the misuse of which blasphemes both American Indian history and its beliefs. Opponents point out that team logos are often drawn as cartoon caricatures, which at best trivialize Indian history and culture. They note that the combined use of the name Indians or Chiefs with logos depicting savage warriors, as does the use of the team name Warriors with logos depicting Indians or uniquely Indian weapons, equates one with the other and implies that all interchangeably refer to the same people.

Mascot opponents believe that if others were able to open their hearts, they would come to understand the offensiveness of using the appropriated imagery.

A third and equally indisputable truth is that the first two truths have led to a stalemate. Courts that have considered the question do not discount the genuineness or the depth of the pain felt by those who oppose the use of mascots. However, even while recognizing that many are offended by the imagery's use, the courts have determined that such conduct is illegally discriminatory only when it is either done with bad intent or clearly understood to be offensive by all. Because it is unrealistic to believe either of the first two truths will change, the status quo will remain stalemated absent the introduction of new facts that change it. Fortunately, that time has arrived.

These three truths focus on the imagery itself and the question of whether its appropriation and use is "hostile" or "offensive" -- concepts that are subjective. New information

now constitutes a fourth truth which focuses objectively on the students, rather than subjectively on the imagery. It is based upon a newer line of research that analytically assesses the effect such imagery has on students.

A growing and unrebutted body of evidence now establishes that the use of American Indian imagery reinforces stereotypes in a way that negatively impacts the potential for achievement by students with American-Indian ancestry. The negative impact on this minority of students is NOT associated with malicious intent, or even benign negativism. In fact the impact of even “positive” stereotyping using figures such as Pocahontas produces a similarly detrimental effect.

By looking solely and objectively at the effect a mascot actually has on students, the community’s intent in adopting it no longer remains at issue. There is also no need to subjectively determine whether the imagery is “hostile” or “offensive” -- nor a need to assess the reasonableness of those taking offense to it. Even where the intent is to positively portray and pay tribute to American Indians, the continued use of American Indian imagery cannot be justified if the impact is to deny some students an equal opportunity to learn.

Recent studies also show how promoting stereotypes of minority groups not only harms students in that minority group, but also contributes to an increased self-image of students in the majority. This effect widens the equal opportunity gap created by the use of American Indian imagery.

Additionally, officially sanctioned use of such imagery conveys a message that stereotyping is acceptable. This has an indirect negative impact on all students when they later must deal with diverse workplaces, a diverse society and a global marketplace. Because this message negatively impacts students in the majority the same way as those being stereotyped it neither adds to, nor subtracts from, the equal learning opportunity gap. It does, however, provide yet another reason for prohibiting school sanctioned stereotyping of minorities.

Importantly, because the disparate impact on equal learning opportunities has only recently been established, ordering that all use of American Indian imagery by schools must cease does not require any finding that there was any past misconduct or that discrimination has been ongoing. Accepting that the schools had no ill intent and that disparate impact had not previously been established, future use of mascots may constitute illegal discrimination even where their use to the present did not.

In the alternative, even if OCR does not find the disparate impact argument legally compelling, certainly any continued use of imagery that has now been shown to harm students is sufficient to establish that future use would constitute discriminatory conduct. Here too, because the information establishing the negative impact of the imagery is recent, schools that had only good intentions and the best interests of their students in mind when using the imagery until the present – will be discriminating if they continue to use the imagery now that actual harm to students has been shown.

We will briefly and individually address each of these now four truths in additional detail, but we do not believe that there is any serious dispute as to the factual basis for each. Collectively, they lead to the inescapable conclusion that the continued usage of American Indian imagery by primary and secondary schools violates the law and concepts of equal opportunity and equal protection. As stated by the US Supreme Court in *Brown v Board of Education*:

[i]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹

Simply put: Because *every student* has the right to an *equal* opportunity to learn, schools cannot be permitted to engage in practices, like the perpetuation of stereotypes through the use

¹ 347 US 483, 493, 74 S.Ct. 686, 691 (1954)

of American Indian mascots and imagery, which are known to diminish that opportunity for some students.

The Michigan Department of Civil Rights asserts that the use of American Indian imagery in primary and secondary educational institutions denies equal learning opportunities for some students. We do not, in this complaint, allege that any of the named schools illegally discriminated by their past use of appropriated imagery, only that they do so by continuing to use the imagery knowing it has been objectively shown to harm students. We believe that after examining the question in the context of this civil rights complaint, the Department of Education, Office of Civil Rights will find that, irrespective of how benign (or even well meaning) the intent behind the imagery's may have been (or may now be), no other conclusion is supportable.

Continued use of American Indian mascots, names, nicknames, logos, slogans, chants and/or other imagery by each of the schools named in the complaint creates a hostile environment and denies equal rights to all current and future American Indian students, and must therefore cease.

A. UNTIL RECENTLY, THE ISSUE OF SCHOOLS USING AMERICAN INDIAN IMAGERY IN SPORTS HAS BEEN DEFINED BY THREE BASIC TRUTHS AND HAS RESULTED IN A STALEMATE WHERE ABSENT EVIDENCE OF AN ACTUAL INTENT TO HARRASS AMERICAN INDIAN STUDENTS, COMMUNITIES MUST INDIVIDUALLY DETERMINE WHETHER TO CONTINUE USING SUCH IMAGERY BASED UPON PUBLIC (MAJORITY) OPINION AND WITHOUT CLEAR LEGAL GUIDANCE.

1. Mascot supporters do not intend to offend, and do not believe they are doing anything offensive.

While some advocates for ending the practice of using American Indian names and imagery are unable or unwilling to acknowledge this as fact, it is intuitively true. Sports fans, including primary and secondary school students and their parents, who desire to continue using the American Indian names, images, and traditions they have come to identify with, do not do so with any intent to offend others. People who wear Indians, Chiefs, Warriors or even

“Redskins”, sweatshirts do so to show pride in, and support for, their team. They are pleased to declare themselves to be, and delighted to be recognized as being “Indians”. They see “Warrior” and “Redskin” as good things to be.

Mascot supporters typically offer a number of arguments for their continued use. An article in the Journal of Law and Education notes that supporters often begin by asserting: “Indian mascots actually honor Native Americans by celebrating their culture and traditions.” The article’s author goes on to summarize other arguments made in support of the continued use of American Indian imagery, noting: “Supporters add that the use of Indian mascots actually helps to preserve Indian culture.

