UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

SAM ANTOINE, a minor, by and through LAVINA MILK, his legal guardian; RICHARD CHASING HAWK, a minor, by and through ROSE MENDOZA, his legal guardian; CHARLES DUBRAY; MINDI FELIX, a minor, by and through DONNA EISENBRAUN, her mother; JESSE MILK, a minor, by and through JOANNE BATES, his mother; DEIDRICK OLD LODGE, a minor, by and through YVETTE IRON HEART, his mother; JENNIFER PENEAUX; JOHNATHON SCRUGGS, a minor, by and through CHRISTINE RINKER, his mother; JOSEPHINE TRAVERSIE, a minor, by and through REGINA TRAVERSIE-LAPOINTE, her mother; TAYLOR WHITE BUFFALO, a minor, by and through DALE AND BEATRICE WHITE BUFFALO, his parents; and all others similarly situated, Plaintiffs, v. WINNER SCHOOL DISTRICT 59-2; MARY FISHER, Individually and as Superintendent of the Winner School District; BRIAN NAASZ, Individually and as Principal of Winner Middle School; and MIKE HANSON, Individually and as Principal of Winner High School, Defendants.	Civ. 06-3007 Judge Charles B. Kornmann

CONSENT DECREE

WHEREAS, on March 24, 2006, Plaintiffs filed this lawsuit, by and through their next friends and on behalf of others similarly situated against Defendants alleging multiple allegations of discrimination, including disparate treatment in school discipline, forwarding students' statements regarding disciplinary matters to law enforcement, and allowing the existence of a racially hostile educational environment. These allegations were detailed in the Complaint referenced as Sam Antoine, et al., vs. Winner School District 59-2, et al., Civ. 06-3007 in the United States District Court, District of South Dakota, Central Division.

Defendants denied each allegation and filed an Answer on April 20, 2006. On October 20, 2006, the Court entered an Order pursuant to Fed. R. Civ. P. 23(b)(2) and certified the litigation as a "class action."

WHEREAS to avoid time and expense of a trial, the Plaintiffs and Defendants entered into mediation before the Honorable Magistrate Judge John E. Simko and have come to an agreement. The Parties hereby submit the following to the Court for approval as a Consent Decree.

The Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

STUDENT AFFIDAVITS

1. Defendants shall not require any student to make any statement, whether in the form of a written affidavit or otherwise, that may be used against him or her in a juvenile court proceeding or criminal proceeding.

DISCIPLINARY INTERVIEWS AND POLICE REFERRALS

2. Once a school official has decided to refer a student to law enforcement as a result of alleged misconduct, that official must: (a) immediately notify an adult family member or guardian of the accused student; (b) promptly cease any further interview of the student until the adult family member or guardian arrives; and (c) inform the student that anything he or she says can be used against him or her in a criminal court and that the student has no obligation to continue speaking.

ANNUAL TRAINING OF STAFF REGARDING STUDENTS' PROCEDURAL DUE PROCESS RIGHTS AND LAW ENFORCEMENT REFERRALS

3. Defendants shall provide annual training, at the beginning of each academic year, to Winner Middle School and Winner High School staff and faculty, on the constitutional due process rights of students.

4. Defendants shall request that the Associated School Boards of South Dakota provide a non-local legal expert on the constitutional due process rights of students to conduct this Training.

5. Defendants shall make attendance at this training mandatory for all School Board members and for all school administrators authorized to make law enforcement referrals.

6. Defendants shall submit the agenda of the training, any written materials distributed at the training, and a sign-in sheet of all participants of the training to the Monitor within thirty (30) days of the training.

DISCIPLINARY MATRIX

7. Defendants shall retain an Expert to assist them with the development of educationally sound, objective and non-discriminatory Disciplinary Matrices for the Middle and High Schools.

