

AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN

**DISCRIMINATION COMPLAINT AGAINST
PAW PAW (MICHIGAN) PUBLIC SCHOOLS**

Filed with: U.S. Department of Education – Office for Civil Rights

1. Name of person filing this complaint:



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2. Persons discriminated against:

Within the school district, entire communities of color and religious groups are victims of an ongoing hostile educational environment. This complaint is filed on behalf of all victimized persons who have been, or will be on Paw Paw Public Schools properties in Paw Paw, Michigan, or who have been participants in off-site activities related to the school district. Records attached to this complaint demonstrate that the victims of discrimination are not limited to specific individuals or discrete groups. The discrimination is pervasive and affects diverse individuals and groups. Although there are individual acts of discrimination, the problems that are the subject of the complaint are systemic and require a system-wide investigation and remedy.

3. Institution responsible for the alleged discrimination:

Paw Paw Public Schools
119 Johnson Road
Paw Paw, Michigan 49079

4. Basis of complaint:

Includes, but is not limited to: Race, Religion, Ethnicity and National Origin

5. Description of discriminatory acts:

The school district maintains an environment that is hostile to a variety of racial, religious, ethnic and immigrant groups. There are ongoing acts of harassment, discrimination, bullying, intimidation, and use of imagery and language that cause humiliation. Details are provided below in the Argument in Support of Complaint and in attached school records.

6. Most recent date of discrimination:

Discrimination against all groups is ongoing. Most notably, use of imagery and language harmful to Native Americans continues, and on December 21, 2018, during a basketball game between Paw Paw High School and another school, white Paw Paw players and many of their fans engaged in a brawl with African American players from the opposing team.¹

7. Is a 180 day Waiver required?

No. See response to #6.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

No. Efforts have been made to communicate with the school district and to invite its participation in a program designed to address conditions associated with institutional hostile environments. The school district has not responded.

9. Have the allegations contained in this complaint been filed with any other Federal, state or local civil rights agency, or any Federal or state court?

The ACLU of Michigan is aware of other complaints that concern the use of imagery and language that are harmful to Native Americans, but this complaint differs in that it sets forth comprehensive allegations of discriminatory acts directed at a wide variety of racial, religious, ethnic and other groups.

10. Secondary contact:

The main number for the ACLU of Michigan is (313) 578-6800.

¹ A comment under a YouTube video of the brawl stated:
“Typical spook thinks hes going to push around a smaller white dude. Cant expect much out of them.”

11. What remedy is being sought?

It is respectfully requested that the Office for Civil Rights consider the facts and circumstances present in the school district, conduct an investigation, and after making appropriate findings, enter into a voluntary resolution agreement with the school district for the rehabilitation of the school district's hostile racial environment and the elimination of discriminatory policies and practices. If the school district declines to enter into a voluntary resolution agreement, federal funds currently earmarked for Paw Paw Public Schools should be withheld.

ARGUMENT IN SUPPORT OF COMPLAINT

Introduction

The American Civil Liberties Union (ACLU) of Michigan files this complaint against Paw Paw Public Schools in Paw Paw, Michigan (a recipient of federal funds). Title VI of the Civil Rights Act of 1964 prohibits discrimination by any program (including a school district) that receives federal funding. 42 U.S.C. § 2000d. This law provides in part: "no person ... shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *Id.* The recipient school district maintains a racially hostile educational environment which violates Title VI of the Civil Rights Act. It is respectfully requested that the Office for Civil Rights consider the facts and circumstances present in the school district, conduct an investigation, and after making appropriate findings, enter into a voluntary resolution agreement with the school district for the rehabilitation of the school district's hostile racial environment and the elimination of discriminatory policies and practices. In the absence of cooperation, the withholding of federal funds can be used to enforce the Civil Rights Act.

Relevant Facts

Although the Paw Paw school district is the focus of an ongoing high profile controversy concerning the use of a racial slur (“Redskins”) as the name for the high school’s sports teams, this complaint is about much more. In 2013, the Michigan Department of Civil Rights (MDCR) filed complaints about Michigan schools’ American Indian-based racist names and images.² The complaints were dismissed because: “OCR will not initiate an investigation unless a complaint provides sufficient detail (i.e., who, what, where, when, how) for OCR to infer that discrimination under one of the laws we enforce may have occurred or is occurring.”³

While this complaint provides details of discriminatory conduct related specifically to the “Redskins” slur, there are reports as well about other hostile acts targeting a variety of racial, religious and ethnic groups that contribute to a racially hostile racial climate in the Paw Paw public schools.⁴ Evidence of the recipient’s racially hostile environment may be found in records maintained by the school district, media reports and other sources of information.