Another proffered justification is that the users of Indian mascots do not intend any harm or ill will toward American Indians. A related argument is that teams choose Indian mascots for the positive attributes associated with American Indians. Supporters also argue that the Indian mascot is a not significant issue, in light of more urgent problems such as hunger and homelessness, and that their schools' mascots are protected by the First Amendment. They attribute mascot opponents' criticism to political correctness gone too far. In addition, supporters often point out that their use of Indian mascots is backed by (sometimes generations of) tradition, and is an important source of pride and a part of their school's or even their community's identity. Supporters also argue that the financial and public opinion costs that would be incurred if a change was made are worthy of consideration.”²

Another, though more problematic, point often stressed by mascot defenders is the number of American Indians who support (or at least do not oppose) the use of the names and images. During a controversy over the use of the team name “Seminoles” (with the tribe’s blessing); “One Florida State student of Seminole heritage called the NCAA policy “beyond

² Dolley, Jeff; The Four R's: Use of Indian Mascots in Educational Facilities, 32 J.L. & EDUC. 21, 26-7 (2003) (citations omitted). For a more detailed description of these arguments see Wright, William N., Note, Not in Whose Name?: Evidentiary Issues in Legal Challenges to Native American Team Names and Mascots, 40 CONN. L. REV. 279, 289-92 (2007).

idiotic" and felt that the University's use of the name "Seminoles" was in fact a great source of pride."³ To which the author correctly notes, "She does not speak for all members of her tribe or all other American Indians. "She does, however, illustrate that the divisions on this issue do not nicely coincide with any neatly drawn ethnic or cultural divisions."⁴

In the minds of fans, "Redskins" is at worst a contranym which, like cleave (split apart / stick together) has two opposite meanings. They believe the term's meaning can be easily discerned from context, and when they are cheering for the team or wearing its' logo, they trust that others will know they intend to convey only the positive definition. They would be as comfortable calling a friend a Redskin as they would be telling the friend he or she looked "wicked."

In short, mascot supporters do so because *they support what the imagery has come to represent to them and to their community*. When mascot advocates call themselves Indians, or Chiefs, or Braves, they know they are using the word in a complimentary way - and don't understand how others could perceive otherwise.

2. Mascot opponents see the misappropriation of American Indian imagery as arrogant and offensive.

Advocates for changing the status quo oppose what they see as the misappropriation of American Indian images. Mascot opponents often offer examples, like those in illustration (A). These examples provide a good start towards an understanding of how the use of these images appears from an American Indian's point of view. However, unless one is Asian, Hispanic, or Black, these are still images of others. Additionally, these examples also fail to recognize that the use of American Indian images goes well beyond simple caricatures of physical attributes.

³ *Wright*, supra, at 291.

⁴ *McBride v. Motor Vehicle Div. of Utah State Tax Comm'n*, 977 P2d 467, 472 (1999) (citing Russell, George, *The American Indian Digest: Contemporary Demography of the American Indian 12-13* (Phoenix, AZ: Thunderbird Enterprises, 1995 ed.) and the affidavit of a clinical psychologist as showing that [t]o demonstrate that there had been a kill, soldiers were required to skin the body of the Native American and bring in the 'red skin.'").

They intentionally stereotype “Indian character traits” and thereby convey messages of what an Indian looks like and how an Indian is (should be) viewed, e.g. as a warrior/savage.

A stronger analogy might be of a school in an area where the vast majority of families were

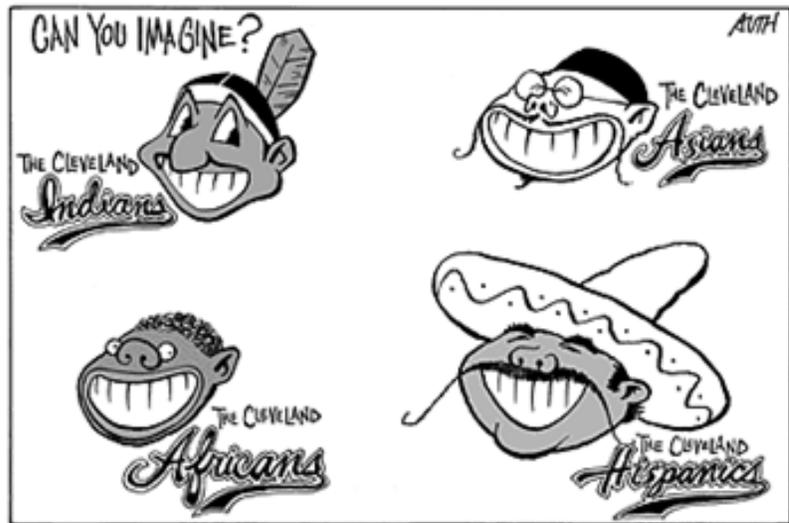


Illustration A

first (and students second) generation immigrants. What if this community was chose to be known as the “Americans” in honor of their new co-patriots and fellow citizens? Seeking to select a logo that captured the image of a “real American” in a way that was also easily identifiable, perhaps they would choose one like the fictitious logo in illustration (B).

The name/logo of the fictitious Americans (B) is no different than that used by Michigan’s Tecumseh Indians (C). In each case the appropriated team name may seem neutral - but when combined with a logo/caricature, any pretext of “honor” is quickly lost. And if we consider the possibility that instead of “Americans” the school chose a common but less neutral nickname for the team, “Infidels,” perhaps we can begin to appreciate what American Indian parents in Clinton, Michigan, might feel like when sending their children to school to become a Redskin.

If we lived one city over, our child would not have to see the logo in his or her school every day, nor would they be required to wear it in order to participate on a team or in the band. Still, how would we feel about going to a game against this school and sitting in a crowd yelling “kill the Americans”? Imagine what the homecoming floats might look like for a school playing the “Americans”?

Equally offensive and perhaps even more insidious to mascot opponents is pairing a people-specific logo with a non-complementary team name. Instead of being the “Americans”,

what if our fictitious high school chose the name “Warriors”, but they used the logo in illustration (D)? The school could certainly make a case that they are urging their teams on to victory by stressing the “never give up” or “don’t tread on me” attitude they admire in the American people, as positive motivation. They may well see this as “honoring” the American spirit, but should that intent be enough to override the offensiveness many Americans would likely feel at being depicted in this manner? The negative and arguably offensive depiction of the “Warrior” in illustration (D) sends a message a lot like the one belonging to Michigan’s Kinde-North Huron Warriors appearing in (E).