8. The Expert shall be selected by mutual agreement of the Parties. If the Parties cannot agree within thirty (30) days of the entry of this Consent Decree, each Party shall submit two (2) names to the Court within forty (40) days of the entry of this Consent Decree and the Court shall select the Expert from among the four names submitted. Preference shall be given to Native American candidates.

9. The matrices developed with the assistance of the Expert shall: (a) eliminate mandatory police referrals, except to the extent required by state law; (b) clearly define discrete categories of misconduct; (c) set forth appropriate consequences for each category of misconduct; and (d) identify the circumstances under which deviations from the punishment dictated by the matrices shall be made. Where appropriate, the matrices shall incorporate the use of traditional Native American practices and tactics as consequences for misconduct.

10. The matrices shall apply equally to all students regardless of race or ethnicity.

11. Defendants shall use their best efforts to have the new matrices in place by the beginning of the 2007-2008 school year.

DISCIPLINARY RECORDKEEPING

12. Defendants shall maintain consistent and accurate records of all disciplinary incidents.

13. The Winner Middle School and the Winner High School shall maintain their records in an identical manner.

14. For each disciplinary incident, the Principals or their designees shall record, in writing, the name, race, gender, and grade of the student; the date, time, and location of the incident; a description of the incident to the extent possible consistent with Paragraph 2; the matrix category within which the misconduct falls; the punishment imposed; whether the

punishment deviated from the matrix and if so the reason for the deviation; and the staff member who made the initial disciplinary referral.

15. If the incident involved a Native American student and the Native American student was referred by a school official to law enforcement, the Principals or their designees also shall record whether the procedural steps set forth in Paragraph 2 were followed.

16. Defendants shall send a copy of each incident report to the family or guardian of each student involved in the incident within five (5) days of the incident, with any other students' names redacted.

17. Defendants shall submit copies of all incident reports to the Monitor and Plaintiffs' Counsel on a monthly basis for the duration of the Decree.

18. Defendants shall not be responsible for any fees associated with Plaintiffs' Counsel's review of these reports, except as provided for in Paragraphs 71 and 72.

EVALUATIONS FOR STUDENTS WITH THREE OR MORE INCIDENTS OF MISCONDUCT

19. With respect to every student punished three or more times during an academic year, Defendants shall conduct an evaluation of the student, with the participation of the student's parent or guardian, the principal, the Ombudsperson, and the Special Education Coordinator, within ten (10) days of the third disciplinary incident to determine whether the student has particular needs that are causing him or her to misbehave.

20. The Principals or their designees shall record the results of the evaluation in writing and shall include in their reports the date of the evaluation, the names of those who attended, efforts made to contact the parents if the parents were not present, any conclusions reached, and any steps to be taken in the future.

21. Defendants shall provide copies of the all such reports to the Monitor and to Plaintiffs' Counsel at the end of each month. Defendants shall not be responsible for any fees associated with Plaintiffs' Counsel's review of monitor's reports, except as provided for in Paragraphs 71 and 72.

THE OMBUDSPERSON

22. Defendants shall hire a Native American Ombudsperson by the beginning of the 2007-2008 academic year or within sixty (60) business days of entry of this Consent Decree. The Ombudsperson shall be selected by Defendants from a list of no less than seven persons provided by the Native American community, as communicated to Defendants by the Rosebud Sioux Tribal Education Department ("RSTED"). All persons on the list must meet the legal qualifications for employment by the Winner School District.

23. The Ombudsperson shall be a full-time employee of Winner School District and shall be provided with an office at either the Middle School or the High School. Plaintiffs and Defendants shall collaborate on the job description for the Ombudsperson, and the job description may be amended with the agreement of both parties.

24. The Ombudsperson shall serve as a liaison between the Native American community and the Winner School District, and shall serve as a voice for Native American students and families before the District, particularly with respect to disciplinary issues.

25. The Ombudsperson shall serve on both the Middle School Principal Advisory Committee and the High School Principal Advisory Committee as set forth in Paragraph 32.