² OCR Docket#15-13-1120 through #15-13-1154

³ Letter of May 29, 2013 from OCR Director Catherine Criswell to Daniel Levy, Director of Law and Policy, MDCR

⁴ Complaints about Native American imagery alone can or should be sufficient to prompt OCR concern. Consider the following media report excerpt: “Kalamazoo resident Jaqueline Faust says her Native American children played against Paw Paw when they were in school and the name hurt them, deeply. But Faust says keeping the Redskin name will also hurt non-native students in Paw Paw. ‘Their children will go out into the world thinking ‘I’m white, I’m privileged, I can do what I want even when it hurts other people.’ It’s not okay,’ Faust said, shaking her head. ‘It’s not okay.’” *Paw Paw School Board Votes 4 to 3 in keep ‘Redskins’ Mascot*, by Lindsey Smith, Michigan Radio (2/9/17). Also, in 2005 the American Psychological Association passed a resolution calling for the immediate retirement of Indian symbols. Former APA President Ronald Levant said: “The use of American Indian mascots as symbols in schools and university athletic programs is particularly troubling because schools are places of learning. These mascots are teaching stereotypical, misleading and too often, insulting images of American Indians. These negative lessons are not just affecting American Indian students; they are sending the wrong message to all students.”

Documents provided in response to an ACLU Freedom of Information Act request reveal the following, among other things:

- A note to the superintendent states: “Inside the school, I was approached by a resident who was punched in the face because she was in favor of the change [of the ‘Redskins’ name] and made this public prior to the meeting. The community or myself should not be afraid to attend a board meeting or any other activity on school property...There are community members who are afraid to attend the meetings and speak out for change due to the hostile environment. I am requesting that you change your mascot name and remove the name redskins and any imagery used in reference to Indians.”
- After a highly contentious school board meeting about the “Redskins” issue, a parent described the proceedings as an “openly hostile environment” and asked school officials to help her identify options for transfer of her child out of the school district.
- One document alleges that students placed a swastika and a small Hitler figurine in the basket of another student’s model hot air balloon science project. In response to a complaint the teacher allegedly described the swastika as “artistic.”
- One report states: “Tuesday coming back from lunch, [name deleted] pushed another student and called him the N word.”
- Another report states: “...[name deleted] came to me yesterday and wanted to talk to me about how he was feeling after the election. Yesterday afternoon he told me he had been hearing racist remarks from other students such as “Trump’s in the house,” “Go back to Mexico,” “Go back to your country now and pick blueberries.”
- Still another report states: “Use of a racial slur, directed at a classmate. Called him a ‘f---ing n***er.’”
- A document states that a student used a “whiteboard eraser to draw a penis and write the ‘n’ word on the carpet.”
- A report alleges that “[name deleted] called another student a ‘dirty Mexican.’”
- An e-mail states: “I wanted to just inform you on some very negative comments I overheard today after school. I was with a group of friends and as I walked over I overheard a student harassing one of the foreign exchange students and accusing him of having ties with the Taliban.”

Records that chronicle the incidents of discrimination set forth above and others are attached as exhibits to this complaint.

Applicable Law

A school district may be liable under Title VI for intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280-81 (2001). Additionally, "...a school district is liable for intentional discrimination when it has been 'deliberately indifferent' to teacher or peer harassment of a student." *Zeno v. Pine Plains Cent. School Dist.*, 702 F.3d 655, 665 (2d Cir. 2012).

Deliberate indifference is "found both when the defendant's response to known discrimination is clearly unreasonable in light of the known circumstances ... and when remedial action only follows after a lengthy and unjustifiable delay"...

DT v. Somers Cent. School Dist., 588 F. Supp. 2d 485, 495 (S.D.N.Y. 2008)

The action or inaction of a school district can provide important evidence of whether there has been deliberate indifference.

A finding of deliberate indifference depends on the adequacy of a school district's response to the harassment. (citations omitted). A failure to respond ... a response that "only follows after a lengthy and unjustified delay," ... and a response that "amount[s] to deliberate indifference to discrimination," (citations omitted) have all been found inadequate. Nevertheless, a school district's actions are only deliberately indifferent if they were "clearly unreasonable in light of the known circumstances." (citations omitted). Thus, when weighing the adequacy of a response, a court must accord sufficient deference to the decisions of school disciplinarians.

Zeno v. Pine Plains Cent. School Dist., 702 F.3d at 666.

OCR has noted that Title VI liability may be established in cases where racially harassing conduct "...is sufficiently severe, pervasive or persistent to limit a student's ability to participate in or benefit from the recipient's programs or services."⁵

Discrimination under Title VI is not limited to being excluded from, or denied the benefits of, a particular school program. *See* 42 U.S.C. § 2000d; 34 C.F.R. § 100.3(a). Discriminatory actions "[r]estrict an individual in any way in the

⁵ Letter of May 29, 2013 (note 2 supra.) Courts have also held that a plaintiff must establish that the recipient has substantial control over harassers and actual knowledge of the harassment. *See: Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 643-50 (1999)

enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit” under the school system. 34 C.F.R. § 100.3(b)(1)(iv); *see also id.* § 100.13(g)(2)(ii). **Educational benefits include an academic environment free from racial hostility...** (“We also find that ... [misconduct that] simply created a disparately hostile educational environment relative to her peers ... could be construed as depriving [the victim] of the benefits and educational opportunities available at [the school].”).