Illustration B

Using the term “Redskins” as a team name is uniquely offensive to many. The term appears to have first been used when “In 1775 the British crown offered a bounty for the scalps of American Indian men, women and children living in the New England colonies.”⁵ Whether it originated in direct reference to the red-skinned scalps of Indians collected as proof of a kill (wanted dead -- not alive), there is no question that word was derogatory. Redskins was a term used to dehumanize the Native-American “savages” who were in the way when Europeans “settled” America, and it has historically been used as a slur.



Illustration C

⁵ *McBride v Motor Vehicle Division of Utah State Tax Comm’n*, 977 P2d 467, 472 (1999), citing George Russell, *American Indian digest: Contemporary Demography of the American Indian* 12-13 (1995 ed.) and the affidavit of a clinical psychologist as showing that “To demonstrate that there had been a kill, soldiers were required to skin the body of the Native American and bring in the “red skin.”

Mascot opponents reject the idea that the term Redskins has over time come to be so commonly accepted that it may now be appropriately used. That use of the term has been so prevalent, open and notorious it now appears acceptable is something that may merit our collective shame, but it is certainly not cause for pretending it was ever an honorable term.



Illustration D

The falsehood of pretending the term Redskins has come to be acceptable is easily seen in the reality that it continues to be recognized as a slur in any context other than sports. Looking at any responsible newspaper, even those published in cities with teams named “Redskins” it is quickly evident that the term’s use is restricted to sports. No such paper has, for example referred to an accident victim, store owner, or even a criminal defendant as a Redskin.⁶ No U.S. Senate colleague ever deferred to Ben Nighthorse Campbell’s opinion by recognizing him as the only Redskin to serve in the august body. What would the reaction be if a national newscast were to recognize the Cheyenne Chief as having attained “the highest elective office ever held by a Redskin”?



Illustration E

Like the “N-word” for African-Americans⁷, the “R-word” should never be accepted in common usage, or be seen as anything other than an affront.

Many mascot opponents see the appropriation of American Indian imagery not only as offensive, but as an implicit denial of history and of how the new nation called America dealt

⁶ Not even on America’s sports pages is an American-Indian who played for an NFL team other than Washington, likely to be referred to as a Redskin. It is interesting to posit what might be the reaction if Washington were to pick an American-Indian player in the draft.

⁷ This list could easily be expanded to include the “S-word” for Hispanics, the “K-word” for Jews, the “W-word” for Italians or any other such common and readily identifiable slurs.

with its American Indian inhabitants. MDCR filed this complaint on February 8th, in part, because it is the date on which the Dawes Act was passed. We do not anticipate that many will recognize the significance of choosing this date. To the contrary, we believe that very few will and sincerely hope many will be inspired to find out⁸. More to the point, we believe that no school where students, teachers, parents, and administrators knew and taught America's history well enough to recognize the Dawes Act would want to use the cartoonish imagery, sacred objects, disrespectful nick names, or other questionable imagery of American Indian's that many use today.

Few, if any, would not find it offensive if schools in Germany today were to adopt Jewish nicknames in "honor" of those who perished in the Holocaust. Nor will the passage of another 50 or 100 years make it appropriate for them to do so. Even if enacted with good intentions and tasteful images, we would immediately recognize that they were at the very least trivializing (if not ignoring or even denying) their past and, in doing so, insulting the descendants of their victims.

In fact, Hitler studied the way America dealt with its "Indian problem" in great detail. He was a great admirer of the methods used to make land available for a 'superior' people and is believed to have used it as model for his solution to the "Jewish problem" in Europe.⁹ There is no question that he believed the most significant lesson to be learned was how soon people would forget.

Beyond the offensiveness of appropriating the imagery and the manner in which it is used, many team logos and other graphics often include feathers and other objects sacred to groups of American Indians. These graphic representations depict items that have religious and historical meaning to native people. They are deemed sacred due to their purpose and are not

⁸ One recommended starting place is Loewen, James W., *Lies my Teacher Told Me; Everything Your American History Textbook Got Wrong*, (Simon & Schuster, 2007) in particular Chapters 2 *The Truth About the First Thanksgiving* and 3 *Re Eyes* (pp 70-134).

⁹ Id. at 125 (quoting historian John Toland who wrote that Hitler "often praised to his inner circles, the efficiency of America's extermination – by starvation and even combat, of the red savages who could not be tamed by captivity." Toland, John, *Adolf Hitler* (Garden City, NY: Doubleday, 1976) p. 702).

to be generalized, caricatured, or devalued. An eagle feather, for example, paired with the head of an Indian Chief and then imbedded in the floor of an entryway or basketball court to be walked on, compounds the offensiveness exponentially.

American Indian imagery belongs (some it seems would say belonged) to American Indians. The appropriation of one People's imagery for new purposes by another is something historically that 'conquerors' do with the 'defeated'. To the vanquished, even a symbolic representation showing them to be strong is really a message that someone was stronger. Students in an American school who call themselves "Redskins", dress up like Indians, cheer using war chants, or wear uniforms emblazoned with cartoon Indians may not intend to disavow history, but it certainly suggests they don't know much about the Dawes Act, or the Indian Removal Act, or the Trail of Tears, or Wounded Knee, or Indian boarding schools....

3. To Date, It Has Not Been Possible to Establish That a School's Use of American Indian Mascots Constituted Legally Impermissible Harassment or Created a Hostile Learning Environment Absent a Showing of Some Intent to Harass or a Near Universal Understanding that a Particular Conduct is Offensive.

While the Department joins those who believe that the misappropriation of American Indian imagery and/or terminology has created environments that should reasonably have been seen as hostile and thus illegal, we cannot dispute that existing case law holds otherwise. Because harassment could until now only be assessed by a subjective examination of the challenged conduct, the use of particular imagery could not be ruled to constitute illegal harassment unless it was intended to offend or so universally recognized as offensive as to allow the intent to be inferred.

OCR provided its enforcement process guidelines in *Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance (Guidance)*.¹⁰ The Guidance provides for two separate theories for establishing the existence of discrimination:

¹⁰ 59 Fed. Reg. 11447 (03/10/1994)

different treatment and hostile environment.¹¹ This complaint does not allege that the American Indian imagery in question is presented to any person or group of persons in a way different than any other. Indeed, exposure is so persistent and pervasive that is almost constantly being presented to all. The different treatment theory is therefore not relevant here.

The Guidance provides that a violation of Title VI is also established:

“ . . . if a recipient has created or is responsible for a racially hostile environment i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient¹²

The Guidance then describes the criteria used to make the hostile environment determination. It provides, in relevant part:

“To determine whether a racially hostile environment exists, it must be determined if the racial harassment is severe, pervasive or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a Title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under Title VI varies inversely with their pervasiveness or persistence.