26. The Ombudsperson shall be present during every interview of a Native American student by the Principal of the Middle or the High School (or his or her designee) in the Principal's Office for disciplinary purposes.

27. The Ombudsperson shall prepare a written report for each Native American disciplinary incident. The written report shall include for each disciplinary incident the name, race, gender, and grade of the student; the date, time, and location of the incident; a description of the incident to the extent possible, and any other information the Ombudsperson wishes to report. If the Native American student was referred by a school administrator to law enforcement, the Ombudsperson shall record whether the procedural steps set forth in Paragraph 2 were followed.

28. In addition, the Ombudsperson shall encourage and assist any adult family member or guardian who responded to a call from a Principal concerning the referral of a student to law enforcement to record whether, in the adult family member's or guardian's view, the procedural steps set forth in Paragraph 2 were followed.

29. The Ombudsperson shall submit his/her reports to the Monitor at the end of each month. In addition, the Ombudsperson shall report on his or her activities twice during each academic year, both in writing and in person, to the School Board and to RSTED.

PRINCIPALS' ADVISORY COMMITTEES

30. Defendants shall establish and maintain a Principal's Advisory Committee ("PAC") at both the Middle School and the High School.

31. The PACs shall meet at regular intervals four times during each academic year to review all documentation pertaining to student discipline to determine whether there are any racial disparities in the imposition of discipline.

32. Each PAC shall consist of seven members, one of whom shall be the Ombudsperson. Two of the remaining six members shall be Native Americans selected by the Native American community, with one member from the Ideal community and one member from

the Winner housing community. No individual other than the Ombudsperson may serve on both PACs.

33. Defendants shall arrange for the Interwest Equity Assistance Center ("Interwest") to provide, at the beginning of each academic year, training and orientation to all PAC members on their duties and responsibilities.

34. The PACs shall report the results of their reviews in writing to the School Board, the Monitor, and Plaintiffs' Counsel. Each report shall state the date of the meeting, the names of PAC members who attended, the documents reviewed, the conclusions reached, and the rationale for those conclusions.

35. Defendants shall not be responsible for any attorneys' fees associated with Plaintiffs' Counsel's review of these PAC reports, except as provided for in Paragraphs 71 and 72.

36. Defendants shall ensure that the PACs are in place by the beginning of the 2007-2008 academic year, and that each PAC have its first meeting in the Fall of 2007.

TEACHER TRAINING ON INDIAN EDUCATION AND EDUCATIONAL EQUITY

37. Defendants shall train all teachers on culturally-sensitive pedagogy, with ongoing training and support. Specifically, defendants shall arrange for the Interwest Equity Assistance Center ("Interwest") to train all administrators and staff on the American Indian Education Professional Development Workshop ("AIEPDW") Program and the Generating Expectations for Student Achievement ("GESA") Program bi-annually or at more frequent intervals if recommended by the Monitor. The initial training shall be conducted as soon as practicable upon establishment of the Benchmarks referred to in Paragraphs 62 through 68 below.

38. Once an appropriate number of administrators and staff have been trained, the District shall implement the AIEPDW Program and the GESA Program as recommended by Interwest.

39. Interwest may consult with RSTED in providing these Programs as it deems appropriate.

STUDENT-ON-STUDENT CONFLICT RESOLUTION

40. Defendants shall arrange for Interwest to train all administrators and staff at the Winner Middle and High Schools on the Olweus Anti-Bullying Program and the Aggressors, Victims, and Bystanders Program bi-annually, or at more frequent intervals if recommended by the Monitor. Training on both Programs shall be conducted as soon as practicable after the establishment of the Benchmarks contemplated by Paragraphs 62 through 68. All administrators and staff who have been trained shall work with Interwest to implement the programs.