Zeno v. Pine Plains Cent. School Dist., 702 F.3d at 665 (emphasis added).

Paw Paw Public Schools Liability

The Paw Paw public school district has violated, and continues to violate Title VI by maintaining a racially hostile educational environment. School district records show a continuing and persistent pattern of racial harassment, and little or no responsive action by the district’s administrators. As noted above, these discriminatory acts range from Nazi references with teacher approval to aggressive use of racial slurs to actual physical assault.

Threshold questions about whether the bad actors are under the control of the recipient and whether the recipient had actual knowledge of the bad acts are answered summarily by the fact that these incidents have occurred on school premises and are chronicled in school records. It is possible then to move quickly to the question of whether school administrators have been deliberately indifferent to the discriminatory conduct.

Frequently, bullying and harassment incidents occur in isolation, and school administrators may develop individualized responses that may be effective or ineffective depending upon the circumstances and the personalities of those involved. However, when there are persistent and widespread incidents, such as in the Paw Paw schools, a different approach is required to eliminate a hostile environment.

Research shows that bullying can be significantly reduced through comprehensive, schoolwide programs designed to change group norms and improve school climate...Specifically, effective anti-bullying programs

incorporate: • A schoolwide focus on increased supervision and the promotion of pro-social behavior... • Intensive, sustained training for students, teachers, school staff, and community members... • Individualized intervention for students at heightened risk... • The promotion of respect for individual differences and an overall norm of tolerance (National School Climate Council, 2012)⁶

Available records suggest that in response to acts of bullying and harassment Paw Paw school officials have relied upon individual discipline, including: in-school and out-of-school suspensions; “loss of privilege;” “no contact contracts;” etc. Because the hostile conduct appears to be ongoing, the individualized disciplinary measures appear to be ineffective.

In its efforts to encourage system-wide remedial measures in the Paw Paw schools, the ACLU of Michigan proposed that the school district take advantage of the programs and services provided by Racial Emergency Solutions, Tools, Opportunities, Resources and Education (RESTORE). This is a collaborative effort by the ACLU, Michigan’s Dispute Resolution Centers, the Anti-Defamation League, Black Family Development, Inc., Michigan Roundtable for Diversity and Inclusion, and several other organizations. The collaborative was established for the specific purpose of providing assistance to school districts coping with racial harassment incidents.

Collectively, the participating organizations in RESTORE provide a variety of services. They include: restorative practices training and facilitation; mediation; cultural competency training; Holocaust awareness education; curriculum counseling and much more. Typically, a RESTORE delegation comprised of representatives of member organizations will meet with a school district’s leadership to learn first-hand about the

⁶ *Fostering a Safe and Bias-Free Learning Environment: A Guide for Educators*, Education Northwest (June 2016) p. 9. (<https://educationnorthwest.org/sites/default/files/resources/fostering-safe-bias-free-508-dec2016-.pdf>)

problems, and to then provide both a diagnosis and a menu of strategies for rehabilitating a school district's hostile environment.

Paw Paw's school district did not respond to an invitation to meet with a RESTORE delegation. Certainly a comprehensive district-wide approach is required. If the school district has already adopted a comprehensive strategy to address problems with the racial environment, it is a strategy that apparently deliberately disregards the toxic impact of the use of a racial slur as a name for its sports teams, and the impact is patently clear from the following media report excerpt:

The Paw Paw Public Schools Board of Education decided Wednesday that the district will continue to use the name Redskins. But the decision-making came at a price -- months of contentious and passionate arguing that divided many in this small community on a matter that had seemed to be something that unified them; their name. At points, the process involved meetings with finger-pointing, name-calling and division along racial lines -- enough interpersonal damage to have many acknowledge that real healing needs to happen as the community moves forward.⁷

If that is not sufficient evidence of the school district's deliberate disregard, then certainly the following is most telling:

...The school board ended a nearly four-hour meeting at about 10 p.m. Feb. 8, by approving a resolution to fully reinstitute the Redskins mascot and image at all of the Paw Paw Public Schools, and not address the matter again '**until a single tax dollar is withheld.**' (emphasis added)⁸

This betrays the school district's full awareness of the controversy and a stubborn determination to stay the racial course until funding is negatively affected.

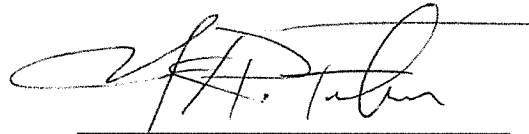
⁷ Paw Paw remains the "Redskins" but it suffered on way to that decision, by Al Jones, Kalamazoo News (2/9/17)

⁸ *Id.*

Conclusion

The Paw Paw school district's apparent cake-and-eat-it-too objective is to decline a comprehensive strategy to address its hostile environment problems unless and until this decision causes a loss of funding. This complaint implores OCR to find that the Paw Paw school district is in violation of Title VI and order actions by the school district that are calculated to rehabilitate the school district's hostile racial climate.

Respectfully Submitted,



Mark P. Fancher

Dated: January 21, 2019