. . . When OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. . .

The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

This is especially true for younger, less mature children, who are generally more impressionable than older students or adults.

. . . [t]he severe, pervasive or persistent standard must be understood in light of the age and impressionability of the students involved and with the special nature and purposes of the educational setting in mind

. . . If OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the

¹¹ Id. at 11448.

¹² Id. at 11449.

victim, under similar circumstances, OCR will find that a hostile environment existed . . . ¹³

The reasonable person standard is where things become difficult. There can be little argument but that some find American Indian mascots to be offensive, and some do not. This is true among Caucasians and American Indians (as well as all other ethnic groups). Even the term Redskins is so timeworn that many American Indians indicate they do not now find it offensive, even though aware of its origins.

First it should be recognized that the “reasonable person of the same race” standard is viewed by many as furthering “the pernicious belief that persons of the same race think alike.”¹⁴ This mascot issue illustrates the point, but it also renders the distinction unimportant. The point that not all group members think alike is clearly seen in the divergence of opinions about mascots among American Indians. The question of whether to instead use a “reasonable person” standard is moot however, because opinions are no less diverse.

Whichever reasonable standard is used, courts, state agencies and OCR have been loath to find that the use of American Indian imagery on its own can ever create a hostile environment. A good example of this is the *Munson*¹⁵ case out of Wisconsin. The State investigated a complaint about a high school’s mascot and through investigation determined in part that the school used the:

“ . . . nickname of “Indians” and has a logo depicting an Indian wearing a full feather headdress or “war bonnet” in the “Plains Indian” Style. . . . The logo is not an accurate depiction of an American Indian from any particular tribe from Wisconsin. . . . The logo and nickname is [sic] used primarily in conjunction with athletic events. Currently, the logo and the slogan “Go Indians” appears [sic] on scoreboards located in the gym and on the football field. A large sign with the logo and the phrase “Mosinee Indians” is located on the opposite end of one of the scoreboards. The phrase “This is Indian Country” is written in large letters on a wall near the gym. The phrase “Home of the Indians” is located on one side of the concession stand. Furthermore, the logo appears on diplomas, certificates, tee-shirts, sweatshirts, on the gym floor, on the back side of the concession stand, and on the high school bulletin board in front of the main office.

¹³ Id. 11450-51.

¹⁴ Trainor, Daniel J.; Native American Mascots, Schools, and the Title VI Hostile Environment Analysis, 1995 U. ILL. L. REV. 971, 993 (1995).

¹⁵ *Munson v. State Superintendent of Pub. Instruction*, unpublished opinion per curiam of the Court of Appeals of Wisconsin, issued Feb. 17, 1998 (Docket #97-1450).

The State however also noted that teachers, students and administrators were divided on the question of whether the logo was appropriate. It found the same was true of the local community, though Wisconsin's Indian Tribes appeared to uniformly oppose the logo. It concluded:

Moreover, this logo is clearly offensive to the appellant and her children. However, the reasonable person standard must be followed. In applying this standard to the Mosinee "Indian" logo, the department concludes that it is not clear that a reasonable person, similarly situated to the appellant, would find that the logo presents a negative stereotype of American Indians.¹⁶

The finding was affirmed by the Wisconsin Court of Appeals.¹⁷ In a case dealing with the University of North Dakota's (UND) use of the "Fighting Sioux" nickname and logo the US District Court put it this way:

"This vastly different response to the same imagery by American Indian groups makes it impossible for the Students to claim that the use of these marks is facially discriminatory. Simply put, the State's use of the "Fighting Sioux" nickname and logo at UND cannot form the basis of a Title VI violation."¹⁸

It is appropriate to require that when conduct cannot be shown to be intentionally discriminatory that it at least be widely recognized as offensive before it can be called illegal discrimination. Courts are wise to recognize that when there is no uniformity of understanding, it is the understanding of reasonable people that should prevail. The implication that anyone who is offended by these mascots is somehow not a "reasonable person" is, at best, insensitive. That it would be "unreasonable" for an American Indian who is depicted by the mascot to be offended, is itself offensive.

A deeper understanding of the reasonable person standard can be gained by thinking about the difference between "offensive," and hostile or "hostile environment". The legal standard for finding a violation of Title VI in these cases is the latter. The legal question involved is thus not merely whether something is "offensive," but whether it is sufficiently offensive (given its severity/pervasiveness/persistence) to "interfere with or limit the ability of a

¹⁶ Id.

¹⁷ Id.

¹⁸ *Annis v. Dalrymple*, unpublished order of U.S. District Court (D.N.D.), entered Aug. 3, 2012 (Docket #2:11-cv 73).

[reasonable person] to participate in or benefit from the services, activities or privileges provided by [the school].”

A good illustration of this is seen in an article attacking the decision of the NCAA to prohibit as “hostile,” mascots upon only a finding that they were offensive.¹⁹ The author made it clear that he was not expressing an opinion about mascot use, but took issue with the NCAA’s application of an “ill-defined moral judgment”²⁰ instead of “the mandates of both relevant and legal doctrine;”²¹ of asking whether the mascot was “offensive” rather than “hostile or abusive.”

The author notes that courts in employment cases (particularly in cases alleging sexual or racial harassment) routinely assess whether offensive conduct creates a hostile environment.²² He points out that the courts in these cases follow the US Supreme Court’s description that an “actionable hostile environment” occurred when conduct was “sufficiently severe or pervasive to alter the conditions of the victim’s employment.”²³

Thus, the real question is not whether it is reasonable to be offended, the real question is whether it is reasonable to be so offended that it alters the conditions of the employment. Similarly, in the educational setting, the real question is whether a reasonable student would be so offended as to let it affect his or her ability to learn or, in other words, whether it would limit the ability “participate in or benefit from the services, activities, or privileges provided by a recipient.”²⁴

There is a remaining legal theory of deliberate indifference that can in some instances be used to impute intent; however, it is difficult to see how it could apply in the above situations where the harm is one of perception and the test is subjective. Absent an objective showing of actual harm, there is nothing of which to be deliberately indifferent.

¹⁹ Glenn, George; *Playing Cowboys and Indians*, 6 VA. SPORTS & ENT. L.J. 90 (2006).

²⁰ *Id.* at 92.

²¹ *Id.* at 104.

²² *Id.* at 108-9.

²³ *Id.* at 109, citing XXX86XXX (emphasis added).

²⁴ OCR Guidance, *supra* at 11449.