NATIVE AMERICAN CLASSES, PROGRAMS AND ACTIVITIES

41. Defendants shall:

a. Offer an elective one-semester Lakota History, Culture, and Language Class each academic year at the Winner High School. The class shall be taught by a Native American teacher. Defendants shall work with RSTED to assist in identifying appropriate candidates for this position.

b. Incorporate Lakota history, culture, and language into the mainstream K-12 curriculum by the beginning of the 2008-09 school year.

c. In consultation with RSTED, sponsor and promote in-school and after-school events in the Winner Middle and High Schools focusing on Native American history, culture and language, such as drum classes or programs, dance classes or

programs, language classes or programs, Lakota After-School Clubs and/or a school-wide recognition and celebration of Native American Heritage Month.

42. Defendants shall implement the requirements of the new South Dakota Indian Education Act.

INCREASING THE NUMBER OF NATIVE AMERICAN EMPLOYEES

43. Defendants shall improve the numbers of Native Americans on the District's staff and faculty, consistent with the Benchmarks developed under Paragraphs 62 through 68.

IMPROVING PARENTAL PARTICIPATION

44. In collective bargaining sessions with the teachers' union, Defendants shall advocate for holding Parent-Teacher conferences at the 4-H Building once per semester. Defendant shall provide food at these Parent-Teacher conferences.

45. Defendants shall work with an Expert such as Interwest to develop and implement steps to improve parental participation in Winner School District's educational community.

46. Defendants must organize at least one activity per academic year to bring families of different cultures together to the school for social purposes.

LOCAL INDIAN EDUCATION COMMITTEE ("JOM BOARD")

47. The Parties acknowledge that the Local Indian Education Committee (also known as the "JOM Board") is not Defendants' Committee, but rather the Native American community's Committee.

48. Defendants shall comply with all federal laws, rules, and regulations regarding the Local Indian Education Committee under the Johnson O'Malley Act.

49. The Local Indian Education Committee shall develop its own charter and by-laws as it is entitled to pursuant to federal law.

50. Defendants shall refrain from establishing the Local Indian Education Committee's meeting agendas, budgets, and membership. Winner School District staff shall not run meetings of the Local Indian Education Committee.

THE ROSEBUD SIOUX TRIBAL EDUCATION DEPARTMENT

51. The Winner School Board shall have a standing place for the RSTED on the agenda of its first regular meeting every month. RSTED shall decide, at its discretion, whether to make a formal appearance at the meeting. If it decides to make such an appearance, it shall follow all regular Board procedures, including the submission of a letter briefly summarizing its presentation.

52. Defendants shall invite a representative from RSTED to the annual School Board retreat.

53. The President of the Winner School Board and the Superintendent shall make a presentation to the Rosebud Sioux Tribal Education Committee each academic year.

54. By the beginning of the 2007-08 academic year, the Winner School District shall enter into a Memorandum of Understanding with RSTED. The Memorandum of Understanding shall include how the Defendants shall obtain advice and guidance of the RSTED regarding Indian culture programs and curriculum development, the confidentiality of educational records disclosed to RSTED pursuant to this Consent Decree, and any other matters in which RSTED's involvement is either suggested or required by this Consent Decree. The memorandum will also provide the RSTED with the Winner School Board procedures which should be followed if RSTED decides to make an appearance as contemplated in Paragraph 51.

THE MONITOR

55. Defendants shall contract with a Monitor who shall oversee Defendants' implementation of the Consent Decree and shall facilitate the development of Benchmarks that Defendants must meet to exit from the Consent Decree.

56. The Monitor shall be certified as a No Child Left Behind Act supplemental service provider, certified by the United States Department of Education Institute of Education Sciences, and if possible, a Native American.

57. The Monitor shall be selected by mutual agreement of the Parties. If the Parties cannot agree on the Monitor within forty-five (45) days of the entry of the Consent Decree, each Party shall submit two names for potential Monitors to the Court within fifty-five (55) days of entry of this Consent Decree, and this Court shall decide from among the four candidates submitted, giving a strong preference to Native Americans.

