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March 15, 2023

Emily Morrison, President
Camden-Frontier Schools
Board of Education
4971 W. Montgomery Road
Camden, Michigan 49232

Re: School Brand Retirement

Dear Ms. Morrison:

It is my understanding that the Camden-Frontier Schools Board of Education will once again consider the question of whether to retire the "redskins" brand at the meeting to be held on Monday, March 20, 2023. The ACLU of Michigan has a longstanding concern about public institutions' use of brands and mascots that expressly, or by implication, affirm, promote, or condone racial discrimination or harassment. We are thus moved to urge in the strongest terms that your school district join the many educational institutions throughout Michigan (and indeed throughout the country) that recognize the harm caused by official endorsement of a racial slur.

You and your colleagues have no doubt heard many arguments about the meaning and significance of the word "redskins." Regardless of differing opinions, those who take offense are able to point to ample credible historical evidence of the racial animus connected to the word. Specifically, law professors Kristen Carpenter and Carla Fredericks explained:

> "Historically, the word described the 'skins' of Indians for which states paid bounties. The killers had to present the Indians' bloody bodies to collect their fees. As a Minnesota newspaper reported in 1863, 'The State reward for dead Indians has been increased to $200 for every red-skin sent to Purgatory. This sum is more than the dead bodies of all the Indians east of the Red River are worth.' Colorado's history includes the Sand Creek Massacre of 1864. After Gov. John Evans asked the U.S. military 'to whip these red-skin rebels into submission,' Col. John Chivington's 700-member cavalry killed 200 Cheyenne and Arapaho Indians encamped under a white peace flag on treaty-protected lands."[1]

The Sand Creek massacre was followed by the desecration of the corpses. Soldiers carved genitalia from victims' bodies, stuck them on poles, and attached them to their hats. Of the massacre, witnesses and contemporary observers commented:[2]

"I saw the bodies of those lying there cut all to pieces, worse mutilated than any I ever saw before; the women cut all to pieces … With knives; scalped; their brains knocked out; children two or three months

[1] https://www.denverpost.com/2015/11/13/guest-commentary-why-use-r-skin-word-at-all/
[2] https://nativeheritageproject.com/2012/11/09/my-shame-is-as-big-as-the-earth-massacre-at-sand-creek/

old; all ages lying there, from sucking infants up to warriors … By whom were they mutilated? By the United States troops …" - John S. Smith

"Fingers and ears were cut off the bodies for the jewelry they carried. The body of White Antelope, lying solitarily in the creek bed, was a prime target. Besides scalping him the soldiers cut off his nose, ears, and testicles-the last for a tobacco pouch …" - Stan Hoig

"Jis to think of that dog Chivington and his dirty hounds, up thar at Sand Creek. His men shot down squaws, and blew the brains out of little innocent children. You call sich soldiers Christians, do ye? And Indians savages? What der yer 'spose our Heavenly Father, who made both them and us, thinks of these things? I tell you what, I don't like a hostile red skin any more than you do. And when they are hostile, I've fought 'em, hard as any man. But I never yet drew a bead on a squaw or papoose, and I despise the man who would." - Kit Carson

The Sand Creek massacre is only one example of the many genocidal acts connected with the "redskins" slur, and it is our hope that your school district will, in the interest of decency, reject a word so intimately related to some of the worst atrocities in this country's history. If, however there is continuing reluctance to abandon the slur, consideration should be given to practical legal concerns.

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.* One penalty for violation of Title VI is disqualification from receipt of federal funding. In addition, Section 402 of Michigan's Elliott-Larsen Civil Rights Act provides: "An educational institution shall not do any of the following: (a) Discriminate against an individual in the full utilization of or benefit from the institution, or the services, activities, or programs provided by the institution because of religion, race, color, national origin, or sex."

We are well aware of the racial demographics of your school district, and the fact that there are few students of color who are currently susceptible to acts of racial animus. Nevertheless, school administrators should be mindful of this country's ongoing demographic changes and shifting residential patterns that may result in an increase in the number of students of color in the district in the near future. What will be the racial climate in the schools when these students arrive? Will they be welcomed by students and teachers who are sensitive to both the impact of racial slurs and the extent to which their own racial perspectives may have been negatively distorted by lives in an insular, racially homogeneous community? Or will students of color instead encounter resentful opposition to their arrival that manifests in unlawful harassment and discrimination? The cost of the latter can be significant.

> "According to the Department of Education, a school district violates Title VI when (1) there is a racially hostile environment; (2) the district had notice of the problem; and (3) it 'failed to respond adequately to redress the racially hostile environment.' 59 Fed. Reg. at 11449. The agency's publication expressly states that a hostile environment can be caused by the conduct of peers. 'Under this analysis, an alleged harasser need not be an agent or employee of the recipient because this theory of liability under Title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.' *Id.*"

Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033 (9th Cir. 1998).

That court went on to explain: "Once on notice of the problem, a school district 'has a legal duty to take reasonable steps to eliminate' a racially hostile environment. 59 Fed.Reg.11450. When a district is 'deliberately indifferent' to its students' right to a learning environment free of racial hostility and discrimination, it is liable for damages under Title VI." *Id*. at 1034.

The pending question regarding the "redskins" brand provides the Camden-Frontier school district with an opportunity to begin what is likely to be an extended process of helping the school community and the broader community to become more knowledgeable about racial history and its implications for the school district. Our hope is that the Camden-Frontier school district might become a model and demonstrate for other school districts how public institutions can demonstrate courage and tolerance. The ACLU of Michigan stands ready to assist any such efforts.

Sincerely,

Mark P. Fancher

Mark P. Fancher
Staff Attorney – Racial Justice Project

Cc: Lynn Landers
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