A student is not protected from being offended, but from being subjected to an environment that is hostile to his or her ability to learn. Thus absent intentional discrimination, the reasonable person standard as applied in hostile educational environment has to date been whether the conduct is so nearly universally understood as offensive, that it would “interfere with or limit the ability of [a reasonable person] to participate in or benefit from” the educational opportunities being offered? Because in this context “reasonableness” is subjective and mascots are not universally seen as offensive, it has not been possible to establish that it was reasonable to conclude that mascots interfered with student abilities.

B. BECAUSE IT IS NOW ESTABLISHED THAT THE PRACTICE OF USING AMERICAN-INDIAN IMAGES IN K-12 SCHOOLS DIMINISHES THE EDUCATIONAL OPPORTUNITY OF SOME STUDENTS (EVEN AS IT INCREASES THOSE OF SOME OTHERS), IT DENIES THOSE STUDENTS AN EQUAL OPPORTUNITY TO EDUCATION, AND IT MUST BE CEASED.

The research empirically demonstrates, for the first time, that the negative stereotypes promoted by American Indian mascots reveal negative consequences for the targeted minority group and positive consequences for the mainstream majority group.

(May 5, 2011)²⁵

Ms. Fryberg is an Assistant Professor of Social and Cultural Psychology at the University of Arizona. She is recognized as a leading researcher and expert for her work examining how social representations of race, culture, and social class influence psychological well-being, physical health, and educational attainment. Her findings, quoted above, are the basis of why MDCR contends the question of whether the use of American Indian mascots by primary and secondary schools is discriminatory must be reevaluated, and why a reevaluation will result in finding that they are. Previously, the focus had to be on the challenged conduct itself, and thus

²⁵ Fryberg, Stephanie A.; Statement to S. Comm. on Indian Affairs, *Stolen Identities: The Impact of Racist Stereotypes on Indigenous People*, Hearing, May 5, 2011 (S. Hrg. 112-37), pg. 31, Washington: Government Printing Office (2011)

a finding of discrimination turned on whether it was motivated by some level of animus, or whether it was so clearly understood as offensive that such intent could be inferred. Now, “for the first time” a sufficient body of work exists to empirically, objectively and conclusively establish that the continued use of American Indian mascots harms students.

With reference to the above discussion of how to determine whether an educational environment was hostile, we no longer need to debate whether it is “reasonable” to allege harm, or whether mascots are or are not universally seen as negative that it is reasonable to determine that harm must be a result. Harm need not be inferred or deduced at all; it is now an established fact.

That the use of American Indian mascots and imagery causes actual and disproportionate harm to American Indian students should be a sufficient basis for finding that it is discriminatory and must not be permitted to continue. However, OCR need not base a finding of discrimination solely on the disparate impact the mascots have. When a school continues to use American Indian mascots knowing that they “have (1) negative psychological consequences for American Indians, (2) positive Psychological consequences for European Americans, and (3) negative effects on race relations,” there is a sufficient basis for OCR to impute bad intent or at least deliberate indifference.

The use of American Indian mascots, nicknames, and logos by schools has been established by numerous studies to cause psychological and emotional harm to American Indian students. Stereotypes are generalizations about a social category and a limited set of behaviors or traits that do not allow for individual differences.²⁶ An extensive body of social

²⁶ See generally Bargh, John A. et al., *Generality of the Automatic Attitude Activation Effect*, 62 *J. PERSONALITY & SOC. PSYCHOL.* 893 (1992); Dijksterhuis, Ap & Van Knippenberg, Ad, *On the Parameters of Associative Strength Central Tendency and Variability as Determinants of Stereotype Accessibility*, 25 *PERSONALITY & SOC. PSYCHOL. BULL.* 529 (1999); Fazio, Frank R. et al., *On the Automatic Activation of Attitudes*, 50 *J. Personality & Soc. Psychol.* 229 (1986); Greenwald, Anthony G. & Banaji, Mahzarin R., *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 *PSYCHOL. REV.* 4 (1995); Greenwald, Anthony G., Klinger, Mark R., & Liu, Thomas J., *Unconscious Processing of Dichoptically Masked Words*, 17 *MEMORY & COGNITION* 35 (1989).

psychological research demonstrates that stereotyping leads to discriminatory outcomes.²⁷

There are now “over 100 journal articles [which] have confirmed that negative stereotypes have negative consequences for members of stereotyped groups.”²⁸

The narrow visibility of American Indians in the mainstream media gives inordinate communicative power to the limited number of representations of American Indians in the media, and the most prevalent representations of American Indians are mascots and symbols of sports teams.²⁹ Stereotypes are especially potent when the group perpetuating the stereotype has little contact or exposure to the group being stereotyped.³⁰ These stereotypical images of American Indians are so pervasive that they create a blind spot within the non-Indian culture, inhibiting the ability to identify the use of American Indian imagery in mascots as inappropriate, or possibly racist. When there are relatively few American Indian students in a given setting, those students are more likely to be stereotyped. American Indian students in academic settings where mascots are used attract even more attention, are more likely to be perceived as acting in their stereotyped roles, and are evaluated more extremely than their non-American Indian peers. Exposure to American Indian mascot images negatively impacts American Indian students’ feelings of self-esteem, achievement, and community worth.³¹

Many of the images, because of the sporting and competitive element, depict American Indians in an aggressive and fighting nature. This fosters and furthers the stereotypes of American Indians as savages, as fighting people, as not peaceful, etc. This has a significant negative impact on the self-esteem, the self-identity, and cultural identity of American Indian students, while also altering the perception non-American Indian students have of their American Indian counterparts.

²⁷ See e.g. Brief for American Psychol. Ass’n as Amicus Curiae, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (No. 87-1167), reprinted in 46 Am. Psychologist 1061, 1063 (1991).

²⁸ Fryberg, Stephanie A. & Watts, Alisha, *We’re Honoring You, Dude: Myths, Mascots and American Indians*, as included in *Doing Race: 21 Essays for the 21st Century* (Hazel Rose Markus ed., 2010).

²⁹ See generally Fryberg, Stephanie, et al., *Of Warrior Chiefs and Indian Princesses: The Psychological Consequences of American Indian Mascots*, 30 BASIC AND APPLIED SOCIAL PSYCHOL. 208-18 (2008).

³⁰ *Id.* at 208.