58. The Monitor shall conduct on-site reviews twice a year for the life of the Consent Decree, to measure progress toward and achievement of the Benchmarks, as well as to consider and/or facilitate modification of Benchmarks where appropriate. Each full year of substantial compliance with the terms of this Consent Decree, including all Benchmarks, will reduce the number of the following year's on-site investigations to one.

59. The Monitor shall report quarterly to the Parties and the Court regarding overall compliance and make recommendations as needed to reach Benchmarks. Defendants shall not be responsible for any fees associated with Plaintiffs' Counsel's review of Monitor's reports, except as provided for in Paragraphs 71 and 72.

60. The Monitor shall work with RSTED throughout the monitoring process.

61. Defendants shall be responsible for all costs associated with the Monitor and the Monitor's functions.

BENCHMARKS

62. The Benchmarks to be developed shall address the following: (1) improving Native American graduation rates; (2) racial disparities in suspensions and police referrals; (3) reduction in overall number of suspensions and referrals; (4) reduction in Native American transfer and dropout rates; (5) improvement of Native American academic achievement; (6) reduction in Native American truancy and tardiness; (7) improvement of Native American parental participation in school meetings and events; (8) improvement of Native American participation in extracurricular activities; (9) improvement of school climate for Native American students, as measured by student perceptions of fairness of discipline, whether they feel their school is responsive to them, and whether they feel they are an important part of the school community; (10) inclusion of Native American culture, history, and language in the curriculum; and (11) accountability for all finances related to Native American students.

63. The Monitor shall conduct initial research and an on-site evaluation during the summer of 2007 or within sixty (60) business days of being selected as the Monitor to assist in the development of Benchmarks. This project shall include a review of data from the School District, including all financial data, interviews with parents, students and other members of the Native American community, and consultation with RSTED. The Parties, in good faith, will provide the monitor access to all information requested and facilitate meetings with all persons deemed appropriate to interview.

64. Using data gathered from the initial research and evaluation, the Monitor shall engage in a "co-construction process" to develop the Benchmarks and establish baselines against which progress can be measured. The co-construction process consists of convening stakeholders to take part in collaborative decision making through equal voice and consensus

principles. The co-construction process shall be undertaken by an eight- to ten- person group with representatives from the following: Winner School District staff and faculty, Winner School Board, RSTED, and the Native American Winner and Ideal communities. Each stakeholder group shall select its own representatives. Counsel for the Parties may attend those group meetings, but shall not be considered stakeholders. Defendants will not be responsible for Plaintiffs' attorneys' fees if they choose to attend any monitor's meetings or the "co-construction process."

65. The Parties recognize that in some instances, the Benchmarks will be the successful implementation in good faith of a program, such as the Olweus Bullying Prevention Program, whereas in other situations, the Benchmarks will be that of achieving a specific outcome, such as increasing the graduation rate of Native American students to a specific level. In other words, depending on the context, a Benchmark could be expressed in the form of a program, task, number, or a percentage.

66. If it appears, during the implementation phase of this Consent Decree, that a Benchmark developed during the initial co-construction process should be modified or amended, the Monitor shall re-convene the stakeholders identified in Paragraph 64 for the purpose of deciding upon that modification or amendment. Modifications or amendments may be warranted if a program mandated by the Consent Decree proves to be ineffective or if a particular percentage established as an initial Benchmark is subsequently deemed to be too high, too low or in need of adjustment.

67. Each Party shall accept the Benchmarks developed through the co-construction process unless it believes that a Benchmark is unrealistic, unreasonable, or will likely be ineffective, in which case that Party may petition the Court to alter that Benchmark.

68. When considering a challenge to a Benchmark, the Court shall defer to the expertise of the Monitor unless the Court is convinced that the Benchmark is indeed unrealistic, unreasonable, will likely be ineffective, or is arbitrary and capricious. In making this determination, this Court shall take into account the overall goals of this Consent Decree, which are to ensure that Native American students are treated equally with all other students and with appropriate cultural sensitivity, as well as the educational and pedagogical needs of Winner School District.