³¹ *Id.*

During the course of one study, researchers presented American Indian undergraduates with the mascot primes of Chief Wahoo, Chief Illiniwek, and the Haskell Indian and then were asked to describe what they wanted to accomplish in the next year. Compared with the control condition in this study, the mascots greatly depressed the proportion of achievement-related possible selves generated by study participants.³² This study found that the mascots are harmful because they are reminders to American Indian students of the limited ways that majority culture view them, and ultimately constrain how they see themselves.³³ The results of the study indicated that these effects were only present in American Indian students.³⁴

A study at the University of North Dakota measured the psychological effect of the “Fighting Sioux” mascot on American Indian and non-American Indian students at the university.³⁵ The UND study compared the nickname and logo’s emotional impact on American Indian and non-American Indian college students. Participants viewed either a neutral or controversial presentation of “Fighting Sioux” imagery common on the UND campus and then completed psychological inventories to determine measures of distress. The study found that in both instances, after viewing the presentations American Indian students reported significantly higher psychological distress levels than did non-Indian students.³⁶ Psychological distress, as measured by feelings of anxiousness, hostility, and depression had not been significantly different when tested prior to the presentations.³⁷ LaRocque’s study, like Fryberg’s, concluded that the psychological effects of exposure were only present in American Indian students.³⁸

One measurable result of racial stereotyping is decreased academic performance. “Stereotype threat” describes a situation where the belief that a student’s performance might be

³² *Id.* at 215.

³³ *Id.* at 208

³⁴ *Id.*

³⁵ See generally LaRocque, Angela R. (2004), *Psychological Distress Between American Indian and Majority Culture College Students Regarding the Use of the Fighting Sioux Nickname and Logo* (unpublished doctoral dissertation), University of North Dakota, Grand Forks, ND. (Available at <http://turtletalk.files.wordpress.com/2011/12/angela-laroque-dissertation.pdf>).

³⁶ *Id.* at 30.

³⁷ *Id.* at 29-30.

³⁸ *Id.* at 27.

viewed as confirming a negative stereotype is demonstrably detrimental to academic performance.³⁹ The “stereotype threat” links being a member of a stereotyped group with being reminded of the stereotypes associated with the group or having that stereotype activated in a test taker and with negative standardized test performance.⁴⁰ Steele’s study finds that decreased academic performance among a stereotyped group is evident even when the member of the targeted group rejects the stereotype, likely because the individual is still operating under the weight of suspicions that the stereotype is true.⁴¹ Stereotype-threatened individuals spend more time completing fewer test questions, while still answering less accurately.⁴²

Importantly, even positive stereotypes can have negative effects. The stereotype that “Asians have superior mathematical ability” can cause Asian students to “choke” or otherwise underperform on a math test.⁴³ Fryberg conducted a series of four separate studies published in 2008 addressing this effect among American Indians.⁴⁴ Among other findings, she documented that even though American Indian high school students reported having largely positive associations with images of the characters Chief Wahoo and Pocahontas, when asked about themselves after viewing the images these students reported lower self-esteem and community worth than did students in a control group who were not shown any images.⁴⁵

How profound is the effect of mascots on self-esteem? At least one study found that being exposed to American Indian mascots lowered the self-esteem of American Indian High

³⁹ Steele, Claude & Aronson, Joshua, Stereotype Threat and the Intellectual Test Performance of African Americans, 69 J. OF PERSONALITY AND SOC. PSYCHOL. 797-811 (1995).

⁴⁰ *Id.* at 809-10.

⁴¹ *Id.*

⁴² *Id.* at 809.

⁴³ Fryberg, Honoring You, *supra* p. 468 (referencing Cheryn, Sapna and Bodenhausen, Galen V., When Positive Stereotypes Threaten Intellectual Performance: The Psychological Hazards of “Model Minority” Status, 11 PSYCHOLOGICAL SCIENCE 5, 399-402 (Sept. 2000)).

⁴⁴ Fryberg, Warrior Chiefs, *supra* pp. 208-18.

⁴⁵ *Id.* and summarized in *We’re Honoring You, Dude*, p 469

school students significantly more than exposure to negative stereotypes like alcoholism, dropout rates and suicide.⁴⁶

Further exacerbating the inequality created by American Indian mascots, the same series of studies showed that European American students reported higher self-esteem when exposed to the Indian representations.⁴⁷ This was true of both the positive and negative images.⁴⁸ Fryberg posits the possibility that this might help to explain the tenacity with which some fight to hang on to “their” American Indian mascot.⁴⁹

The harmful effects of American Indian imagery is again exacerbated when it is official school policy and when it is as pervasive and persistent as is a school’s mascot, logo and nickname. This complaint does not involve mere exposure to images, nor does it involve college students and adults, as did the above studies. The complaint applies to primary and secondary school students who are confronted daily with stereotypes, officially endorsed by the very institutions that are supposed to be nurturing each student to reach his or her full potential.

While not related to the disparate effect, there has also been significant research concerning the effects of exposure to mascots on non-American Indian students. A stereotypic portrayal has negative effects on those who are not targets of the stereotype and can have the effect of creating a racially hostile educational environment for all students. Even where the intention of the depiction may have been to honor a particular tribe, the consequence of exposure to the American Indian mascot is increased stereotyping of other racial minorities.⁵⁰ The study by Kim-Prieto found that individuals who are exposed to American Indian mascots and stereotypic portrayals will heighten their stereotyping of Asian Americans. Racial priming via the American Indian mascots increases the tendency to endorse stereotypes about other minority groups. Furthermore, increased exposure to stereotypes results in greater reliance on

⁴⁶ Fryberg, Statement to S. Comm., supra p. 30. Fryberg, Statement to S. Comm., supra p. 30.

⁴⁷ Fryberg, Honoring You, p 474

⁴⁸ Id. p. 475

⁴⁹ Fryberg, Statement to S. Comm., p. 30.

⁵⁰ Kim-Prieto, Chu et al., Effect of Exposure to an American Indian Mascot on the Tendency to Stereotype a Different Minority Group, 40 J. OF APPLIED SOC. PSYCHOL. 534-53 (2010).

those stereotypes when making interpersonal evaluations in work and academic settings.⁵¹

Reliance on any stereotype appears to increase along with exposure to stereotypes, regardless of whom the stereotype is portraying.⁵² Although this particular harm affects all students and thus does not increase the equal opportunity gap between them, it is still indicative of a schools indifference to the negative consequences of the mascots use.

American Indian mascots go beyond being merely offensive. The use of American Indian mascots has been demonstrated to cause actual psychological harm to American Indian students. Persistent racial stereotyping also has the effect of decreasing academic performance in members of a targeted racial group. When using American Indian mascots, educational institutions are abandoning their obligation to American Indian students by failing to provide them an equal opportunity to participate in or benefit from the educational services and activities being provided.

The schools named in this complaint may well have had only good motives for using the mascot until now, but they cannot claim good motives if they now deliberately ignore this data. Their use of American Indian imagery is now objectively, imperially and unequivocally established to have a disparate impact. OCR can elect to rule based upon this disparate impact, or it can rule based on a finding that schools continuing to use American Indian mascots intend to do so knowing it causes harm, or it can rule based on a finding that schools are simply being deliberately indifferent about the whole issue. In any event, now is the time to tell schools receiving federal funds that they cannot continue to discriminate against American Indian students, present or future.

Because there is now “for the first time” an objective showing that actual harm is resulting and that it disparately falls on American Indian students, there is no longer any need to question what the school, or what the “reasonable American Indian” thinks about the mascot.

⁵¹ *Id.* at 536.

⁵² *Id.* at 545.

Schools cannot be permitted to disadvantage minority students just because it contributes to the “spirit” of the majority to do so. They cannot be permitted to exclude some students in order to create unity among the others. They cannot call themselves “Redskins” just because they have done it for so long that most people have forgotten where it comes from. They cannot choose to call themselves Indians when they do so at the expense of those to whom the identity, and all that goes with it, really belongs.

C. THE U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS (OCR) IS THE MOST APPROPRIATE VENUE FOR ADDRESSING THE ISSUES PRESENTED IN THIS COMPLAINT.

1. This Complaint is Properly within the Legal Jurisdiction of the U.S. Department of Education, Office of Civil Rights.

The Office for Civil Rights (OCR) enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. This responsibility includes enforcement of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin.

OCR’s powers and responsibilities in this area are governed by 34 CFR Part 100, *Nondiscrimination Under Programs Receiving Federal Assistance Through The Department Of Education Effectuation Of Title VI Of The Civil Rights Act Of 1964*. The OCR regulations specifically provide that OCR should exercise its powers

. . . to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Education. .⁵³

Specific discriminatory actions prohibited include,⁵⁴ but are not limited to,⁵⁵ ensuring that:

(1) A recipient under any program to which this part applies may not . . . on ground of race, color, or national origin;

⁵³ 34 CFR pt. 100.1.

⁵⁴ 34 CFR pt. 100.3(1)(b)

⁵⁵ 34 CFR pt. 100.3(5)

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service . . . or other benefit under the program;

(vi) Deny an individual an opportunity to participate in the program . . . or afford [a person] an opportunity to do so which is different from that afforded others under the program . . .

An OCR complaint need not be filed by a victim of the alleged discrimination. Anyone who believes that an education institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age may complain on behalf of another person or group.⁵⁶

A complaint must be filed within 180 days of the date of the alleged discrimination.⁵⁷ In this instance, the discrimination is ongoing and Complainant avers that each of the schools named in this complaint was using American Indian imagery in a manner the complaint alleges to be discriminatory up to, and including, the date on which this complaint was filed (02/08/2013).

2. The US Department of Education, Office of Civil Rights is the Most Appropriate Venue.

OCR is the most appropriate venue because the complaints and the issues presented by them directly relate to public education, and apply only through high school (K-12). Primary and secondary institutions and systems are engaged in the education of young and impressionable students during a period of growth and development. These institutions are designed to prepare these youth for their future and to help them develop the tools they will need to achieve their full potential. Students in these systems have no choice about whether to attend school and little, if any, choice about where to attend. However, they are entitled to an equal opportunity to learn when they do.

⁵⁶ 34 CFR pt. 100.7(b).

⁵⁷ *Id.*

K-12 schools are the learning environment in which children begin to develop into the adults they will become. It could not be more vital.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. *Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.*

The above statement respecting the unique importance and protections to be afforded our public schools and students may sound as though it comes from the rally speech of an education advocate, but the quote comes from the U.S. Supreme Court opinion in *Brown v. Board of Education*.⁵⁸ It was offered as the Court's explanation of why, "even though the physical facilities and other "tangible" factors may be equal" the constitutional question was whether segregation "deprive[d] the children of the minority group of equal educational opportunities?"⁵⁹ *Brown* was not simply about the reality that two separate schools could never be equal; it was based upon a recognition that treating minority students differently "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."⁶⁰

This complaint is not based upon whether the use of American Indian imagery, or even of the team name "Redskins", is offensive. It is instead based on evidence that the use of American Imagery promotes stereotypes that, whether offensive or positive, disadvantage a group of minority students by denying them the advantages and privileges received by others. This complaint is not based upon any narrowly defined set of facts that would require individual assessment of individual schools and communities and perhaps even issues of regional

⁵⁸ *Brown v. Bd. Of Ed.*, 347 U.S. 483, 493 (1954).

⁵⁹ *Id.*

⁶⁰ *Id.*

differences in how a particular symbol or term is perceived on a local level. It is based upon broader principles that should be applied in all U.S. schools equally.

The Department of Education is uniquely qualified to assess the studies and other evidence to determine the extent to which the stereotyping resulting from the use of American Indian imagery does have a negative impact on American Indian students. It is a question requiring a level of educational expertise that is not easily found elsewhere and is certainly not guaranteed to be consistent in individual state and local courthouses or state and local education agencies.

Subjective assessments, like whether particular images or the name “Redskins” is sufficient to create a hostile environment, may in some instances be appropriately made on a more local level, because that which is universally perceived as offensive in some places may not be in others. However, this complaint does not depend on subjective determinations and it is therefore, not just unnecessary, but inappropriate to take local or regional differences into account. This is an issue on which guidance from a single, authoritative, national entity is required.

Additionally, the information establishing the negative impact of mascot use is still relatively new. If not addressed on a national level, it will be left to local jurisdictions where the first question is often, what are others doing? Thus, students will continue to suffer as many state or local bodies wait for others to act first. If, as claimant MDCR contends, students are being denied equal learning opportunities, they have suffered long enough and there is no reason why it should not be remedied as rapidly and consistently as possible.

Michigan does have a complaint process whereby MDCR is able to file a complaint similar to this one before the Civil Rights Commission. It is a process that will need to be considered if OCR does not investigate these cases to resolution. However, we have chosen this venue instead, because we desire to reach and protect the maximum number of students who are currently victims of discrimination, to achieve a uniform interpretation and enforcement

of federal civil right laws across the country, and to minimize the divisive effect this issue has on communities. MDCR hopes OCR will choose to resolve the issues presented in this complaint not because it is the only place that can, but because it is best suited to do so.

Only OCR can bring the proper expertise to the issue and if OCR agrees, for example, that using “Redskins” as a high school team name does, in the words of *Brown v Board of Education*, “deprive the children of the minority group of equal educational opportunities,” then its use simply cannot be continued at the expense of those children and only OCR can remedy the discrimination nationally.