IMPLEMENTATION TIME TABLE

69. Teacher training and implementation of the programs mandated by Paragraphs 37 through 41 of the Consent Decree shall begin immediately or as soon as practicable after development of Benchmarks and establishment of measurement baselines.

ATTORNEYS' FEES AND COSTS

70. Defendants shall pay $100,000 to Plaintiffs' Counsel in attorneys' fees and costs.

71. Notwithstanding any other provision of this Consent Decree, if Plaintiffs successfully move to hold Defendants in contempt for failure to comply with any term of the Consent Decree or any benchmark established pursuant to the Consent Decree, Plaintiffs are entitled to reasonable attorneys' fees and costs incurred in connection with that motion.

72. Plaintiffs reserve the right to petition for attorneys' fees and costs associated with the defense of a motion to terminate the Consent Decree pursuant to Paragraph 77 below, if that motion is unsuccessful. Defendants reserve the right to challenge such a petition.

MEDIA RELATIONS

73. The Parties shall issue one joint press release announcing the Consent Decree, with no additional press release to be issued by either Party with respect to the settlement of this lawsuit.

DISCLOSURES OF EDUCATION RECORDS

74. This Consent Decree constitutes a court order authorizing Defendants to disclose information protected by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(b)(2)(B) for the purpose of effectuating this Consent Decree to (a) the Monitor; (b) RSTED; (c) Interwest; (d) any other Expert retained pursuant to this Consent Decree; (e) Plaintiffs' counsel; and (f) PAC members.

75. Each of the entities and/or individuals receiving information protected by FERPA pursuant to Paragraph 74 shall enter into a confidentiality agreement with Defendants prior to receiving such records, consistent with 20 U.S.C. § 1232g(b)(4)(B).

RETENTION OF JURISDICTION AND ENFORCEMENT OF CONSENT DECREE

76. This Court shall retain jurisdiction over all matters relating to the implementation and enforcement of the Consent Decree.

77. This Consent Decree shall remain in effect until Defendants have complied with all Benchmarks, for four consecutive school years, at which time the Consent Decree shall automatically terminate. Defendants may, however, move for termination of the Consent Decree if they believe that they have substantially complied with both the Consent Decree and the benchmarks for four consecutive years.

MISCELLANEOUS PROVISIONS

78. Failure by a Party to enforce any provision of the Consent Decree will not be construed as a waiver of the Party's right to enforce other provisions of the Consent Decree.

79. Terms of this Consent Decree shall be binding upon the Parties hereto, their agents, their successors-in-interest and their assigns.

80. This Consent Decree only affects the Parties to this action.

81. If any provision of this Consent Decree is declared void and/or unenforceable by any court of competent jurisdiction, for any reason, the remainder of the Consent Decree shall remain in full force and effect.

82. All undersigned counsel of record for the Parties has the authority to enter into and execute this Consent Decree on behalf of their clients.

SIGNED on the dated indicated below:

DANA HANNA

Date: December 10, 2007
PO Box 3080
Rapid City, SD 57709

CATHERINE YONSOO KIM

ROBIN DAHLBERG

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 1004

STEPHEN PEVAR

AMERICAN CIVIL LIBERTIES UNION
32 Grand Street
Hartford, CT 06106

COUNSEL FOR PLAINTIFF CLASS

DONALD KNUDSEN

Date: December 10, 2007

SARA FRANKENSTEIN

GUNDERSON, PALMER, GOODSELL
& NELSON, LLP
440 Mt. Rushmore Road
P.O. Box 8045
Rapid City, South Dakota 57709-8045

COUNSEL FOR DEFENDANTS

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated this 10th day of December, 2007.

BY THE COURT:

CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

BY: _____
DEPUTY