3. While there are other “Redskins”, this complaint is properly filed with OCR and limited to primary and secondary schools.

The Michigan Department of Civil Rights has long believed that non-Indian use of American Indian mascots, nicknames, logos, and other images or practices is inappropriate and often offensive. Great numbers of the descendants of Peoples who resided in, and possessed, this land long before it was “discovered” and “civilized” find the appropriation and misuse of these stolen items of identity to be offensive. MDCR believes the use of such imagery by non-American Indian persons, groups, or commercial-enterprises is often offensive, usually inappropriate, and should always be suspect.

But that’s not what this complaint is about.

This complaint is not about the name or logo of the Washington “Redskins”, the tomahawk chop of the Atlanta Braves, or the names, customs or logos of other professional sports teams. Nor is it about the dance of “Chief Illiniwek” at the University of Illinois, Chief Osceola riding his horse Renegade at Florida Seminoles games, the “Fighting Sioux” of the University of North Dakota, or other misappropriated imagery in college athletics. It’s not about the sacred eagle feathers and Great Father figures trod upon during pro and college basketball, football, hockey and other games nationwide, and emblazoned on everything from baby bibs to undershorts.

While too omnipresent to be avoided entirely, these items appear primarily in adult settings. Children are exposed outside of schools, but for the most part with parental consent (if not outright involvement and support). On college campuses where terms and symbols are an all but unavoidable part of a student's identity, students are at least of an age to better understand and they have the opportunity to elect to attend a different school.

MDCR will continue to challenge the misappropriation of American Indian imagery in settings outside primary and secondary schools. We will continue to try to persuade those who are using such imagery to change their logos to something they can take pride in without doing so at the expense of others. However, MDCR sees education, particularly K-12 public education as being an important civil right in and of itself. We believe there are few American values or rights as vital as the right to equal educational opportunity. Schools cannot be permitted to continue practices that can be shown to harm a minority group of students.

In this complaint, MDCR raises the misappropriation of American Indian imagery and identity only within the context of primary and secondary education institutions receiving federal funds.

4. The Michigan Department of Civil Rights is an Appropriate Complainant and is appropriately filing "on behalf of," rather than naming individual American Indians or requiring individuals to file on their own behalf.

As noted above, a person or organization filing a complaint with OCR needn't be a victim of the alleged discrimination, but may complain on behalf of another person or group. However, MDCR is not choosing to file this complaint on behalf of current and future students with American Indian ancestry simply because the law says it can. We believe that, pursuant to our duty to protect individuals from discrimination, we are compelled to do so.

Our determination that MDCR needed to be the complainant in this matter is based upon a number of factors. We believe our filing best expresses that this issue has far broader implications and importance than might be conveyed otherwise. We also do not believe that any of the schools named in this complaint deserves to be singled out in the way that selecting

one and filing a specific complaint would do. This is especially true as this complaint does not allege past discrimination based on the schools' past conduct. We allege only that it is discrimination for schools to continue to use American Indian imagery now that it has been established, irrespective of the presence or absence of hostility, doing so has a disparate and detrimental effect on American Indian students, their self-esteem, and their educational potential.

The decision to file this complaint on behalf of others was largely based upon our previous experiences dealing with the issue. Two items in particular are significant: personal safety and timing. Both issues can be illustrated by the efforts of a particular pair of young women to get their former school to change its mascot. Their experience has caused us to spend considerable time thinking about how we could best raise the issue.

These women are American Indians attending high school and living in a community that had heavily invested their identity in the school's sports programs, particularly football. Both were very disturbed by the imagery, logo, and related cheers, etc. But, even stronger than their objections was their reluctance to raise the issue while they were students.

Seeing how others around her viewed Indians, one has described a fear of even self-identifying publicly. They described having only two choices: they could 'come out' as American Indians, show their pride in what EVERYBODY else ridiculed, be identified as trying to take away the community's identity, and be perceived as calling everybody around them racists; or they could quietly endure. Not surprisingly, they chose the latter as being the best way to survive and get the most out of the educational opportunity being offered them.

Enduring for them, like it does for every student who is made to feel they must hide or downplay being American Indian, meant having to wear logos they found offensive (and yet of which they are the subject) in order to take part in band or sports. It meant enduring chants and cheers, periodically attending school spirit events and pep rallies, daily viewing offensive signs,

murals, paintings and statues, and perhaps worst of all saying nothing when others insult who you are.

They, like others who have talked to us about experiences in other schools, described how part of the fear of being identified as an American Indian in such a situation is the knowledge that it will quickly become the sum total of how others view you. They would be expected to speak on behalf of American Indians, and to explain why American Indians do or feel what they do. They would be pressured to approve of the mascot “on behalf of all native peoples” as though they thought it was possible (and believing it would be betrayal) to do so. And disturbingly, they would be expected to “live up to” the distorted image others have of what an Indian “should” be.

How are students to feel they fit in with fellow students who actively insult them and belittle who they are on a constant basis? How are they to learn from and respect teachers who show no respect for who they know they are? How are they to academically achieve in such an environment? - To maintain self-esteem and confidence? – To set high goals for their future and see themselves meeting high expectations?

To their great credit, these two young women came out of that environment with their pride intact and a desire to protect others who might follow. When they felt far enough removed from the eye of the storm to do so, they began an effort to get the school to change. They quickly learned that their fears about how others would react were well founded. They were roundly shunned by the community, taunted when expressing themselves, and regularly subjected to violent threats.

They also learned, unfortunately through us, the legal hurdles involved with trying to bring a civil rights complaint as the graduate of a program rather than a student. Reprisals against those raising this issue in Michigan have previously resulted not only in verbal and written threats, but also the placing of dead rabbits between the front and screen doors of one’s house, and the burning of outbuildings and cars belonging to a family that led a successful effort

to change a school's mascot. MDCR thus wishes to stress that neither the women above, nor any other specific present or future student has been involved in, or even consulted about, the filing of this complaint. Most importantly, no one who has previously raised the issue with us has the ability to ask us to withdraw this complaint and we hope this might deter others from trying to persuade them to do so.

For similar reasons, MDCR does not believe it would be reasonable to expect present or future students to file complaints of their own. We believe the experiences of those who have had to face that choice in the past speak loudly and clearly on the issues of how mascots can unequally diminish educational opportunity. We file this complaint on behalf of current and future students, but we do so with past students in our hearts.

Respectfully submitted,

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